

WATER RETAIL CODE – MINOR AND INTERMEDIATE RETAILERS

Draft Decision

May 2014



REQUEST FOR SUBMISSIONS

The Essential Services Commission of SA (**the Commission**) invites written submissions from all members of the community on this paper. Written comments should be provided by **30 June 2014**. It is highly desirable for an electronic copy of the submission to accompany any written submission.

It is Commission's policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to publish any submission based on length or content (for example containing material that is defamatory, offensive or in breach of any law).

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The Essential Services Commission of South Australia is the independent economic regulator of the electricity, gas, ports, rail and water industries in South Australia. The Commission's primary objective is the *protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services*. For more information, please visit www.escosa.sa.gov.au.

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GLOSSARY OF TERMS

Commission	Essential Services Commission of South Australia
customer	<p>a person who owns land in relation to which a retail service is provided and includes:</p> <ul style="list-style-type: none"> • where the context requires, a person seeking the provision of a retail service; and • in prescribed circumstances—a person supplied with retail services as a consumer or user of those services (without limiting the application of this definition to owners of land); and • a person of a class declared by the regulations under the WI Act to be customers
ESC Act	Essential Services Commission Act 2002 (SA)
intermediate retailer	means a retailer which provides retail services to more than 500 and up to and including 50,000 connections
minor retailer	means a retailer which provides retail services to up to and including 500 connections
retailer	a water industry entity licensed in accordance with Part 4 of the WI Act
retail service	<p>has the same meaning as given to the term in the WI Act and covers a water service and/or a sewerage service supplied through a reticulated system, including:</p> <ul style="list-style-type: none"> • drinking water services; • non-drinking water services; and • sewerage services
sewerage service	has the same meaning as given to the term in the WI Act
Water Retail Code	means the <i>Water Retail Code—Minor and Intermediate Retailers (WRC-MIR/01)</i> made by the Commission under Part 4 of the ESC Act
water service	has the same meaning as given to the term in the WI Act
WI Act	Water Industry Act 2012 (SA)

EXECUTIVE SUMMARY

The *Water Industry Act 2012* requires that the Essential Services Commission of South Australia (**the Commission**) establish a consumer protection framework through the use of industry codes made under Part 4 of the *Essential Services Commission Act 2002 (ESC Act)*. Industry codes prescribe detailed rules of conduct and procedure that must be followed by industry participants.

The use of industry codes, made in accordance with the requirements of the ESC Act, allows for a higher degree of regulatory flexibility, while maintaining appropriate scrutiny, accountability and transparency of process in their development. Industry codes can cover any number of areas within a regulated industry, from consumer protection to technical matters.

The Commission has developed a water industry code, the *Water Retail Code—Minor and Intermediate Retailers (Water Retail Code)*, which applies to Minor Retailers (i.e., those licensees with up to and including 500 connections) and Intermediate Retailers (i.e., those licensees with greater than 500 and up to and including 50,000 connections).

The Water Retail Code is the principal consumer protection document setting out the behavioural standards and minimum requirements to be complied with by minor and intermediate retailers (**M&I retailers**) when dealing with their customers.

While the transition to a new regulatory regime can be complex, the regime under the Water Retail Code has been designed to protect consumers' long-term interests and its implementation is therefore essential.

To date, the implementation of:

- ▲ contracts that govern the provision of retail services to customers (standard contracts); and
- ▲ the provision of information to customers regarding their rights and obligations in respect of the supply of a retail service (customer charters),

has been slow. Therefore, the Commission has determined that it is appropriate to consider further reform of the Water Retail Code in those areas to assist retailers and thereby ensure that their customers receive the benefit of these key consumer protections.

It is noted at the outset that local government retailers can rely on rating provisions under local government legislation and need not use contracts. Nevertheless, not all local government retailers may wish to continue that practice and these rating provisions do not apply to other retailers. For those retailers it is important that standard customer contracts are in place, and for all retailers it is important that customer charters are in place, as soon as possible and through a simple process.

As a result, it is proposed that the Water Retail Code be amended to include model standard contracts and model customer charters. Standardisation will aid consumers and assist retailers in delivering their consumer protection obligations.

Those model documents are to be adopted by M&I retailers for all of their customers or, where relevant, for particular customer classes. Where existing contracts are in place, those arrangements will continue until terminated, at which time the model standard contract will apply.

Acknowledging that there is a suite of retail services that an individual retailer may provide (e.g., drinking water, recycled water or sewerage), the proposed model standard contracts will allow for provisions relating to specific services to be included. Further, in recognition of the fact that some M&I retailers may wish to further modify certain aspects of the model standard contracts or customer charters to reflect certain aspects of any unique retail services they provide, a Commission-approved mechanism for variation is also proposed. Under that scheme, any proposed amendments would need to be clearly marked, explained and justified and submitted to the Commission for approval, prior to being adopted or utilised.

The Commission is seeking submissions on the proposed amendments to the Water Retail Code as set out in section 3 of this Draft Decision and the draft model standard contracts and customer charters by **30 June 2014**.

1. BACKGROUND

The Essential Services Commission of South Australia (**the Commission**) is the independent economic regulator of a number of industries which provide essential services in South Australia. The Commission is a statutory authority, established under the *Essential Services Commission Act 2002 (ESC Act)* with the primary objective of:

“...protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services”.

The *Water Industry Act 2012 (WI Act)* commenced on 1 July 2012. The WI Act establishes the regulatory framework for the water and sewerage industry covering economic regulation, technical regulation, water planning and customer complaint handling. Under the WI Act, the Commission has various regulatory functions in relation to water and sewerage retail services in South Australia including: industry licensing, consumer protection and retail pricing.

Any person or entity wishing to provide retail services to South Australian consumers is required to obtain a licence from the Commission authorising those operations. Pursuant to Part 4 of the WI Act, the Commission has adapted the licence categories established by the Treasurer (for the purposes of setting licence fees)¹ to establish three classes of licensees:

- ▲ Major retailers – those licensees with greater than 50,000 connections;
- ▲ Intermediate retailers - those licensees with greater than 500 and up to and including 50,000 connections; and
- ▲ Minor retailers - those licensees with up to 500 connections.

The WI Act requires that the Commission establish a consumer protection framework through the use of industry codes made under Part 4 of the ESC Act and the Commission has published one consumer protection code to apply to both minor and intermediate retailers (**M&I retailers**): the *Water Retail Code – Minor and Intermediate Retailers (Water Retail Code)*.²

1.1 Water Retail Code - Minor and Intermediate Retailers

The Water Retail Code sets out the key consumer protection obligations that apply to M&I retailers. The Water Retail Code covers the following areas:

- ▲ **Customer Sale Contracts** – Commission approved contracts that set out the terms and conditions on which retailers are to provide water and/or sewerage services to customers;

¹ The Treasurer’s advice on water licence fees is available at <http://www.escosa.sa.gov.au/library/120831-WaterLicenceApplicationFeeandAnnualLicenceFee-Treasurer.pdf>.

² Refer <http://www.escosa.sa.gov.au/projects/182/economic-regulation-of-minor-and-intermediate-water-retailers.aspx> and <http://www.escosa.sa.gov.au/library/130627-WaterRetailCode-MinorIntermediateRetailers-WRC-MIR01.pdf>.

- ▲ **Customer Information Obligations** – requirements on retailers to develop customer charters, enquiry, complaint and dispute resolution procedures (including escalation of complaints to an independent dispute resolution body) and customer communication policies and adopt the residential customer hardship policy published by the Minister for Water and the River Murray;
- ▲ **Retailer Supply Obligations** – requirements on retailers in relation to customer connections, the quality and reliability of the supply of retail services, supply interruptions and emergencies and the recovery of monies for the illegal use of retail services;
- ▲ **Customer Service Obligations** – requirements on retailers in relation to billing, billing disputes (including undercharging and overcharging), payment methods and flexible payment arrangements; and
- ▲ **Restrictions, Disconnections and Restoration of Supply** – prohibitions on retailers for the disconnection of sewerage services for non-payment and obligations on retailers prior to the restricting of water services and requirements relating to the timeliness for restoration of supply.

The Water Retail Code commenced on 1 July 2013. However, consistent with the Commission’s approach to the implementation of new regulatory requirements in other industries, M&I retailers were provided with a three-month implementation period (until the end of September 2013) to allow for various policies and procedures to be developed and submitted to the Commission, for approval, where required.

During the initial three-month implementation period, M&I retailers were expected to use their best endeavours to implement the requirements of the Water Retail Code and work toward full compliance by 30 September 2013.

1.2 *Communication of customer rights and obligations under the Water Retail Code*

Under the Water Retail Code, there are two mechanisms under which the rights and obligations of retailers and customers are to be clearly set out and communicated: customer sale contracts and customer charters.

In respect of customer sale contracts, the Water Retail Code reflects the power given to retailers under section 36 of the WI Act to develop deemed statutory contracts for the sale and supply of water and/or sewerage services. This model, adopted from the *Electricity Act 1996* and the *Gas Act 1997*, allows for binding and valid contractual relationships to be deemed to exist between retailers and their customers in respect of the water and/or sewerage service being provided.

Given the binding statutory nature of the contract arising under this section, the WI Act establishes a measure of regulatory oversight and control, by providing that the terms and conditions of such contracts must comply with relevant regulatory requirements imposed by the Commission.

In respect of customer charters, M&I retailers are currently required to develop and submit to the Commission for approval a customer charter which should be a plain language (customer friendly) document which informs customers of their basic rights and responsibilities under their current customer sale contract or agreement. The purpose of a customer charter is to redress the potential imbalance of knowledge between a customer and a retailer in respect of the retail service being provided.

Where M&I retailers have decided not to utilise the statutory contract model (for example, where a local council relies on the rating provisions of local government legislation), the customer charter is the principal document pursuant to which retailers inform customers of their basic rights and responsibilities with respect to the water and/or sewerage service they receive.

2. A NEW APPROACH

2.1 *Customer sale contracts*

At the time of releasing the Water Retail Code, the Commission's final decision in respect of customer sale contracts was to require all privately owned M&I retailers to utilise the standard contractual model. Recognising the pre-existing statutory ratings system under local government legislation, it did not require local council retailers to transition to this contractual model at that point in time, although it did encourage adoption (and some such retailers have indicated an intention to move to the contractual model).³

Only a small number of M&I retailers have submitted standard contracts to the Commission for approval and, of those submitted, none have yet been approved, due to inconsistency with some requirements of the Water Retail Code.

While the transition to a new water regulatory regime can be a complex progression, that regime has been designed to protect consumers' long-term interests and its implementation is important. Accordingly, it is important that standard customer contracts are in place for all retailers who do not propose to rely on the rating system under the Local Government Act, and as soon as possible.

The Commission is keen to reduce any regulatory burden surrounding the implementation of the Water Retail Code provisions dealing with standard contracts – the more readily the regime can be adopted the more easily its benefits can flow to customers.

To facilitate this approach, model standard contracts have been developed, which it is proposed that M&I retailers should adopt. The standard contracts could apply to all of a retailer's customers or a set of standard contracts, based on the models, could be used for different customer classes. The Commission has successfully used this approach in the both electricity and gas industries and has previously worked with SA Water in the development of the standard contract it currently uses for the majority of its customers.

For ease of use, the Commission has prepared three draft model standard contracts, one for retailers providing water and sewerage services, one for retailers providing only water services and one for retailers providing only sewerage services. In addition, the model contracts allow for the incorporation of specific schedules to take account of any special characteristics of some supplies, (e.g., intermittent water supply).

M&I retailers that are currently charging for water and/or sewerage services in accordance with the statutory rating system or which already have existing agreements in place that the parties wish to continue, will not be required to adopt the model standard contract until such existing arrangements terminate.

³ Pursuant to the Local Government Act 1999, Councils can charge a rate payer for the provision or treatment of water or the removal of sewage through the provision of a statutory rate notice.

To implement this new approach to standard contracts, clause 2.1 of the Water Retail Code requires amendment.

In summary, the proposed amendments to clause 2.1 of the Water Retail Code will:

- ▲ require M&I retailers, which are not charging based on a statutory rating system or which have existing agreements in place that the parties wish to continue, to adopt a model standard customer contract prepared by the Commission;
- ▲ incorporate the model standard customer contracts (which allow for specific schedules to be included to take account of special characteristics of some supplies) as a schedule to the Water Retail Code;
- ▲ provide that a M&I retailer may apply to the Commission to vary a clause (or clauses) of a model customer contract; and
- ▲ provide grandfathering arrangements for existing contracts, noting that at the termination of those contracts a model standard contract will be required.

This approach was adopted by the Commission for SA Water under the new framework and has been successfully implemented for that retailer.

2.2 Customer charters

Pursuant to clause 3.1 of the Water Retail Code, all M&I retailers are required to develop, publish and provide customer charters to their customers. Customer charters must clearly communicate key rights and obligations of the retailer, the customer and a tenant in plain English.

The Commission has previously advised retailers that a customer charter can be a short, summary document.⁴ However, again the Commission has received very few customer charters to approve since the Water Retail Code took effect and the charters it has received have not addressed all requirements of the relevant code provisions.

Accordingly, for the same reasons as noted above in respect of standard contracts, draft model customer charters have been developed, for M&I retailers to adopt. Again the Commission has developed three model customer charters, one for retailers providing water and sewerage services, one for retailers providing only water services and one for retailers providing only sewerage services. The Commission has taken this approach to simplify this process for retailers and reduce overall regulatory requirements, thereby facilitating the delivery of consumer protection benefits to customers.

To implement this new approach to customer charters, clause 3.1 of the Water Retail Code requires amendment.

⁴ Further guidance on the contents of customer charters was provided in the Explanatory Memorandum to the *Water Retail Code - Minor and Intermediate Retailers*. Refer <http://www.escosa.sa.gov.au/library/130627-WaterRetailCode-MinorIntermediateRetailers-ExplanatoryMemo.pdf>.

The proposed amendments to clause 3.1 of the Water Retail Code will:

- ▲ require M&I retailers to adopt a model standard customer charter prepared by the Commission;
- ▲ incorporate the model customer charters as a schedule to the Water Retail Code; and
- ▲ provide that a M&I retailer may apply to the Commission to modify a model customer charter.

3. PROPOSED AMENDMENTS

In accordance with Part 4 of the ESC Act and the Commission's Charter of Consultation and Regulatory Practice⁵, the Commission consults with all stakeholders when making or varying an industry code or rule. Further, section 25(2) of the WI Act requires the Commission to have regard to the scale and nature of operations of water industry entities in determining the appropriate form of regulation, including industry codes, to apply to individual licensees.

For the reasons outlined earlier, the Commission considers that additional regulatory action is required to ensure that the customers of M&I retailers can benefit from the key consumer protections provided under the Water Retail Code regarding standard contract and customer charters. Consequential amendments to clauses 2.1 and 3.1 of the Water Retail Code are therefore proposed. In addition, the Commission has developed draft model standard contracts and draft model customer charters that it proposes be adopted by M&I retailers.

The Commission is mindful that some M&I retailers may wish to modify a model standard contract or customer charter for various reasons (e.g. so they properly reflect certain aspects of any unique retail services being provided) and has therefore included a mechanism for M&I retailers to propose variations to the model documents. However, any proposed amendments to the model documents will need to be clearly marked, explained and justified and submitted to the Commission for approval, prior to the modified documents being adopted and utilised.⁶ In approving any modifications, a key consideration of the Commission will be whether or not the proposals are in the long term interests of consumers.

Set out below are the proposed amendments to the Water Retail Code. The Commission is seeking submissions from stakeholders on these amendments.

In addition, as part of the consultation process, the Commission is seeking submissions on the draft model standard contracts and customer charters. These documents can be found at <http://www.escosa.sa.gov.au/projects/209/water-retail-code-minor-and-intermediate-retailers.aspx> and should be read in conjunction with this Draft Decision.

⁵ Refer <http://www.escosa.sa.gov.au/consultation/charter-of-consultation-and-regulatory-practice.aspx>.

⁶ For the avoidance of doubt, the addition of, or variation to, minor administrative details (such as name, address and contact details) will not constitute an "amendment" to the model documents.

3.1 Water Retail Code – amendment to customer sale contract provisions

It is the Commission’s Draft Decision to amend clause 2.1 by replacing the current text with the following:

2.1 Standard terms and conditions

- 2.1.1 A **retailer** must, on and from a date notified by the **Commission**, adopt a **standard contract** published by the **Commission** as attached to this industry code as Schedule 1;
- 2.1.2 A **retailer** must obtain the written approval of the **Commission** before it makes an amendment to a **standard contract** and must publish the amended terms and conditions in accordance with the requirements of section 36 of the Water Industry Act 2012.
- 2.1.3 Unless otherwise agreed by the parties, clause 2.1.1 will not apply to a **retailer** in circumstances where a **retailer**:
 - (a) charges a **customer** for **retail services** as a component of a rate notice issued under the Local Government Act 1999 for as long as this statutory charging arrangement continues; or
 - (b) already supplies a **retail service** to a **customer** under an existing agreement for as long as that agreement is in force.
- 2.1.4 The **Commission** may, by notice in writing to a **retailer**, require the **retailer** to amend its **standard contract(s)** in accordance with the requirements of section 36 of the Water Industry Act 2012.
- 2.1.5 A **retailer** must, on request by a **customer** or a potential **customer**, provide that **customer** with a copy of its **standard contract**, free of charge.
- 2.1.6 If a **customer** has already received a copy of the **standard contract** and requests another copy within a 12-month period, a **retailer** may impose a reasonable charge for providing that copy.

For the avoidance of doubt, all other subclauses of clause 2 would remain unchanged.

3.1 Water Retail Code – amendment to customer charter provisions

It is the Commission’s Draft Decision to amend clause 3.1 of the Water Retail by replacing the current text with the following:

3.1 Customer Charter

- 3.1.1 A **retailer** must, on and from a date notified by the **Commission**:
 - (a) adopt a Customer Charter published by the **Commission** as attached to this industry code as Schedule 2; or
 - (b) submit any proposed modifications to an adopted Customer Charter to the **Commission** for written approval prior to publication of that Customer Charter in accordance with clause 3.1.2.

3.1.2 A **retailer** must:

- (a) advise a **customer** of the availability of its Customer Charter as soon as practicable, and in any event, no later than the issue of the first bill;
- (b) place a copy of its Customer Charter(s) on its website, in a readily accessible location;
- (c) prominently display its Customer Charter(s) in those parts of the **retailer's** offices to which **customers** regularly have access; and
- (d) send a copy of its Customer Charter, or a summary document approved by the **Commission**, to a **customer** or a tenant brought within the definition of **customer** by regulations on request and free of charge as soon as practical following a request to do so.

3.1.3 The **Commission** may review the Customer Charter(s) from time to time.

For the avoidance of doubt, all other subclauses of clause 3 would remain unchanged.

4. NEXT STEPS

The Commission is seeking submissions on the proposed amendments to clauses 2.1 and 3.1 of the Water Retail Code and the draft model standard contracts and customer charters by **30 June 2014**.

The Commission will incorporate the issues raised in the submissions, where relevant, and release its Final Decision in **September 2014**. If the proposed amendments are adopted, a final version of the model standard contracts and customer charters will be released in conjunction with the Final Decision.



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