

# WATER RETAIL CODE – MINOR AND INTERMEDIATE RETAILERS

*Final Decision*

March 2015



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The Essential Services Commission of South Australia is an independent statutory authority with functions in a range of essential services including water, sewerage, electricity, gas, rail and maritime services, and also has a general advisory function on economic matters. For more information, please visit [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au).





# TABLE OF CONTENTS

- Glossary of Terms \_\_\_\_\_ ii
- Executive Summary \_\_\_\_\_ 1
- 1. Background \_\_\_\_\_ 4
  - 1.1 Rights and obligations under the Water Retail Code \_\_\_\_\_ 5
  - 1.2 Draft decision regarding customer sale contracts and charters \_\_\_\_\_ 6
  - 1.3 Consultation process \_\_\_\_\_ 7
- 2. Proposed Amendments to the Water Retail Code \_\_\_\_\_ 9
  - 2.1 Customer contracts \_\_\_\_\_ 9
  - 2.2 Customer charters \_\_\_\_\_ 9
  - 2.3 Discussion \_\_\_\_\_ 9
- 3. Final decision \_\_\_\_\_ 16
  - 3.1 Amendment to customer sale contract provisions \_\_\_\_\_ 16
  - 3.2 Amendment to customer charter provisions \_\_\_\_\_ 17
  - 3.3 Additional amendments \_\_\_\_\_ 17
- 4. Next Steps \_\_\_\_\_ 20

## GLOSSARY OF TERMS

<b>Commission</b>	Essential Services Commission of South Australia
<b>customer</b>	<p>a person who owns land in relation to which a retail service is provided and includes:</p> <ul style="list-style-type: none"> <li>• where the context requires, a person seeking the provision of a retail service; and</li> <li>• 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</li> <li>• a person of a class declared by the regulations under the Act to be customers</li> </ul>
<b>ESC Act</b>	Essential Services Commission Act 2002
<b>intermediate retailer</b>	means a retailer which provides retail services to more than 500 and up to and including 50,000 connections
<b>minor retailer</b>	means a retailer which provides retail services up to and including 500 connections
<b>residential customer</b>	means a customer which acquires retail services primarily for domestic purposes
<b>retailer</b>	a water industry entity licensed in accordance with Part 4 of the Act
<b>retail service</b>	<p>has the same meaning as given to the term in the Act and covers a water service and/or a sewerage service supplied through a reticulated system, including:</p> <ul style="list-style-type: none"> <li>• drinking water services;</li> <li>• non-drinking water services; and</li> <li>• sewerage services</li> </ul>
<b>sewerage service</b>	has the same meaning as given to the term in the Act
<b>Act</b>	Water Industry Act 2012
<b>Water Retail Code</b>	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
<b>water service</b>	has the same meaning as given to the term in the Act

## EXECUTIVE SUMMARY

The Essential Services Commission of South Australia (**Commission**) has established a consumer protection framework in the water and waste water industries through industry codes made under the *Essential Services Commission Act 2002 (ESC Act)*. These industry codes prescribe rules of conduct and procedures that must be followed by industry participants when dealing with their customers.

One of these codes, the *Water Retail Code—Minor and Intermediate Retailers (Water Retail Code)*, applies to minor and intermediate retailers (**retailers**).<sup>1</sup> The Water Retail Code, which took effect on 1 July 2013, is the principal consumer protection document setting out the behavioural standards and minimum requirements imposed on retailers. As the regulatory regime set out in the Water Retail Code has been designed to protect the long-term interests of consumers with respect to the provision of water and sewerage services, the Commission has been assisting retailers to implement the regime.

Adoption of the regime has been slow in terms of:

- ▲ customer contracts that govern the terms and conditions on which retail services are provided to customers (standard contracts), and
- ▲ the supply of easily accessible information to customers regarding their rights and obligations in respect of a water or sewerage retail service (customer charters).

Given the prominence of such matters in a consumer protection regime, in 2014, the Commission proposed further reform of the Water Retail Code, to assist retailers in delivering on these key consumer protections. In summary, it was proposed that the Water Retail Code be amended to include model standard contracts and customer charters to be adopted by retailers. A Draft Decision was released on 2 May 2014, setting out the proposed changes to the Water Retail Code to implement the new approach and was accompanied by draft model standard contracts and customer charters.

The Commission received written submissions in response to the Draft Decision and undertook significant public consultation, including hosting workshops with retailers in both regional and metropolitan locations. Overall, stakeholders supported the proposed changes to the Water Retail Code.

Having regard to the legislative and policy intent of the Water Industry Act 2012, submissions received and the Commission's consideration of an appropriate regulatory approach, its Final Decision is that, the Water Retail Code will be amended, from 1 July 2015, so that:

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<sup>1</sup> A minor retailer means a retailer which provides retail services to 500 or fewer connections. An intermediate retailer means a retailer which provides retail services to more than 500 but less than 50,000 connections.

- ▲ retailers not charging for a water or sewerage retail service as part of a statutory rate notice or under an existing agreement (compliant with the Water Retail Code) are required to adopt a model standard contract in respect of residential customers
- ▲ retailers are required to adopt a model customer charter in respect of residential customers
- ▲ the model standard contracts and customer charters are incorporated as a schedule to the Code
- ▲ retailers can apply to the Commission for a variation to a clause (or clauses) of a model standard contract or customer charter where the retailer can demonstrate there is a valid reason for the variation and the variation is in the long term interests of consumers, and
- ▲ minor clarifications are made to the provisions dealing with complaint handling and dispute resolution and permitted disconnections.

The new requirements of the Water Retail Code as they apply to retailers are set out in the table on the following page.

	<b>Residential</b> Drinking Water / Non-Drinking Water / Sewerage Service	<b>Non-Residential</b> Drinking Water / Non-Drinking Water / Sewerage Service / Trade Waste
New Customer Sale Contracts  - to take effect from 1 July 2015	<ul style="list-style-type: none"> <li>• <b>Must</b> adopt a model standard contract</li> <li>• <b>Must</b> adopt a model customer charter</li> <li>• <b>Can</b> apply to Commission to modify the model standard contract or charter if necessary</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Must</b> have customer contracts that comply with the Water Retail Code – Minor and Intermediate Retailers</li> </ul>
Existing Customer Sale Contracts  - took effect prior to 1 July 2015	<ul style="list-style-type: none"> <li>• <b>Must</b> have customer contracts that comply with the Water Retail Code – Minor and Intermediate Retailers</li> <li>• <b>Must</b> adopt model customer charter</li> <li>• <b>Can</b> apply to Commission to modify charter if necessary</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Must</b> have customer contracts that comply with the Water Retail Code – Minor and Intermediate Retailers</li> </ul>
Statutory charging arrangement under the Local Government Act 1999 utilised	<ul style="list-style-type: none"> <li>• <b>Must</b> adopt model customer charter</li> <li>• <b>Can</b> apply to Commission to modify charter if necessary</li> <li>• <b>Must</b> comply with the Water Retail Code – Minor and Intermediate Retailers</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Must</b> comply with the Water Retail Code – Minor and Intermediate Retailers</li> </ul>

The Final Decision will take effect on 1 July 2015 to allow retailers the opportunity to review the final model documents that have been released in conjunction with the decision and submit any modifications for approval if required.

# 1. BACKGROUND

The Essential Services Commission of South Australia (**Commission**) is an independent economic regulator and advisory body for a number of industries which provides 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 (Act)* commenced on 1 July 2012. The Act establishes the regulatory framework for the water and sewerage industry covering economic regulation, technical regulation, water planning and customer complaint handling. Under the 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.

The Commission has established a consumer protection framework in the water and waste water industries through industry codes made under the ESC Act. One of these codes, the *Water Retail Code – Minor and Intermediate Retailers (Water Retail Code)*<sup>2</sup> applies to minor and intermediate retailers (**retailers**).<sup>3</sup>

The Water Retail Code sets out the key consumer protection obligations imposed on retailers and 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
- ▲ **Customer Information Obligations** – requirements on retailers to develop customer charters, complaint and dispute resolution procedures (including escalation of complaints to an independent dispute resolution body), 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

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<sup>2</sup> 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-MIRO1.pdf>.

<sup>3</sup> Minor retailers are licensees that supply up to 500 connections and intermediate retailers are licensees that supply to more than 500 connections and up to and including 50,000 connections.

- ▲ **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.

## 1.1 *Rights and obligations under the Water Retail Code*

The Water Retail Code contains two mechanisms by which the rights and obligations of retailers and customers are to be communicated: customer sale contracts and customer charters.

### 1.1.1 *Customer sale contracts*

The Water Retail Code reflects the power given to retailers under section 36 of the Act to develop deemed statutory contracts for the sale and supply of water and/or sewerage services. This contractual model 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. In practice, this means that retailers can publish standard terms and conditions to apply to their entire customer base, or a subset of their customer base, without having to be involved in individual negotiations or obtain signatures from each customer.

Given the binding statutory nature of a contract arising through this process, the Act establishes a measure of regulatory oversight and control, by providing that the terms and conditions of such contracts must comply (or be consistent) with regulatory requirements set by the Commission. In reviewing the terms and conditions of any customer sale contracts submitted pursuant to section 36 of the Act, the Commission's key focus is that those terms and conditions comply with the relevant provisions of the Water Retail Code and are fair and reasonable.

### 1.1.2 *Customer charters*

Under the Water Retail Code Retailers are currently required to develop a customer charter and submit it to the Commission. A customer charter should be a plain language (customer friendly) document which advises customers of their rights and responsibilities (as contained in their customer sale contract). For retailers that charge customers as a component of a rate notice issued under the *Local Government Act 1999* (and do not have a contract with their customers) the customer charter is particularly important, as it is the principal document by which they inform customers of those consumer protection matters.

A key point of distinction between a customer charter and a customer contract is that the charter is not a legally binding document. Accordingly, only the customer sale contract can be legally enforced by either party.

## 1.2 *Draft decision regarding customer sale contracts and charters*

In its Final Decision on the Economic Regulation of Minor and Intermediate Retailers of Water and Sewerage Services,<sup>4</sup> released on 28 June 2013, the Commission required all privately owned retailers to utilise the standard contractual model set out in section 36 of the Act. 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.<sup>5</sup>

In respect of customer charters, the Commission required all retailers to develop a charter within 3 months of obtaining a licence, publish that charter and provide it free of charge to any customer upon request.

Adoption of the regime has been slow in terms of customer contracts that govern the terms and conditions on which retail services are provided to customers (standard contracts) and the supply of easily accessible information to customers regarding their rights and obligations in respect of a water or sewerage retail service (customer charters). To date, only a small number of retailers have submitted standard contracts and customer charters to the Commission for approval.

While the transition to a new regulatory regime can be complex and resource intensive for regulated businesses, the regime set out in the Water Retail Code has been designed to protect the long-term interests of consumers with respect to an essential service. Accordingly, the Commission is committed to promoting the implementation of the Water Retail Code requirements. Given the prominence of contracts and charters, the Commission proposed further reform of the Water Retail Code in these areas to assist retailers in delivering these key consumer protection measures.

On 2 May 2014, the Commission released a Draft Decision on proposed changes to the Water Retail Code to assist the adoption and use of customer sale contracts and customer charters. In summary, the Draft Decision proposed that the Water Retail Code be amended so that retailers would be required to adopt a model customer sale contract and customer charter developed by the Commission in respect of their customers (rather than each retailer using its own form of contract and charter and having these documents separately approved).

While the proposed amendments meant that the adoption of a model customer sale contract and charter by retailer would become mandatory, the Commission provided a carve-out for two classes of retailers. The classes of retailer exempted were retailers that have powers under the Local Government Act to charge for water or sewerage services and

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<sup>4</sup> A copy of this Final Decision can be found at <http://www.escosa.sa.gov.au/projects/182/proposed-price-regulation-for-service-providers-other-than-sa-water.aspx> and its decision in relation to the use of standard contracts is set out on page 20.

<sup>5</sup> Pursuant to the Local Government Act 1999, councils can charge a rate payer for the supply or treatment of water or the removal of sewage through the provision of a statutory rate notice and need not use contracts.

retailers that already have existing contracts in place (that are compliant with the Water Retail Code).

The proposed amendments were considered advantageous for all stakeholders as the standardisation of customer contracts and charters provides certainty and clarity to consumers, while assisting retailers deliver on consumer protection obligations in a timely manner. In addition, the successful adoption of a similar contractual model by SA Water supports such an approach being introduced for other retailers.

This Final Decision summarises the key issues raised by stakeholders in respect of the Draft Decision and the draft model standard contracts and charters. It also sets out the final decision in respect of the proposed amendments to the customer contract and charter provisions of the Water Retail Code.

### *1.3 Consultation process*

In accordance with Part 4 of the ESC Act and the Commission's Charter of Consultation and Regulatory Practice, the Commission consults with all stakeholders when making or varying an industry code or rule. Further, section 25(2) of the 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 retailers.

With the release of the Draft Decision in May 2014, the Commission invited written submissions on its proposal to amend the Water Retail Code as described above. The Commission received written submissions from the following stakeholders:

- ▲ South Australian Council of Social Service (**SACOSS**)
- ▲ City of Salisbury, and
- ▲ City of Charles Sturt.<sup>6</sup>

In addition to the written submissions received, the Commission invited all retailers to attend information workshops held in metropolitan and regional areas (attended by the majority of retailers). The additional feedback on its proposed Draft Decision through that process is greatly appreciated.

The Commission has been assisted by the submissions it has received through the consultation process. It has carefully considered the issues raised by stakeholders through the consultation period and, where relevant, incorporated the suggestions into this Final Decision. Where appropriate, the Commission has, either by direct quotation or by reference to themes, mentioned certain arguments and submissions in the text to assist stakeholders understand the positions it has reached; however, a failure to reference an argument or submission does not mean that the Commission has not taken that argument or submission into account in its deliberations. While the Commission has not adopted all positions put in

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<sup>6</sup> Copies of the submissions received are available on the Commission's website at <http://www.escosa.sa.gov.au/projects/209/water-retail-code-minor-and-intermediate-retailers.aspx>

submissions, all submissions have been helpful in informing the consideration of each of the relevant issues and the competing viewpoints.

## 2. PROPOSED AMENDMENTS TO THE WATER RETAIL CODE

### 2.1 *Customer contracts*

Three draft model standard contracts and three model customer charters were consulted on: one set for retailers providing water and sewerage services; one for retailers providing only water services; and, one for retailers providing only sewerage services.

To provide flexibility, the draft contracts proposed a mechanism to allow retailers to modify clauses or include additional terms, if necessary, to take into account any special characteristics of a service they supplied. Any contract to be modified in this way would need to be submitted to the Commission for approval.

To give effect to this new approach to customer contracts, the Draft Decision set out amendments proposed to clause 2.1 of the Water Retail Code. In summary, the proposals were that retailers should:

- ▲ adopt a model standard customer contract to apply to their customers (except retailers charging based on a statutory rating system or retailers with compliant agreements already in place)
- ▲ incorporate the model standard customer contracts (which included a mechanism for retailers to modify or add provisions to a model contract to cover special characteristics of some supplies) as a schedule to the Water Retail Code, and
- ▲ obtain the Commission's approval to modify or add provisions to a model customer contract

Grandfathering arrangements were proposed for existing contracts, (noting that at the termination of these contracts, the adoption of a model standard contract would be required, and that existing contracts should be compliant with the Water Retail Code).

### 2.2 *Customer charters*

In relation to customer charters, the Draft Decision proposed amendments to clause 3.1 of the Water Retail Code, requiring retailers to:

- ▲ adopt a model standard customer charter
- ▲ incorporate the model customer charters as a schedule to the Water Retail Code, and
- ▲ obtain the approval of the Commission to modify a model customer charter.

### 2.3 *Discussion*

The key themes arising from submissions to the Draft Decision, and the Commission's responses and reasons for decision, are addressed below.

### *2.3.1 Mandatory adoption of standard contracts and charters for all customer classes*

Submissions indicated general support for amendments to be made to the customer sale contract and charter provisions of the Water Retail Code.

SACOSS stated its strong support for the standardisation of contractual arrangements and the disclosure of consistent and clear information to customers in respect of water or sewerage services.

While the City of Charles Sturt did not object to the amendments as set out in the Draft Decision, it noted that retailers who had submitted documents to the Commission would be disadvantaged if they were subsequently required to adopt model documents and terminate existing arrangements. The City of Salisbury also agreed that there was merit in amending the Water Retail Code; however, it expressed a preference for the amendments to apply in respect of residential customers only. The City of Salisbury recommended this exclusion as it considers the Water Retail Code (and model standard contracts) is targeted towards the protection of residential customers and, from its experience, contracts with non-residential customers are often the subject of negotiation, such that no two contracts are alike.

In addition to written submissions received, the Commission consulted with over 40 retailers at information workshops in both regional and metropolitan areas. All retailers were invited to participate in a workshop, with the majority able to attend. The Commission received useful feedback on the Draft Decision from retailers through this process; in particular, on the application of model customer contracts to non-residential customers and the process proposed for modifying model contracts. As a result of this feedback, the Commission has a better understanding of the types of unique services (particularly non-drinking water services) that are being provided by retailers across the State and the issues that retailers face in providing those services.

The key focus for many retailers was the application of model standard contracts to non-residential customers. Many retailers noted that existing contracts for the provision of non-drinking water services to non-residential customers varied considerably, primarily as a result of the needs of such customers and the technical realities of such supplies. Retailers also submitted that many of the terms and conditions included in the model contracts were inappropriate or inapplicable to non-residential customers, such that the schedule of these contracts would need to be heavily utilised to effect the removal or alteration of a number of clauses. It was also suggested that non-residential customers generally have the balance of power when negotiating the terms of a non-drinking water contract, due to the fact there is often alternative water supply options.

Those submissions have force, as the model standard contracts do contain a number of terms that are more appropriately applied to residential customers. Further, standard contracts are more appropriate where standardised terms and conditions are to apply to particular customer groups. The use of standard contracts is less important where contracts include a number of negotiated (and often varying) terms and conditions, such as with non-residential supply.

Given the arguments presented in the submissions and the fact that the model standard contracts and charters were developed to assist retailers in delivering key consumer protections, the Commission is persuaded that the mandatory adoption of model documents by retailers in respect of non-residential customers is not warranted at this time. Requiring retailers to adopt standard contracts and charters for non-residential customers would appear to increase complexity in delivering consumer protections, rather than simplifying the process as intended.

Nevertheless, retailers' contracts with non-residential customers must be compliant with the requirements of the Water Retail Code. On that basis, the Commission reserves the right to revisit this decision (for a particular retailer or across the market) if it becomes apparent that there is a systemic issue with supply contracts for non-residential customers being non-compliant with the Water Retail Code.

### *2.3.2 Assurances around the timing of Commission approval*

The City of Salisbury submitted that the Commission should provide assurances to retailers in respect of the turn-around time for an approval of a standard contract modification, as delays in this process could result in the loss of potential customers. In the approval of any modification, a key consideration will be whether or not the proposals are in the long term interests of consumers.

Accordingly, if the proposed amendments can be adequately explained and supported and do not result in unfair or unreasonable terms, the Commission will be committed to providing its approval within 30 business days.<sup>7</sup>

However, the turnaround time for a decision will, in large part, depend on sufficient explanation of the modifications as provided by the retailer. In the case of incomplete proposals, the Commission may suspend consideration of the proposal until further information or documents are provided. In this event, the Commission will consult with any retailer required to submit modified documents so that the timing of a decision can be discussed and agreed.

### *2.3.3 Duplication of information*

The City of Salisbury also submitted that it was unnecessary for the model customer charters to duplicate information already contained in the model standard contracts. While it is acknowledged that some information contained in the model contracts is repeated in the charters, the role of these two documents and the way in which they are to work together necessitates this approach.

The customer contract is the legally binding document which must set out the terms and conditions that govern the supply of a water or sewerage service by a retailer. Either party to

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<sup>7</sup> 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" that requires Commission approval.

the contract can enforce these terms and conditions and may seek damages if the contract is breached.

In contrast, the customer charter is an advisory document which should provide a summary of the key terms and conditions of the customer contract and how a customer may contact the retailer. The customer charter is not a legally binding document and cannot be enforced by a retailer or a customer.

Accordingly, as the two types of documents have different roles and legal enforceability, they must work together to ensure both retailers and customers are adequately protected and informed.

#### *2.3.4 Modifying clauses of the Commission's model customer contracts*

In developing the model standard contracts and charters, the Commission recognised that, in certain circumstances, it would be necessary for a retailer to modify a clause or include additional terms to take into account any special characteristics of the service supplied (e.g. supplies subject to availability). There may be a number of other situations in which the terms and conditions of the model standard contracts cannot be complied with, however, it is untenable to accommodate for all situations in documents designed to have a broad application. To accommodate this, it was proposed that a mechanism be included in the model documents by which retailers providing a unique service could apply to modify certain clauses of the model standard contract to deal with their situation.

The submissions from the City of Salisbury and the City of Charles Sturt suggested specific amendments to a number of clauses to accommodate the nuances of services they provide. While the efforts of these two retailers in undertaking this task is appreciated, the majority of the suggested amendments will only benefit a small number of retailers. Accordingly, given the nature of the model standard documents as templates that can be broadly adopted, the Commission does not propose to accept the amendments proposed in these submissions. As an alternative, the Commission would recommend that these (and other) retailers apply directly to the Commission to obtain ongoing approval for modifications in the manner discussed above. In doing so, it is important to reiterate that retailers must be prepared to adequately justify why such modifications are necessary.

SACOSS noted three general issues with particular clauses of the model standard contracts. First, it raised a concern with terms of the model standard contract that require customers to contribute to the costs of certain works. While SACOSS acknowledged the right of retailers to recover costs from customers in certain circumstances, it was concerned that some customers would not have the capacity to pay for such costs up-front or may be in financial hardship when the costs are accrued. The particular clauses of the Water Retail Code identified by SACOSS are replicated and discussed further below.

### *Water retail service – Reliability*

- (a) *We will use our best endeavours to provide you with a water flow rate to meet your reasonable needs. Please note that, for some customers, the flow rate may not be sufficient for all purposes without provision of additional on-site infrastructure. You assume the responsibility of providing such additional water infrastructure.*

This clause does not provide a retailer with the right to recover costs from consumers. A retailer owns the infrastructure up to the connection point and the customer owns the infrastructure on their side of the connection point. In this scenario, a customer has discretion whether to arrange for an upgrade of their infrastructure to receive the flow rate as provided by the retailer. This is an unregulated and contestable service, such that a customer may contract with a provider of their choice to undertake necessary work or decide not to. Payment terms for any works would need to be negotiated between the customer and the chosen provider.

### *Sewerage Retail Service - Reliability*

- (b) *If a blockage in the sewerage retail service occurs within our sewerage reticulation network, that is from the supply side of the connection, we will clear the blockage at our cost unless and to the extent you have contributed to the blockage occurring. If you have contributed to the blockage, you will be liable to pay us for the proportion of the costs reasonably determined by us to be attributable to your contribution to the blockage.*

In relation to this clause, it is noted that the terms of the model standard contracts that require customers to contribute to costs are limited to circumstances where a customer's actions have directly impacted upon the reliability of the service they receive. In general, the cost of services provided to specific customers should be recovered through specific charges to those customers, rather than such costs being borne by a retailer (which is ultimately paid for by all customers through higher tariffs).

However, the Commission notes that incurring an unexpected cost may affect a customer's capacity to pay for retail services. Under the Minister's Hardship Policy,<sup>8</sup> retailers must offer customers experiencing financial hardship flexible payment options which take into account a customer's capacity to pay for retail services. Debts incurred to remove blockages should be considered when determining realistic payment options in line with a customer's capacity to pay.

Second, SACOSS requested clarification regarding the terms of the standard contracts dealing with tariff changes, in particular, whether a retailer is obliged to notify a customer of a new tariff rate prior to it taking effect.

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<sup>8</sup> Refer: <http://www.dcsi.sa.gov.au/services/community-development/community-connect/water-retailers>

In respect of retailers that charge customers for water or sewerage services as a component of a rate notice (issued under the Local Government Act) the Commission understands that such retailers must declare their rates (which include the annual amount payable for the water or sewerage service provided) prior to them taking effect. Accordingly, all customers of these retailers are notified in advance of what their water and sewerage service charges will be and these amounts are set for the financial year (and do not change). Accordingly, the terms of the model contracts dealing with changes to tariff rates would not apply to these retailers.

In respect of water and sewerage service retailers who do not charge in this way, a change in a tariff rate could occur during a financial year. However, the Commission does not have evidence which suggests that this is a common practice of water retailers.

The Commission understands that this is primarily due to the nature of a water retailer's costs (which commonly include bulk water costs (or wholesale costs)) which tend to remain reasonably stable over a 12 month period (unlike, for example, an electricity retailer's costs). In the event a retailer has underestimated its costs, the general practice is for any shortfalls to be recovered through the following year's formal price setting process, rather than through ad hoc price adjustments.

Finally, it should also be noted that all retailers are currently required to prepare and publish on their website a price list which sets out all fees and charges of a retailer (and be updated if they change).

Accordingly, in light of the existing requirement to publish a pricing schedule and the fact that the majority of retailers do not adjust their prices during a year, the benefits of imposing additional price disclosure obligations on retailers in respect of tariff changes would outweigh the costs. Notwithstanding this position, if it becomes apparent that retailers are implementing ad hoc tariff adjustments and that this is causing issues for customers in terms of bill shock or financial hardship, the Commission will revisit this matter.

Last, SACOSS noted that the terms of the model standard contracts dealing with payment difficulties were slightly inconsistent with the Water Retail Code, in that the requirements did not capture the situation where a retailer had identified that a customer was experiencing payment difficulties. This inconsistency will be corrected by ensuring that these provisions of the model standards contracts capture all situations as envisaged by the Water Retail Code.

### *2.3.5 Clauses of the model documents dealing with disconnections and reliability of services*

Through the public consultation process, the Commission was advised by some retailers that, due to technical or health requirements, certain non-drinking water and sewerage services could not be disconnected or meet certain reliability requirements. Further, some retailers put forward the view that the clauses dealing with the termination of customer sale contracts would not work in practice.

The Commission has therefore undertaken internal and external review of its model documents to ensure that they are legally and technically sound and user friendly. The resulting changes from the consultation documents are as follows:

- ▲ clarification in relation to who can undertake work on a customer's on-site infrastructure (i.e. an appropriately licensed plumber) and who is responsible for paying the costs of any works (i.e. the customer)
- ▲ clarification that customers are to be *immediately* notified if there is any reclassification to their service pursuant to clause 22.1(d) and that any reclassification can only be done in accordance with applicable health requirements
- ▲ clarification that a retailer must have (and adhere to) policies or procedures in place dealing with blockages, bursts or leaks and provide reasons to a customer if the retailer determines that a customer contributed to a blockage, burst or leak pursuant to clause 22.3(d) and (e)
- ▲ confirmation that a retailer is not required to action a customer requested disconnection pursuant to clause 26.2 if it would be contrary to any existing health, environmental or technical requirements
- ▲ confirmation that prices contained in a retailer's price list must state whether they are inclusive or exclusive of GST, and
- ▲ clarification that customers should be advised in writing by a retailer (e.g. in the customer charter) of any pre-conditions that they must satisfy before connection to the retailer's retail service can be actioned.

### 3. FINAL DECISION

For the reasons set out above, the Commission's final decision is to amend the provisions of clauses 2.1 and 3.1 of the Water Retail Code. As discussed in section 2.3.1, the Commission has been persuaded that the mandatory adoption of model standard contracts and charters by retailers in respect of non-residential customers is not warranted at this time. Accordingly, to take account of this change in position, the amendments to be made to the relevant provisions of the Water Retail Code are slightly different to the amendments previously proposed in the Draft Decision.

#### 3.1 Amendment to customer sale contract provisions

To give effect to the Commission's decision on changes to customer contract provisions, clause 2.1 will be amended by replacing the current text with the following:

##### 2.1 Standard terms and conditions

- 2.1.1 A **retailer** must adopt a **standard contract** published by the **Commission** as attached to this industry code as Schedule 1 in respect of its **residential customers**;
- 2.1.2 A **retailer** may adopt a standard contract published by the **Commission** as attached to this industry code as Schedule 1 in respect of its **non-residential customers**.
- 2.1.3 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.
- 2.1.4 Unless otherwise agreed by the parties, clause 2.1.1 will not apply to a **retailer** in circumstances where a **retailer**:
  - (a) charges a **residential 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 **residential customer** under an existing agreement for as long as that agreement is in force.
- 2.1.5 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.
- 2.1.6 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.
- 2.1.7 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, it will not be mandatory for a retailer to adopt a model standard contract developed by the Commission in respect of non-residential customers at this time. However, if a retailer chooses to do so, it will also be required to comply with the relevant provisions of clause 2.1 of the Water Retail Code.

## 3.2 Amendment to customer charter provisions

To give effect to the Commission's decision in retailer to customer charters, clause 3.1 of the Water Retail Code will be amended by replacing the current text with the following:

### 3.1 Customer Charter

3.1.1 In respect of **residential customers**, 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; and
- (b) submit any proposed modifications to a Customer Charter adopted under clause 3.1.1(a) 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 **residential 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 **residential customers** regularly have access; and
- (d) send a copy of its Customer Charter, or a summary document approved by the **Commission**, to a **residential 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.

## 3.3 Additional amendments

Additional feedback was received from stakeholders in relation to other areas of the Water Retail Code that could benefit from amendment. While the Commission will undertake a thorough review of the regulatory framework that applies to minor and intermediate retailers in the 2015/2016 financial year (which will include a wholesale review of the Water Retail Code) it has taken the opportunity to amend two areas of the Water Retail Code at this time.

Specifically, the provisions of the Water Retail Code dealing with complaints and dispute resolution and disconnections have been identified as provisions requiring amendment to clarify policy positions and reduce implementation issues. The amendments to be made to these provisions will not change the nature of any of the obligations, rather they are being made to reduce uncertainty around how such obligations are to be applied. The following sections explain (and set out) the additional amendments to be made to the Water Retail Code.

### 3.3.1 Complaint handling and dispute resolution

Clause 3.2.1 of the Water Retail Code deals with complaint handling and dispute resolution. This clause will be amended so that additional matters specifically listed for inclusion in a retailer's complaint handling procedure are deleted. These matters primarily concern the provision of information to residential customers and are more appropriately dealt with in a retailer's customer charter. Consequently, there is no need for the Water Retail Code to require retailers to duplicate this information in complaint handling and dispute resolution procedures. Retailers continue to be required to have a procedure that complies with *Australian Standard ISO 10002—2006 Customer satisfaction—Guidelines for complaints handling in organisations*. To assist retailers with the implementation of this requirement, the Commission has developed a template complaint handling and dispute resolution procedure which is available for retailers to adopt if they wish.

Specifically, clause 3.2.1 will be amended by replacing the current text with the following:

#### 3.2 Complaints and dispute resolution

3.2.1 *Within 3 months of being granted a licence, a **retailer** must prepare and submit to the **Commission** for approval the procedures it will comply with for the management and resolution of customer complaints and disputes, which must be prepared in accordance with AS ISO 10002-2006 (as amended from time to time).*

For the avoidance of doubt, all other subclauses of clause 3.2 remain unchanged.

### 3.3.2 Permitted disconnections

Clause 7 of the Water Retail Code deals with retailers' obligations in relation to such requests. The Commission received feedback from retailers and from its technical consultant that there are other regulatory requirements in existence (or technical nuances) that may prohibit the disconnection of such services in certain circumstances. While the Water Retail Code currently gives a retailer sole discretion in relation to disconnection requests (allowing a retailer to exercise its discretion not to disconnect if other requirements or technical restrictions prevent it from doing so) the relevant clauses will be amended to clarify this position.

Specifically, clause 7.3.1 and 7.4.1 will be amended by replacing the current text with the following:

#### 7.3 Permitted disconnections

7.3.1 *Subject to any public health and safety requirements or technical restraints which affect the **retail service** provided by a **retailer**, a **retailer** may arrange for disconnection of a **customer's retail services** only if a **customer** has:*

- (a) *requested that disconnection;*
- (b) *used the retail services illegally; or*

- (c) *refused entry to a water industry officer appointed under the Water Industry Act 2012 for the purposes of meter reading or other purpose consistent with carrying out duties in accordance with **applicable regulatory instruments**.*

While retailers cannot disconnect supply for non-payment (and cannot disconnect sewerage services at all), there are times when a customer may seek the disconnection of their supply (e.g. for building works etc.).

7.4 *Customer request for final account or disconnection*

- 7.4.1 *If a **customer** requests the **retailer** to arrange for the preparation and issue of a final bill, or, subject to clause 7.3, the disconnection of, the **customer's supply address**, the **retailer** must use its **best endeavours** to arrange for that final bill (in circumstances where final bills can be issued) or disconnection in accordance with the **customer's** request.*

For the avoidance of doubt, all other subclauses of clause 7 remain unchanged.

## 4. NEXT STEPS

To allow retailers the opportunity to properly review the final model documents released with the Final Decision (and submit any proposed modifications to the Commission for approval), a four month implementation period will be adopted for the decision. Accordingly, while the amended Water Retail Code has now been released, the amendments to the provisions that deal with customer sale contracts and charters (and complaint handling and disconnections) will not take effect until 1 July 2015.

Given the extent of this transitional period, the Commission will expect all retailers to be complying with the relevant provisions of the Water Retail Code by that date. Further, from then onwards, the Commission will be undertaking investigations to ensure that compliance is being achieved. The Commission's approach to compliance is essentially risk-based so that there is minimal cost and disruption to complying licensees but appropriate oversight when issues arise. Further details on how the Commission undertakes its compliance functions are set out in the Commission's Water Industry Guideline No. 1.

To assist retailers in implementing the consumer protection framework, retailers are invited to contact the Commission should any matters or questions arise. Information sessions and detailed support is available on all aspects of the Commission's consumer protection, pricing and reporting framework. Inquiries should be directed to [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au) or by calling the Commission switchboard on (08) 8463 4444.



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