

# BILLING CONSUMERS RATHER THAN LANDOWNERS

*Issues Paper No. 6*

*Inquiry into the reform of SA Water's drinking water and sewerage prices*

August 2013



## REQUEST FOR SUBMISSIONS

The Essential Services Commission of SA (**the Commission**) invites written submissions from interested parties in relation to the conclusions raised in this Issues Paper. Written comments should be provided by **5:00 p.m., Friday 8 November 2013**. 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](http://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 exhibit any submission based on their length or content (for example containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to:

Billing Customers rather than Landowners - Inquiry into the reform of SA Water's drinking water and sewerage prices

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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](http://www.escosa.sa.gov.au).

## THE ISSUE

Historically, SA Water has billed landowners, rather than occupants, for water and sewerage services. Tenants cannot, therefore, access the consumer protection mechanisms available to water ‘customers’. The practice is reasonably unique to the water sector – it does not apply in the case of utilities such as gas, electricity or telecommunications.

The Productivity Commission has recently suggested that where water is separately metered there is ‘no clear justification for landlords, rather than tenants paying for water usage.’<sup>1</sup>

As part of its inquiry into the reform of SA Water’s drinking water and sewerage prices, the Essential Services Commission of South Australia (**Commission**) is exploring alternatives to the landowner having sole responsibility for water and sewerage charges, and seeking to determine whether a different approach would promote greater economic efficiency.

Promoting greater economic efficiency is considered by the Commission to be consistent with its primary objective of protecting the long term interests of consumers. It is important to note that some of these consumers may not be SA Water ‘customers’.

People are strongly encouraged to read Issues Paper 1, accessible [here](#), which describes the context and objectives of this inquiry.

## CURRENT APPROACH

### *Residential tenancies*

Under Section 73 of the *Residential Tenancies Act*, the landlord and tenant agree who is to pay for water supply and usage charges. Although the landlord is held responsible for the SA Water bill, rates and charges can be passed on to the tenant through a rental agreement. In the absence of an agreement, the landlord must bear the supply and usage charges up to a limit fixed or

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<sup>1</sup> Productivity Commission, *Australia’s Urban Water Sector: Productivity Inquiry Report*, p. 159.

determined under the regulations. Any amount in excess of that limit is to be paid by the tenant.

Recent amendments to the *Residential Tenancies Act* have changed the default arrangements for payment of rates and charges for the supply of water.<sup>2</sup> While it will still be the case that charges are to be borne as agreed between the landlord and tenant, if there is no agreement, and the supply of water to the premises is separately metered, the rates and charges are to be paid by the tenant to the landlord. (If the water supply is not separately metered, the rates and charges are still to be borne by the landlord.)

Despite that general rule, a tenant will not be required to pay for water charges if the landlord does not request payment within three months of the issue of the bill. Further, a tenant is not required to pay water charges if they have requested a copy of the account and the landlord has failed to provide one within 14 days of the request – at no cost. Tenants can also directly request billing data from SA Water.<sup>3</sup> All sewerage charges are currently paid for by the landlord.

### *Retail and commercial leases*

Pursuant to Section 26 of the *Retail and Commercial Leases Act 1995*, a lessee is liable to pay an amount to the lessor in respect of outgoings – and this includes water and sewerage charges. The lease must specify:

- ▲ the outgoings
- ▲ how the amount of outgoings will be determined
- ▲ how they will be apportioned to the lessee
- ▲ how those amounts will be recovered

The lessor is required to provide a disclosure statement to the lessee before a lease is entered into. This statement must include outgoings – including water and sewerage charges payable –

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<sup>2</sup> The Residential Tenancies (Miscellaneous Amendment) Bill 2013 was assented on 14 May 2013 and will come into operation on a day to be fixed by proclamation (to be advised).

<sup>3</sup> Refer clauses 18.11.4 and 18.11.5 of the Commission’s Water Retail Code – Major Retailers.

together with an estimate of the lessee’s annual liability.

Under Section 31 of the Act, the lessor has an ongoing obligation to give the lessee a written estimate of outgoings, including an itemised list, every year. This estimate must be for each accounting period during the term of the lease and be provided at least one month prior to the start of each period.

Retail and commercial tenants are also able to directly request billing data from SA Water.<sup>4</sup>

## POSSIBLE APPROACHES AND OPPORTUNITIES FOR CHANGE

### *Option 1: Continue billing landowners (status quo)*

If the current arrangements are maintained, the landowner remains ultimately responsible for water rates and charges, and landlords and tenants enter into separate agreements that determine who pays them.

Where no arrangement exists and tenants do not pay for water directly, they are often paying indirectly through higher rents. There is therefore less transparency.

As tenants are not considered to be customers of SA Water, they are prevented from accessing consumer protection measures, including taking advantage of its *Residential Customer Hardship Program* and flexible payment arrangements.

There are several benefits in maintaining the status quo.

- ▲ Billing systems are already in place.
- ▲ Tenants can access billing information from SA Water, or their landlord, to confirm that amounts being passed on are fair and accurate.
- ▲ There is no debt risk for SA Water because of its legal rights to pursue debts. Under Section 18C of the *South Australia Water Corporations Act 1994 (SA)*, any amount owed to SA Water for water or sewerage services will, until it is paid, be a ‘first charge’ on the land to which the services have been provided. This essentially means that the land is considered security for the purposes of recovering debt. Under section

18D of the Act, if any charges are in arrears for two years, SA Water can publish a notice for the sale of the land. If, a year after publication, any of the charges remain unpaid, SA Water can, with the approval of the Minister, take action to sell the land to recover its debt.

### *Option 2: Directly bill tenants for all water and sewerage charges, including supply charges.*

The Productivity Commission’s view is that where dwellings are separately metered, it would be ‘more economically efficient’ for tenants to be billed for water consumption charges directly.<sup>5</sup> Further, it states it would be administratively simpler for tenants to also pay the fixed-charge components of water supply and sewerage removal, rather than paying indirectly through rents.<sup>6</sup>

Adopting this option may also have implications for the rating on abuttal methodology (Refer to the Commission’s Issues Papers – Water Tariffs [here](#) and Sewerage, Trade waste and Property-based Charging [here](#)).

The benefits of directly billing tenants for all charges are as follows:

- ▲ Tenants would be recognised as SA Water customers and therefore have customers’ rights and obligations, including better access to concessions, hardship programs and flexible payment arrangements.
- ▲ Tenants could seek to have issues or disputes resolved directly by SA Water or the Energy and Water Ombudsman.
- ▲ There would be no need for tenants to deal with a property manager or landlord with respect to reliability issues.
- ▲ The level of involvement of the Residential Tenancy Tribunal in billing and water reliability-related issues would reduce.
- ▲ Tenants would have greater access to information about their consumption and, importantly, they would receive the same price signals that other users receive.

The downsides of this option are as follows:

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<sup>4</sup> Refer clauses 18.11.4 and 18.11.5 of the Commission’s Water Retail Code – Major Retailers.

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<sup>5</sup> Productivity Commission, p. 159.

<sup>6</sup> Productivity Commission, p. 159.

- ▲ Implementation would involve costs, as there would need to be changes to SA Water’s billing system.
- ▲ While there would be more transparency for tenants, some might be effectively double-charged if a landlord chooses to continue to recover costs through rent. It is possible that landlords would not reduce rents if this new system is implemented.
- ▲ The possibility of the emergence of split incentives. Where landlords do not directly receive the benefit of reduced water consumption, they are unlikely to invest in water conserving features. For tenants to contribute towards water conserving features, the tenant needs to be confident that they can recoup savings through lower water bills over the life of tenancy.
- ▲ Assuming that the landowner would not remain ultimately legally responsible for water charges, SA Water’s debt recovery risk would be likely to increase. (The same already applies in the electricity and gas sector.) SA Water would therefore need to apportion its risk across its wider consumer base.

*Option 3: Directly bill tenants for their water consumption and sewage disposal only. Landowners would still be liable for supply charges.*

As discussed above, directly billing tenants for their water consumption and sewage disposal would give them access to consumer protection measures they are not currently entitled to.

This approach has been adopted in Victoria, where some water utility entities direct bill tenants. In Victoria, if the property has a separate meter, the landlord:

- ▲ can arrange for the tenant to be billed for water usage and sewage disposal; and
- ▲ must provide the tenant’s contact details to the water provider, who will read the meter and start billing.<sup>7</sup>

Under this option, the landowner is responsible for supply charges on the property as well as

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<sup>7</sup> Consumer Affairs Victoria, *Renting a home, a guide for tenants*, p. 13, available at <http://www.consumer.vic.gov.au/resources-and-education/forms-and-publications>.

maintenance of the water supply and sewerage services.

For example, City West Water advises that, ‘When you rent a home that has its own meter, you are responsible for paying the water usage and sewage disposal charges, which are charges for the water that you use.’<sup>8</sup>

The ramifications of adopting this option include:

- ▲ the need to change the way sewerage charges are calculated (Refer to the Commission’s Issues Paper – Sewerage, Trade Waste and Property-based Charging [here](#))
- ▲ additional costs for SA Water in sending two bills for one property
- ▲ costs involved in altering SA Water’s billing system
- ▲ an increase in the debt recovery risk faced by SA Water. (This assumes the landowner would not remain ultimately legally responsible for water and/or sewerage charges, and therefore SA Water’s first charge on the land would be removed)

*Option 4: Require landlords to install water efficient products before passing on charges*

In Queensland, tenants can only be required to pay the full cost of water consumption if the premises meet water efficiency standards. (For example, toilets must be dual flush and showerheads and all internal cold-water taps must have a flow rate no greater than 9 litres per minute).

If premises do not meet water efficiency standards, the lessor must pay for a ‘reasonable’ supply of water. Similar requirements exist in New South Wales, where tenants are required to pay for water usage *providing the premises are separately metered and water efficient*.

If South Australia adopted a similar approach, there would be costs involved in the administration of the scheme and it may result in more water efficiency-related disputes being referred to the Residential Tenancies Tribunal.

Introducing this measure would remove the risk of split incentives emerging and it provides an

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<sup>8</sup> Refer: [www.citywestwater.com.au/residents/change\\_of\\_tenancy.aspx](http://www.citywestwater.com.au/residents/change_of_tenancy.aspx).



incentive to landlords to install efficient appliances. However, while the cost of installing the water efficient products would be borne by the landlord, it is likely that these costs would be passed onto tenants through increased rent.

## QUESTIONS

The Commission seeks the views of interested stakeholders on the issues raised above and, in particular, in relation to the following:

*Q: Are the current arrangements where landowners, rather than tenants, are liable for water and sewerage charges satisfactory? If not, why?*

*Q: Should landlords be required to install water efficient appliances before passing on water and sewerage charges?*

*Q: Should tenants be responsible for water and sewerage charges? If so, should they be responsible for all charges, including supply charges, or only water consumption and sewage disposal charges?*

*Q: Are there any further costs or benefits that the Commission should consider in assessing the options for change?*

*Q: Are there other alternative arrangements the Commission should consider?*

## FURTHER INFORMATION

Any queries relating to this consultation should be directed to:

- ▲ Kara O’Sullivan, Analyst – Regulatory Affairs
- ▲ Brooke Palmer, Analyst

If you would like to keep up to date with the Commission’s activities and the release of papers for consultation, subscribe at <http://www.escosa.sa.gov.au/subscribe.aspx>.



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