

# Consultation on economic regulation of the South Australian water industry - July 2012

The Essential Services Commission of South Australia (the Commission) is the independent economic regulator for a range of essential services in South Australia including electricity, gas, water, sewerage, rail and maritime services.

We are a statutory authority, established under the *Essential Services Commission Act 2002* (ESC Act) with a primary objective to:

*protect the long term interests of South Australian consumers of essential services with respect to the price, quality and reliability of essential services.*

We interpret our primary objective by considering the welfare of consumers both today and in the future. We recognise that current and future consumer welfare must be carefully traded off. While our focus is on consumer welfare, we recognise that the interests of regulated entities and other stakeholders are relevant to the extent that they affect the current and/or future welfare of consumers. For example, we must ensure that the appropriate investment incentives exist today to ensure that the future needs of consumers are met.

Our Strategic Plan 2012/15 and our Charter of Consultation and Regulatory Practice set out in more detail who we are, what we do, how we do it and how you can get involved in our review processes. Both documents are available on our website at: <http://www.escosa.sa.gov.au>.

## REGULATORY REFORM OF THE SOUTH AUSTRALIAN WATER INDUSTRY

In 2009, the Government of South Australia announced a framework of reforms and commitments to address water security issues in “*Water for Good: a plan to ensure our water future to 2050*” (Water for Good).

Key to implementing Water for Good was the development of a new legislative framework for the water and sewerage industry in South Australia.

## THE WATER INDUSTRY ACT 2012

The *Water Industry Act 2012* (the Act) commenced on 1 July 2012. It replaces the *Waterworks Act 1932*, *Water Conservation Act 1936* and *Sewerage Act 1929*. Many provisions in these Acts applied only to SA Water and its customers. The Act governs all water industry entities providing “retail services” to South Australian customers.

The Act establishes the regulatory framework for the water and sewerage industry covering economic regulation, technical regulation, water planning and customer complaint handling.

The Government of South Australia has appointed the Commission as the independent economic regulator for urban and regional water and sewerage services in South Australia.

## OUR ROLE IN THE WATER INDUSTRY

We are responsible for the economic regulation of urban water and sewerage services in South Australia. Our role includes industry licensing, consumer protection and retail pricing.

**Licensing:** Any person or entity wishing to provide retail services to South Australian consumers will be required to obtain a licence from us authorising those operations. The licence issued will require the licensee to comply with a number of regulatory obligations relating to supplying customers, achieving minimum standards of service, maintaining dispute resolution processes, notifying us of changes to corporate structures and complying with our industry codes.

**Consumer protection:** Licensees (or retailers) will be required to comply with our industry codes. We will create a consumer protection regime to deal with matters such as binding service standards, billing, payment, disconnection/flow restriction and contractual matters. The protection of consumers’ interests is of paramount importance in the provision of any essential service, particularly where those services are not provided in a competitive market. We will establish a regime which serves to protect the long-term interests of consumers.

**Retail Pricing:** We will undertake independent price regulation to facilitate greater economic efficiency by:

- providing independent scrutiny over the costs of service delivery, to help minimise inefficient expenditure;
- providing greater confidence and certainty to consumers and investors in the industry (including potential new entrants), that pricing decisions will be made subject to clear economic objectives and by providing greater transparency in the decision-making process;
- addressing, in a transparent manner, any situations where revenues are insufficient to meet efficient costs, which may result in inefficient consumption decisions or threaten the ongoing viability of operations; and
- ensuring that prices and price structure reflect efficient costs and provide appropriate price signals to both consumers and investors.

## THE ROLE OF OTHER REGULATORS AND AGENCIES

The Act and the ESC Act limit our role to economic regulation only; we do not have any role in environmental, health or social policy. Those matters are addressed by other regulators and Government agencies. These agencies and the roles they perform are set out in Table 1 below.

A number of these other regulators and agencies set standards that SA Water and other water industry entities must comply with in delivering services to consumers.

Table 1 - Entities involved in the regulation of the South Australian water industry

REGULATOR/AGENCY	ROLE	LEGISLATION
Department of Environment, Water and Natural Resources (DEWNR)	Regulates state water resources and other natural resource management matters	<i>Natural Resources Management Act 2003</i>
SA Health	Regulates the public health aspects relating to the provision of drinking water supplies.	<i>Safe Drinking Water Act 2011</i>
Office of the Technical Regulator	Technical regulator responsible for safety and technical matters	<i>Water Industry Act 2012</i>
Environmental Protection Agency (EPA)	Regulates the environmental impact of water businesses.	<i>Environmental Protection Act 1993</i>
Treasurer	Sets application and licence fees for water industry entities, issues Ministerial directions (e.g. billing and metering) and issues Pricing Orders.	<i>Water Industry Act 2012</i>
Energy & Water Ombudsman SA (EWOSA)	Independent industry-based complaint handling body. Handles complaints of customers of water licensees.	<i>Water Industry Act 2012</i> <i>Corporations Act 2001</i>
Office of Business & Consumer Services (BCS)	Regulates the relationship between landlords and tenants for the payment of rates and charges for water and sewerage services. Regulates the professional conduct of plumbers.	<i>Residential Tenancies Act 1995</i> <i>Plumbers, Gasfitters and Electricians Act 1995</i>
Department for Communities & Social Inclusion (DCSI)	Establishes customer hardship and concession policies.	<i>Water Industry Act 2012</i>

## CURRENT CONSULTATION

We employ an open, transparent and inclusive review process. The majority of our reviews allow stakeholders to provide submissions on our proposed decisions and to suggest alternatives and improvements at various stages throughout our review. Stakeholder engagement and expert consultation are central to our process to ensure we maintain and improve our decision-making and ensure genuine impartiality in our determinations and recommendations.

We have already consulted on the broad regulatory framework that we intend to apply to the water industry as part of the preparation of advice provided to the Treasurer in August 2011 and May 2012.

While the requirement to be licenced by us and comply with our industry codes and guidelines does not commence until **1 January 2013**, from **1 July 2012**, our broad regulatory powers and functions under the ESC Act commenced in the water industry. This allows us to formally commence our consultation process for developing our regulatory instruments and making price determinations in preparation for the formal commencement of our licensing role from **1 January 2013**.

We are currently undertaking consultation on our Draft Water Retail Code and the development of a combination of Pricing Principles and Price Monitoring to apply to service providers other than SA Water. Details of our consultation in each of these areas, including details on where to find additional information, are summarised in the following sections.

As the economic regulator of other essential services, including gas and electricity, we have always taken a transparent and collaborative approach to performing our role and we aim to take the same approach to our role in the water industry.

We will liaise with these other bodies, where relevant, to ensure that regulation of the water industry remains coordinated.

## APPLYING FOR A RETAIL LICENCE

From 1 January 2013, any person or entity providing “water retail services” to South Australian customers will be required to be licensed by us.

The Act defines a “water retail service” as:

- sale and supply of water to a person for use where the water is to be conveyed by a reticulated system; or
- the sale and supply of sewerage services (the collection, storage, treatment or conveyance of sewage through a reticulated system) for the removal of sewage, even if the service is not actually used.

A retail service includes, but is not limited to, the following activities:

- Drinking water services;
- Sewerage services;
- Recycled water/Stormwater services;
- Other non-drinking water services; and
- Other miscellaneous water and sewerage services.

If you currently provide any of these services in South Australia, you should discuss the requirements for a licence with us. Further information on Applying for a Water Retail Licence is available on our website: <http://www.escosa.sa.gov.au/library/120713-ApplyingForWaterRetailLicence-FactSheet.pdf>.

## CONSUMER PROTECTION AND THE WATER RETAIL CODE

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The Water Retail Code will regulate retailer behaviour when dealing with customers of water and/or sewerage services. The Draft Water Retail Code covers the following areas:

- **Enquiry, Complaint and Dispute Resolution procedures** – internal procedures for handling customer enquiries, complaints and disputes, which must include escalation to an independent dispute resolution body where the issue cannot be satisfactorily resolved by the retailer;
- **Billing** - to ensure that customers receive accurate billing information in a timely manner and that customers' needs are addressed when billing errors are determined;
- **Payment and Payment Difficulties** - minimum requirements for payment terms, payment methods and the requirements for managing temporary payment difficulties experienced by customers;
- **Hardship Programs** - measures designed to assist hardship customers to avoid having their retail services restricted or disconnected due solely to an inability to pay; and
- **Disconnections and restrictions for non-payment** - limitations on the grounds on which water and wastewater services may be restricted or disconnected and obligations on retailers prior to restricting a customer;

Further information on our Draft Water Retail Code is available on our website: <http://www.escosa.sa.gov.au/library/120713-WaterRetailCode-FactSheet.pdf>.

## COMPLIANCE MONITORING AND REPORTING

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We are of the view that fostering a strong culture of compliance within regulated businesses is necessary for the protection of consumer interests. A collaborative compliance framework has been established in the other essential service industries we currently regulate. This regime:

- Encourages regulated entities to actively co-operate in the early reporting and rectification of identified non-compliance;
- Uses a risk-based approach (as far as possible) in both compliance monitoring and enforcement, based on the likelihood of a breach of a regulatory obligation and the possible consequences of that breach on South Australian consumers; and
- Reserves stronger enforcement action (e.g. prosecution) for the more serious cases involving wilful or systemic non-compliance with major consequences, or where other processes have not achieved the desired remedial effect.

Our current approach to compliance in other essential service industries will be applied (with appropriate modifications) to retailers in the water industry.

Our Draft Compliance Systems and Reporting Guideline is available on our website: [http://www.escosa.sa.gov.au/library/120713-ComplianceMonitoring\\_Reporting-FactSheet.pdf](http://www.escosa.sa.gov.au/library/120713-ComplianceMonitoring_Reporting-FactSheet.pdf).

## PERFORMANCE MONITORING AND REPORTING

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Requiring retailers to monitor and report on their performance provides us with the data we require to develop service standards and undertake the ongoing assessment of compliance with those standards.

We will consult with retailers on the development of a Water Industry Reporting Guideline to capture data on key requirements of the Water Retail Code once it has been finalised.

## RETAIL PRICE REGULATION

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We have released a Statement of Approach setting out our proposed approach to regulating SA Water's revenues, having regard to a draft Pricing Order issued by the Treasurer.

Further information on our Statement of Approach to Economic Regulation of SA Water's Revenues is available on our website:

<http://www.escosa.sa.gov.au/library/120713-EconomicRegulationOfSAWatersRevenue-StatementOfApproach.pdf>.

We recognise there are differences between SA Water and other providers of water and sewerage services (e.g. Local Government), and propose a 'light-handed' approach to price regulation of service providers other than SA Water.

Our Discussion Paper sets out our proposal to apply a combination of 'pricing principles' and 'price monitoring' to service providers other than SA Water who provide one or more of the following:

- Drinking water services;
- Sewerage services;
- Recycled water/Stormwater services;
- Other non-drinking water services; and
- Other miscellaneous water and sewerage services.

Our Discussion Paper sets out our initial thoughts only; the proposals are not final.

Further information on our Proposed Approach to Price Regulation for Service Providers other than SA Water is available on our website:

<http://www.escosa.sa.gov.au/library/120713-PriceRegulationNonSAWater-FactSheet.pdf>.

## CONSULTATION TIMELINE

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We will be undertaking several rounds of public consultation between now and the formal commencement of our regulatory framework on 1 January 2013 (Table 2).

Table 2 - Consultation Timeline

CONSULTATION TIMELINE	TIMING
Pricing Principles Discussion Paper (all other water industry entities)	July 2012
Draft Water Retail Code Released	July 2012
Licence applications accepted	From September 2012
SA Water submits Water Plan	September 2012
Pricing Principles Draft Determination (all other water industry entities)	October 2012
Final Water Retail Code released	October 2012
Pricing Principles Final Determination (all other water industry entities)	December 2012
SA Water Draft Revenue Determination	January 2013
Licensing regime commences	1 January 2013
SA Water Final Revenue Determination	May 2013
Price Regulation for SA Water commences	1 July 2013
Price regulation of all other water industry entities commences	1 July 2013

## COMMENTS AND SUBMISSIONS

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We are currently undertaking consultation on our Draft Water Retail Code and the development of Pricing Principles to apply to Service Providers other than SA Water.

We ask that submissions be provided by **close of business Friday, 24 August 2012**.

## FURTHER INFORMATION

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Any queries relating to this consultation should be directed to the Commission.

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



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THE ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA  
Level 8, 50 Pirie Street Adelaide SA 5000  
GPO Box 2605 Adelaide SA 5001  
T 08 8463 4444 | F 08 8463 4449  
E [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au) | W [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au)