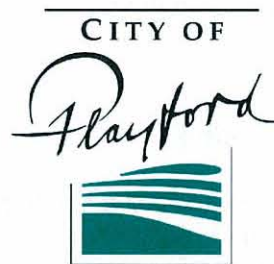


**SUBMISSION TO THE ESSENTIAL SERVICES  
COMMISSION OF SOUTH AUSTRALIA IN RELATION  
TO THE STATEMENT OF ISSUES RELEASED AS PART  
OF CONSULTATION ON THE WATER INDUSTRY BILL  
2010**

**BY THE CITY OF TEA TREE GULLY, THE CITY OF  
SALISBURY, THE CITY OF CHARLES STURT,  
THE CITY OF ONKAPARINGA AND THE CITY OF  
PLAYFORD**



## 1. INTRODUCTION

This Submission is made on behalf of the City of Tea Tree Gully, the City of Salisbury, the City of Charles Sturt, the City of Onkaparinga and the City of Playford (the **Councils**) in response to the request for submissions on the Statement of Issues prepared by the Essential Services Commission of South Australia (**ESCOSA**) as part of the consultation on the draft *Water Industry Bill 2010* (the **Bill**).

The Councils are variously involved in the retail sale of water to residential, commercial/industrial, community and government based customers.

The Councils have already made a submission on the Bill. As there is necessarily an overlap between the Councils' issues pertaining to the Bill (and the regulations) and ESCOSA's role as economic regulator, a copy of that submission is **attached** and should be considered in conjunction with this Submission.

Rather than providing a response to each of the 44 issues that ESCOSA has identified, this Submission sets out general principles that the Councils support or identifies issues about which they require clarity or in relation to which they have concerns about their eventual implementation.

This Submission is not intended to cover all aspects of the Statement of Issues because the Councils are focusing, for the purpose of this Submission, on those aspects that they consider will affect their current or proposed water businesses in relation to the retail sale of water.

This Submission is made on behalf of the administration of the Councils and does not limit or alter any submission made by any of the Councils individually, nor should it be considered in conjunction with any submission by the Local Government Association to limit or alter that submission.

The Councils' Submission follows:

## 2. LICENSING

### 2.1 Scope of licensing

The requirement to hold a licence pursuant to Section 18 of the Bill is limited to situations where a person either provides a retail service or undertakes an activity for which a licence is required by the regulations.

If councils are required to be licensed in any capacity, there should be deeming provisions which enable councils to more easily obtain a licence when ESCOSA is considering their application. For example, the requirements in relation to a council's fitness to hold a licence should be fairly easy to satisfy, and perhaps should be waived in relation to councils.

In addition to providing retail services, the Councils each own and operate significant water and sewer infrastructure that is unrelated, or only indirectly related, to any retail services. This infrastructure is largely provided and maintained to satisfy existing statutory obligations under the *Local Government Act 1999* and in the absence of an alternative being provided by SA Water.

The Councils submit that conditions and obligations arising as a result of holding a licence (i.e. maintenance of infrastructure and creation of and compliance with a customer code, if applicable – see below, among others) should only relate to that infrastructure that is directly related to the retail service and not other infrastructure of a licensee. The Councils submit that in relation to non-retail water or sewer infrastructure they (and local government generally) should be recognised as water industry entities without the need to be licensed.

## 2.2 Licence conditions

The Councils consider there are particular licence conditions which ought not to be imposed on them in light of the Councils' place within an existing regulatory regime, or because they are not applicable to the size or type of operations the Councils will be engaged in. For example:

- the requirement to comply with applicable codes or rules, or comply with code provisions relating to designated customers. As outlined below, the Councils do not support a blanket industry code;
- requiring a water industry entity, at the request of a designated customer, to provide designated services at the entity's standard contract price and subject to the water industry entity's standard contractual terms and conditions. Given the nature of the Councils' systems, there may be limited or no ability to provide or expand services to certain customers;
- maintain specified accounting records and to prepare accounts according to specified principles. Councils are subject to strict reporting obligations and financial management requirements under the *Local Government Act 1999*;
- compliance with specified technical or safety requirements or standards. The Councils require consultation on any proposed technical or safety requirements or standards;
- financial or other capacity to provide services or to continue operations or activities under the licence. This is not applicable to local government. The Councils have obligations to act in a sound and financially sustainable way and this extends to water and sewer operations;
- requirement to maintain insurance. All councils are members of the Local Government Mutual Liability Scheme, which is re-insured by the State Government;
- changes to officers and, if applicable, major shareholders. This is not applicable to local government; and
- requirement for performance of community service obligations by water industry entities. This is not applicable to local government given its role.

A licensing regime that is too onerous or inflexible will not encourage involvement by the Councils in retail services, which in some instances provide

a community benefit or service not otherwise provided. The Councils would therefore welcome the opportunity to consider and provide comment on an exemplar set of licence conditions.

### 2.3 Exemptions from licensing

The Councils support general exemptions from licensing for local government.

As a minimum, the Councils submit that small systems, or systems with a limited number of users should be exempt (for example, small CWMS systems and direct connections to large industrial users). The regulatory cost in such situations would far outweigh the benefit to consumers.

### 2.4 Technical regulation

As outlined above, if the Councils are required to be licensed, only those parts of the Councils' infrastructure which directly relates to the retail service should be regulated.

The Councils also support transitional provisions such that technical regulations are phased in over an extended period of time (reflective of the useful life of infrastructure) so that there is no need to retrofit existing systems.

The Council would welcome the opportunity to consider and provide comment on proposed technical regulations.

## 3. CONSUMER PROTECTION AND COMPLIANCE

As outlined by ESCOSA, councils are already required to comply with regulatory provisions that are not being repealed as part of the proposals in the Bill. There is a concern that the application of the proposed industry code to councils will result in an excessive regulatory burden, given the existing framework of the *Local Government Act 1999*.

For example, councils are required to have and implement policies and procedures for their interface with ratepayers, including in relation to complaints handling. Will it be the case that councils will be required to have two sets of policies and procedures and implement them simultaneously?

At a minimum, the Councils support the development of different industry codes for local government, or which differ according to the scale, scope and type of services being undertaken by a licensed entity. Alternatively, the Councils' existing legislative requirements and compliance regimes could be supplemented and strengthened by voluntary codes of practice and customer charters, if applicable, for those councils involved in retail services.

The Councils would welcome the opportunity to be involved in the development of any industry code and in discussions as to its scope and content.

## 4. PRICE REGULATION

The Councils support the following general principles in relation to pricing:

- Where councils have current contracts in place, price determinations, or implementation of any standard terms and conditions, would not impact on

the prices or terms agreed under those contracts (including any rights of renewal).

- SA Water potable prices should not be the top level of pricing. In some instances, there is a market for the Councils to produce and sell water that is of a higher quality than SA Water potable water. The Councils should not be prevented from being able to charge commensurate prices due to the imposition of a price cap based on lower quality water.
- Soft price determination, i.e. the setting of principles and ranges rather than hard imposition of set prices. If price determination (and the general regulatory burden) is too rigid, there is a concern that the Councils will have no incentive to be (or will be actively prevented from being) dynamic or innovative and will pull back water operations to self-supply. This will have consequences for the ability to achieve State and Federal Government water reuse targets.
- The Councils do not generally support the use of different bands of pricing for different classes of water quality. It is considered that water class alone as the determinate of price is insufficiently sophisticated.
- Pricing principles and ranges to be flexible enough to recognise there are various factors influencing the price at which water may be sold at any given time. These differ between the Councils and also within the Councils across different projects:
  - size of systems and potential customer base;
  - start up costs (e.g. capital costs of infrastructure);
  - operational and maintenance costs;
  - incentives required to be offered to attract and retain customers;
  - contributions by customers to the cost of infrastructure (headworks);
  - cost of production eg the source of water from stormwater, trade waste or sewerage; and
  - expectations of funding providers.
- The ability to charge for connection rather than consumption for in-set systems, with an exemption from individual metering in certain circumstances. For example, some community title (and strata title) divisions are currently jointly metered by SA Water, with charges for water consumption split between consumers. While regional metering (e.g. to the development boundary, whether a community or Torrens title division) is supported, individual metering may be cost-prohibitive.
- Recognition of the social or environmental value of water as part of its overall economic value.

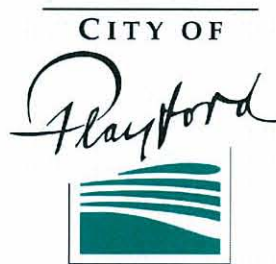
## 5. **CONCLUSION**

The Councils welcome the opportunity to play an active role in further consultation and development of licence conditions, technical regulations and industry codes.

It is suggested that the discussions that have been ongoing between various councils and ESCOSA should be formalised following this Submission by way of a formal and minuted meeting to discuss these issues.

**SUBMISSION TO THE MINISTER FOR WATER IN  
RELATION TO THE CONSULTATION ON THE WATER  
INDUSTRY BILL 2010**

**BY THE CITY OF TEA TREE GULLY, THE CITY OF  
SALISBURY, THE CITY OF CHARLES STURT,  
THE CITY OF ONKAPARINGA AND THE CITY OF  
PLAYFORD**



## 1. INTRODUCTION

This Submission is made on behalf of the City of Tea Tree Gully, the City of Salisbury, the City of Charles Sturt, the City of Onkaparinga and the City of Playford (the **Councils**) in response to the request for submissions during the consultation on *the Water Industry Bill 2010* (the **Bill**).

The Councils are variously involved in the retail sale of water to residential, commercial/industrial, community and government based customers. They are therefore making this Submission in relation to issues pertaining to the Bill about which they require clarity or in relation to which they have concern about their eventual implementation.

Because the Bill has been released in a consultation draft form without accompanying regulations, this Submission provides an outline of the issues which the Councils believe will require further consideration when the regulations are released or, alternatively, which may relate to the exercise of ESCOSA's power under the Bill. The Councils, or a representative delegation from them, would welcome the opportunity to discuss any of the issues raised in this Submission with the Minister to assist in the formulation of any revised draft of the Bill or any regulations to accompany and support the Bill when it is next released.

Given the substantial amount of water and sewerage infrastructure owned by the Councils (and local government generally), together with the significant involvement of these Councils in large water projects and the provision of retail water services, the Councils submit that local government (and the Councils in particular) can make a valuable contribution during this process. Consequently the Councils would welcome the opportunity to be involved in all further consultation that the Minister may undertake in connection with the Bill.

This Submission is not intended to cover all aspects of the Bill as the Councils are focusing, for the purpose of this Submission, on the aspects of the Bill which affect their current or proposed water businesses in relation to the retail sale of water. ***The Councils are generally supportive of the objectives of the Government in implementing the Bill, namely to create a legislative framework for the regulation of the provision of water and sewerage services to the public in South Australia. The Councils are keen to ensure that the body of the Bill reflects and supports these objectives and takes into account current practices and the parties involved.***

This Submission does not limit or alter any submission made by any of the Councils individually, nor should it be considered in conjunction with the submission of the Local Government Association to limit or alter its submission.

The Councils' Submission follows.

## 2. LICENSING REGIME

The requirement to hold a licence pursuant to Section 18 of the Bill is limited to situations where a person either provides a retail service or undertakes an activity for which a licence is required by the regulations. The Councils submit that the licence conditions and the obligations arising as a result of holding a licence (i.e. maintenance of infrastructure and creation and compliance with a customer code amongst others) which flow from the requirement to be licensed should only relate to the infrastructure which is directly related to the retail service and not other infrastructure of a licensee



which is unrelated to the retail service. For example, in the Councils' case, there is significant infrastructure involved in the collection of stormwater and filtration and injection of stormwater into underground aquifers. The Councils submit that it is only upon the extraction of water from the aquifer that they commence their retail service activities and therefore, it is in only relation to the infrastructure from this point on that the obligations which flow from being licensed should apply. The Councils submit that in relation to other water infrastructure or sewerage infrastructure they (and local government entities generally) should be recognised as water industry entities by the Bill without the need to be licensed.

The submissions above are made on the basis that a significant amount of the water and sewerage infrastructure which councils maintain throughout their areas is provided in accordance with a statutory obligation under the *Local Government Act 1999*, rather than being related to their retail service businesses. The Councils submit that they should be entitled to the rights and powers of water industry entities in relation to all of their water and sewerage infrastructure but that to the extent that their infrastructure is not related to a retail activity, they should not be obliged to comply with licence conditions or the technical regulations. If an alternate view is taken by the Minister or ESCOSA then the licence conditions themselves (and the technical regulations which will also apply) will become unnecessarily cumbersome and complicated. The Councils submit that such a situation would place an unreasonable burden on them in relation to infrastructure which is not currently the subject of such independent regulation and which is provided as a public service or in satisfaction of existing statutory obligations.

As an alternative to licence conditions, the Councils' existing legislative requirements and compliance regimes could be supplemented and strengthened by voluntary (and sector-wide) codes of practice and customer charters, if applicable.

### 3. **INFRASTRUCTURE**

Further to the above point, the Councils submit that they should obtain the benefit of the powers and duties relating to land and infrastructure set out in the Bill (specifically, Part 5 Division 2 and Part 6, Division 1), with respect to their existing water and sewerage infrastructure, notwithstanding that such infrastructure may not be or need to be licensed for retail services, in order to be able to better carry out their existing statutory obligations in relation to water and sewerage. While local government has been given the statutory responsibility for providing such services, the accompanying powers and rights (for example, the right to access private land for the purposes of maintenance of existing infrastructure) are not sufficiently enshrined.

### 4. **ABILITY TO CHARGE AND RIGHTS FOR RECOVERY**

The Councils note that pursuant to Schedule 2 Part 2 and particularly the proposed new Sections 18B and 18C, SA Water is granted a right to have a first charge against land in relation to land upon which a person has taken water and is in arrears in relation to payments for that water. The Councils submit that it is appropriate for a statutory right to be included in the Bill, which entitles the Councils as water industry entities and/or licensed persons under the Bill to have a similar right.

The Councils note that such a right would not be appropriate in circumstances where the consumer is not the land owner and the land owner is either the Crown or the Council itself. For this reason the Councils submit that there should also be an alternative recovery process enshrined in the Bill to provide the Councils with a statutory right to pursue customers where it is not appropriate for them to take a charge out on the land.

## 5. PRICING

The Councils note Section 36 of the Bill which provides ESCOSA with a right (subject to complying with a pricing order issued by the Treasurer) to regulate prices for retail services.

The Councils are concerned that the pricing regulation mechanism in the Bill is too limiting and may unintentionally result in water industry entities being forced to make losses on the sale of water. The Councils submit that the power of ESCOSA to regulate prices should exclude the power to regulate prices in relation to contracts which include provision for contributions to headworks, incentives or other mechanisms which may result in the actual price for the retail service being increased or decreased.

The Councils also submit that contracts of a value over a certain threshold should be exempt from price regulation.

Although a matter predominantly for consideration by ESCOSA, the Councils submit that it is appropriate for the Act, at least in relation to pricing, to recognise different classes of water, including classes of water which may be of a higher quality than potable water. There are a number of industries which require water of a more pure nature than potable water for their operations and providing water to this standard is more costly than providing potable water. Water industry entities who do so (predominantly by treating recycled water) should not be penalised by a pricing regulation regime which uses potable water as the benchmark for the highest quality (and price) of water.

In addition, the Councils submit that the power of the Treasurer to make pricing orders is too broad, and impinges on the independence of ESCOSA from political pressure in its role as a pricing regulator for the water industry. The Councils submit that the Treasurer's power to make pricing orders be further limited in its scope and also in relation to the period in which they can be made. For example, the concept of pricing orders is similar in some respects to the power of the Minister for Energy to make initial pricing orders under the *Electricity Act 1996*. In that Act, the power is only able to be exercised up to a date determined by proclamation. The Councils submit that a similar provision be included in the Bill.

## 6. LICENCE FEES AND CONDITIONS

It is unclear from the Bill how much a water industry entity will be charged for a licence (both during the application process and on an annual or ongoing basis) and what the conditions attaching to the licence will be. The Councils submit that it would be appropriate for a scale of licence fees to be included in the Bill or in the regulations (subject to consultation) and for an exemplar set of licence conditions to be published for consultation.

## 7. TECHNICAL REGULATION

Although the Councils recognise that the regime for technical regulation will be the subject of further consultation, they submit that the Bill should provide for the ability for water industry entities to charge customers for their use of water on a basis which recognises their proportional use of water in a specified (and metered) area. This would be similar to the way in which property owners in community titled properties are currently charged by SA Water for their mains (potable) water usage in many circumstances.

The Councils submit that a similar approach would be appropriate in relation to the charging for water provided through a 'third pipe' into a subdivision. It is often not viable for the Councils to meter every connection to a third pipe system and the Councils submit that to require such a regime would restrict the growth of the use of such water infrastructure.

This industry is reducing the State's reliance on potable water for uses which do not require it and increasing the amount of water which is being used for a purpose which is appropriate to its quality.

## **8. TRANSITIONAL PROVISIONS**

### **8.1 Current agreements**

The Councils have many current agreements in place, having terms of up to 99 years. The Councils submit that the transitional provisions of the Bill should exempt those contracts from the operation of the Bill, including the pricing regulation and technical regulation provisions. The Councils believe that it would be inequitable for the Bill to have retrospective effect.

### **8.2 Technical regulation**

The Councils all have significant levels of infrastructure, both related to their retail operations and to their general statutory obligations. The Councils submit that this infrastructure should not be subject to the technical regulation regime provided for in the Bill. The effect of the legislation should not be retrospective on the basis that it would be inefficient and uneconomic for the Councils to be required to retrofit their existing infrastructure to comply with a new regime.

### **8.3 Requirement for third pipe networks**

The Councils submit that the *Development Act 1993* and associated regulations should be amended to allow planning authorities to require new subdivisions to include third pipe infrastructure for the delivery of non-potable water for appropriate uses.

This would provide planning authorities with a power which is not currently present in the development regime in the State and which would enable them to promote environmental initiatives which require the use of water for purposes appropriate to its quality.

