

1 February 2011

Mr John Hill
Acting Chair
Essential Services Commission of South Australia
GPO Box 2605
Adelaide SA 5001

Via email to: escosa@escosa.sa.gov.au

Dear Mr Hill

COTA Seniors Voice (CSV) welcomes the opportunity to provide comment on the Essential Services Commission (ESCOSA) Economic Regulation of the South Australian Water Industry Statement of Issues ('Statement of Issues').

CSV wants to ensure that the water needs of older people will be assured through both the *Water Industry Bill* (the 'Bill') and ESCOSA's code-making role as discussed in the Statement of Issues. We do not believe that this can be done without a significant widening of the scope of the Bill.

CSV is concerned that the lack of legislative links between the economic role of ESCOSA and the social role of government will not lead to the best outcomes for older people in a competitive water market and ensure their entitlement to water.

Therefore, while CSV's position on key issues raised in the Statement of Issues is provided, the submission should be read in the context that CSV advocates a more comprehensive legislative instrument that would provide clear, unambiguous guidance for ESCOSA in its code-making role.

To facilitate a more comprehensive understanding of CSV's position, I attach for your information CSV's submission on the *Water Industry Bill* as well as its submission on the Statement of Issues.

Should you have any questions regarding either of these submissions, please contact Tom Stead, Policy Officer, on 8224 5515 or email tstead@seniorsvoice.org.au.

Yours sincerely



Ian Yates AM
Chief Executive

Attachments:

- COTA Seniors Voice Submission to the Economic Regulation of the South Australian Water Industry Statement of Issues
- COTA Seniors Voice Submission to the *Water Industry Bill 2010*



COTA Seniors Voice

**Economic Regulation of the South Australian Water Industry
Statement of Issues**

Submission

2011

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COTA Seniors Voice

COTA Seniors Voice (CSV) is South Australia's peak seniors' organisation with an individual membership of around 20,000 and over 250 seniors' organisation members with a combined membership of more than 60,000. In addition, CSV has 80 associate members who are aged care providers, local government bodies, health units and other service and educational institutions. CSV membership networks and programs are state-wide.

CSV has a longstanding record of contribution to State Government policy for older people, their carers and families, and also delivers a range of programs and services for older Australians.

CSV is concerned that older people's access to affordable quantities of essential services such as water and energy is under threat and supports the view that everybody should have affordable access to sufficient quantities of essential services for health, wellbeing and social participation.

South Australia and its Older Population

South Australia has an ageing population, greater than any other state or territory in Australia. At present, 1 in 7 South Australians are aged 65 years and over. By 2021 it will be 1 in 5 and by 2051 it will be 1 in 3. At the same time, people aged 85 years and over will quadruple from 1 in 57 South Australians being aged over 85 to 1 in 15 being aged over 85 by 2051.¹

Many older people in South Australia are also dependent on government benefits. In 2007-08 106,600 South Australian households had retirement pensions as their principal source of income.² More recent data shows that 180,000 older South Australians receive Age and Department for Veteran's Affairs benefits³, of whom approximately 120,000 receive the maximum rate.

These figures show that there are not only that there are more older South Australians, but that many of them are reliant on limited incomes to meet their basic needs.

¹ Australian Bureau of Statistics (2005) Populations Projections

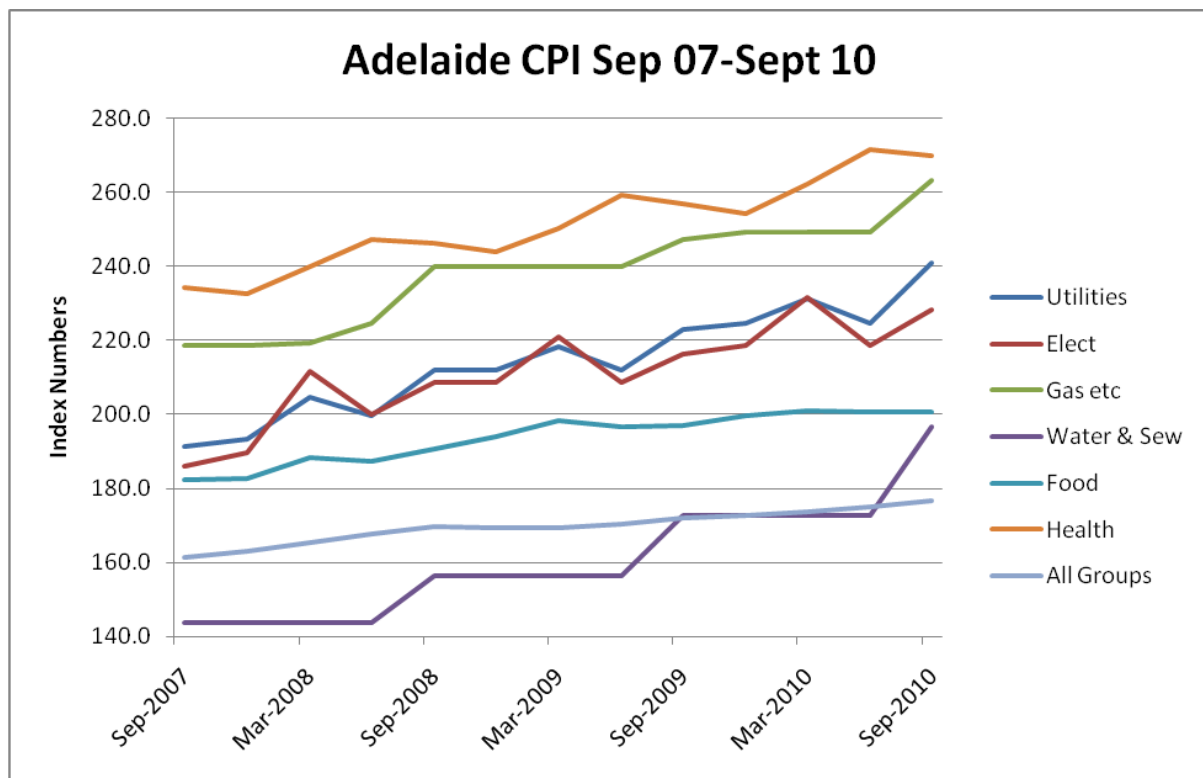
² Australian Bureau of Statistics (2009) Household Income and Income Distribution, Australia, 2007-08

³ FaHCSIA (2010) Income support customers: a statistical overview 2009

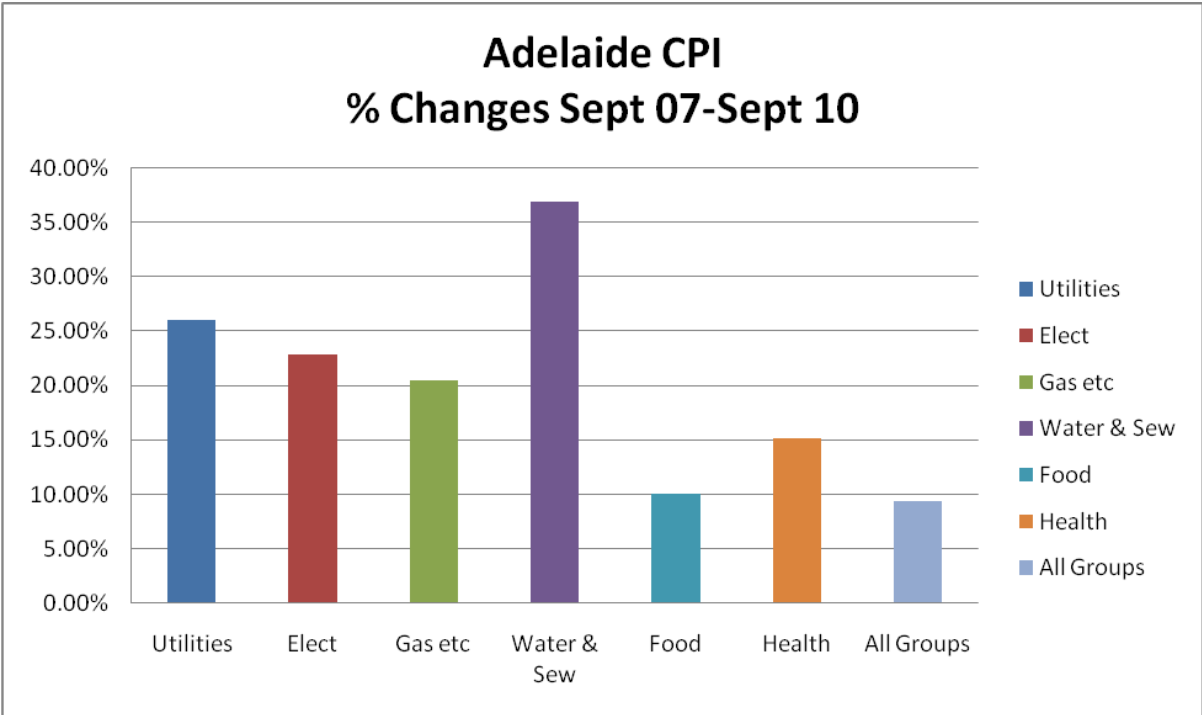
Older People and Essential Services

There is no doubt that the cost of essential services is affecting older people. Rising costs for electricity, gas and water all diminish the ability of households – particularly those on low and fixed incomes – to manage their weekly finances and to maintain health and wellbeing. This is of particular concern because after housing costs, utility bills are often ranked highest in order of importance and thus are paid before other costs such as food and medical costs.

The increasing burden of essential services can be seen in the CPI data. These show that electricity; gas and other household fuels; and water and sewerage costs have risen well above the general, or 'all groups' CPI (see below) over the last three years.



The cost of water and sewerage services in particular has risen faster than other essential services, and at over three times the rate of CPI (see below).



CSV continues to maintain that even small nominal increases in the price of utilities can have significant proportional and actual impacts on the lifestyle of older people. There is a proportion of the population that is now only just able to manage their existing financial commitments. Given the recent increases in the prices of other essential goods and services such as food, fuel and water, any further increase in water prices is likely to place these households under financial duress. It is clear that strong price regulation, progressive tariff structures and realistic concessions are required to ensure affordable access.

Statement of Issues

CSV welcomes this opportunity to submit to the Economic Regulation of the South Australian Water Industry Statement of Issues (the 'Statement of Issues') consultation and notes that it has also provided comment on the *Water Industry Bill 2010* (the 'Bill'). Consequently many comments made in this submission are duplicated in CSV's submission on the Bill.

In general, CSV holds the view that as we head towards a third party access regime, it is through legislation that the entitlement to water for older South Australians can be assured. While the Statement of Issues makes frequent reference to relevant industry codes in the energy industry, the passage of the *National Energy Retail Law (South Australia) Bill 2010* will bring most of these energy codes – on a nationally consistent basis – into one coherent legislative package.

CSV believes that a similar comprehensive legislative approach to water and sewerage services will provide the best basis for protecting consumers going forward, and all comments in this submission should be read in this context.

However, CSV is happy to both respond to the questions posed in the Statement of Issues, and provide general comments regarding the role of the Essential Services Commission of SA (ESCOSA) and the relationship between government and ESCOSA.

General Comments

The entitlement to water

There is no doubt that water is essential to life and must therefore be treated as an entitlement rather than a commodity. CSV notes that the entitlement to water forms a part of SA Water's business and that water supply is not 'disconnected' due to failure to pay as in the case with energy.

While the best way to guarantee this entitlement is through the Bill, the role of ESCOSA will be vital in either complementing the Bill or in providing the 'rules of the game' to sit beneath the Bill.

The consumer impact of reform

As noted in its submission to the Bill, CSV believes that the privatisation and promotion of competition within the energy industry holds important lessons for the current move towards a more competitive water industry. While proponents of competition repeatedly point to the savings that can be made by actively participating in the market through market contracts, it is clear that those on 'standing' or 'default' contracts will always require strong price protection.

As has been noted in recent correspondence to ESCOSA and the Minister for Energy, there remain a substantial number of energy customers (nearly one-third) who choose to remain on the electricity standing contract. A recent report by Colmar Brunton⁴ identified a number of significant features of this group, including older age and low income. It is likely that this will also be the case in a competitive water market, and the impacts on these and other segments of consumers require assessment.

In its submission to the Bill, CSV called for an independent study to be undertaken as soon as possible to explore the consumer impact of the proposed reform.

The main elements of the consumer impact study should include:

- Independence – the study should be undertaken by a body independent of government and water industry interests, with methodology to be decided in consultation;
- A focus on access and affordability for all water users, inclusive of owner-occupiers, tenants and residents of facilities where water costs are passed through;
- A strong focus on consumer protections in its terms of reference;
- A cost-benefit analysis should be a key focus – the costs and benefits of proposed changes and of a ‘business as usual’ approach for low income and vulnerable groups;
- A thorough and careful consideration of the potential impacts of any third party access regime on consumers; and
- The relationship between proposed legislation and other legislation including the *Australian Consumer Law* (Cwlth), the *Residential Tenancies Act* (SA), the *Retirement Villages Act* (SA), the *Residential Parks Act* (SA) and the *Aged Care Act* (Cwlth).

It is particularly important that the relationships between the Bill and other State and Commonwealth legislation is recognised, explored and made explicit in the final legislation. Failure to do this will lead to further confusion among market participants (not least consumers) regarding rights, obligations and protections.

CSV specifically notes that despite reference being made in a number of forums to the effect that the *Residential Tenancies Act* (RTA) will continue to provide for the landlord-tenant relationship, the RTA and its subordinate guidelines are not even sufficient for current circumstances.

‘Consumers’ versus ‘customers’

One of the overriding concerns of CSV in relation to the Bill is the issue of ‘consumer’ versus ‘customer’, and it is puzzling that ESCOSA has not sought additional comment on this issue. Without clarifying this issue at the outset, the government runs the risk of relegating tenants of public and private rental housing,

⁴ Colmar Brunton (2010), ‘Monitoring the Development of Energy Retail Competition in South Australia and Consumer Preference for Market Contract Information’

residential parks and retirement villages to a lesser status under the law than property owners.

CSV recognises that even in energy legislation not all energy consumers are customers – not all members of a household are considered customers for billing or consumer protection purposes. Additionally, there still remains the important issue of inset networks and exempt sellers, currently being dealt with by the Australian Energy Regulator (AER).

There is however one important difference in that energy customers must arrange connection, disconnection and pay their bills as individual customers regardless of property ownership status. In effect the energy account(s) ‘follow’ the customer from residence to residence.

This has historically not been the case with water and sewerage services, both of which have been ‘rated’ against property rather than charged to actual consumers. While sewerage services can and should continue to be charged in this way as a fixed cost, there is a need to rethink the way water use and charges are assigned to consumers. Given water is charged on consumption, it is an anachronism to levy costs on property owners who have little or no direct relationship with water consumption on their tenanted properties. This could lead to consumers (tenants) being disconnected due to non-payment by the customer (property owner).

In essence, thought needs to be given to the idea that water ‘consumers’ (in the energy sense) should become ‘customers’ through a direct contractual relationship mechanism built into the Bill. This would legislate for consumers in a range of settings to have guaranteed access to hardship provisions and the ombudsman scheme.

CSV believes that the current arrangements under the *Residential Tenancies Act 1995* and the *Residential Tenancies Regulations 2010* are insufficient in that they do not and cannot afford the protections required for water consumers, particularly tenants. Given that many older people reside in residential parks, retirement villages and public and private rental accommodation, the lack of coverage threatens to disproportionately disadvantage these groups, particularly as older people who do not own their own home are some of the most vulnerable members of the community. Moreover, leaving it to the Minister for Water to declare all, some or none of these consumers of water to be customers is far from ideal.

CSV has therefore recommended to the Department for Water (DFW) that it consult with ESCOSA and consumer groups on this important issue.

ESCOSA’s approach to regulation

While ESCOSA has proven itself to be a generally effective, reasonable and consultative regulator over its lifetime, CSV is concerned that some of its recent decisions have been flawed. The recent Electricity Retail Price Path Determination is the prime example of this flawed approach, and CSV has formally questioned the absence of genuine concern for consumers in the final decision.

The evidence of a shift away from consumer concerns and towards purely economic reasoning is clear in the Statement of Issues, which references its role under the *Essential Services Commission Act (2002)*:

*'That paramount statutory imperative [Section 6 of the ESC Act] is necessarily interpreted in an economic context of efficiency, particularly so in light of the fact that sections 6(b)(iv) and (v) expressly refer to efficiency considerations. Furthermore, the second reading speech for the ESC Act makes it clear that the terms used in section 6 are economic terms relating to efficiency and therefore that economic concepts should be used in analysing and applying the provision...'*⁵

CSV fundamentally disagrees with this reading and notes that 6(v) refers to the benefits to consumers of competition and efficiency, and therefore should be read as being a social as well as an economic imperative.

Additionally, the reference to the second reading speech of the ESC Act is erroneous as on this occasion the Minister noted the *consistency between* the long term interests of consumers and financial viability leading from greater efficiency, and not *greater efficiency equals a purely economic approach* as read by ESCOSA.⁶

Because of these issues of interpretation, CSV advocated in its submission to the Bill that changes be made in legislation to make the principles of price regulation clear and unambiguous for ESCOSA to follow.

With particular regard to water regulation, CSV notes that in *Water for Good* (p. 142) the government states that the government will (through the Bill) 'develop a regulatory framework to':

- *Establish a clear separation between economic objectives, to be pursued by ESCOSA, and non-economic objectives (i.e. health, social and environmental objectives) to which ESCOSA must have regard, but for which the State Government will retain primary responsibility*⁷

CSV is concerned that this detracts from the functions of ESCOSA under the ESC Act and leaves low income and vulnerable consumers at the mercy of government concessions policy. In its submission to the Bill, CSV therefore called for formal linkages between the roles of government and ESCOSA in the Bill.

It is also concerning that the Statement of Issues states on pages 24 and 25 that 'independent regulation in the water industry can facilitate greater economic efficiency through:'

⁵ ESCOSA (2010) Economic Regulation of the South Australian Water Industry: Statement of Issues, p. 7

⁶ Hansard, House of Assembly, Wednesday 10 July 2002

⁷ <http://www.waterforgood.sa.gov.au/water-planning/the-plan/>

- Providing greater confidence to investors in the industry, by ensuring that pricing decisions are made subject to clear economic objectives (as opposed to social or other objectives)...

This approach is not consistent with the notion that water is an entitlement, and CSV does not agree that this approach puts the needs of consumers first.

The distinction between water industry licensees

CSV considers it important that types of retail water service providers be made and understood. Throughout the comments below, CSV refers to 'small' and 'regional and remote' service providers. These references are to areas that are outside the reach of SA Water infrastructure and not to 'competitors' that will at some stage supposedly enter the market in competition with SA Water and other existing entities.

It is important that this distinction be made and understood, as where allowances should be made for small regional or remote providers, these should not also be made for new market entrants. Exempting new market entrants from the same rigorous regulatory and consumer protection requirements applied to SA Water simply provides a market advantage that can be exploited, potentially at the expense of the consumer.

Advocacy

As water industry reforms take shape, it will become increasingly important to ensure that consumers are provided with strong, well resourced advocates to ensure that their concerns are heard by government, water businesses and regulators. Changes to energy markets have highlighted this need, and consumer advocates have been acknowledged to provide otherwise overlooked points-of-view to various decision-making bodies.

Moreover, recognising the entitlement to water naturally leads to the conclusion that those who are entitled to water must also be entitled to resources for the purpose of advocacy.

CSV therefore recommends that a dedicated funding stream is allocated to consumer advocacy and that this funding is administered by either DFW or ESCOSA.

Specific Comments

The comments below are in response to the issues raised in the Statement of Issues that are most relevant to older people. As noted above, all comments provided should be read in the context of CSV's general view that many of these issues should be dealt with through the Bill.

Issue 2: Licence conditions

Taking into account the licence conditions already mandated by clause 26 of the Bill, are there any additional licence conditions that may be appropriate to apply to entities providing water and/or sewerage services?

CSV does not take issue with the wording of section 26 and notes its approval of 26(1)(g) and (h): the requirement for dispute resolution processes and for licensees to participate in an ombudsman scheme.

CSV has previously called for water to be included under an expanded Energy Industry Ombudsman (EIOSA) scheme and it is important that all water license-holders participate in the scheme to ensure equitable protections for all older consumers across the industry, regardless of location. While it is understood that the difference in size of licence holders may lead to cross-subsidisation by larger licence-holders, CSV believes that this is a small price to pay by industry participants for adequate consumer protections.

However CSV is concerned that there is a serious omission in the licensing conditions in regard to hardship provisions and the requirement for retailers to develop and implement hardship policies that meet certain standards. Hardship provisions are a core protective mechanism for consumers experiencing payment difficulties, many of whom will be on low or fixed incomes such as pensions.

As per CSV's comments above relating to the need for the Bill to be more comprehensive, it is considered important that customer hardship provisions are clearly spelled out in the legislation. The *National Energy Retail Law (South Australia) Bill 2010* (the 'NERL') includes a number of requirements for essential services retailers, including:

- A statement on the purpose of customer hardship policies – to identify customers experiencing payment difficulties and to assist them in meeting their requirements;
- The requirement for retailers to develop a customer hardship policy that meets the regulator's guidelines;
- The minimum requirements for hardship policies; and
- The need for the regulator to approve any hardship policy prior to implementation.

Failing significant changes to the Bill, CSV calls on ESCOSA to ensure that these conditions are included in relevant codes and regulations.

CSV holds the view that protections for consumers should be included in licence conditions (preferably in legislation) should include the need to adhere to the principle that no customer can be disconnected for any other reason than a serious criminal breach, including under the relevant health and environmental health legislation.⁸

Issue 3: A water retail services industry code

Based on its experience in the regulation of other essential services, the Commission considers that a water retail services industry code should:

- reflect key customer concerns, particularly those related to reliability, billing and payment and complaint handling;*
- be consistent across the various water industry entities covered by the Bill, while allowing for arrangements to be tailored to reflect differences across the water industry (allow sufficient flexibility to design arrangements to meet localised customer issues);*
- facilitate consistency with consumer protection measures that apply in other essential services regulated by the Commission.*

Are there any additional matters which should be dealt with in the development of the consumer protection framework under a water retail services industry code?

In the absence to comprehensive legislation, CSV supports the approach outlined above. CSV agrees that the various energy industry codes provide a basis for water industry codes and that consistency across essential services should be a key aim.

Issue 4: The form of water industry codes

Given the Commission's understanding that the nature of the water retail service will vary by water type (drinking water, recycled or reuse water) and customer type (residential, commercial, industrial (light and heavy)) does any water industry code need to be tailored in application?

What key distinctions give rise to differences across the various water industry entities that the development of any industry codes should consider? How should differences between the retail services provided by different licensees be reflected in any industry code arrangements?

Should the Commission make a single Water Retail Services Code or develop a discrete series of separate industry codes to establish its consumer protection framework?

⁸ CSV notes that this issue also needs to be dealt with in Part 6, Division 2 of the Bill.

CSV believes that in order to maintain the health and wellbeing of older people, the safety, reliability and affordability of water for use in and around the home must be paramount in any water industry code(s), regardless of where the water originates.

However given the fact that some water service providers are small and/or remote, standards may need to vary slightly to meet local conditions. Any variance of standards would necessarily involve rigorous health and technical expertise and could only be allowed within a thin band of tolerance.

In regards to the difference between a single code and multiple codes, CSV's focus in this case is on the protections offered and not on the number of codes through which they are provided.

Issue 5: Obligation to supply/pre-conditions for connection

While the Bill indicates that each licensed water industry entity will have an obligation to provide designated services at the request of a designated customer (on standard contract price and terms and conditions), should such an obligation be subject to the customer meeting certain pre-conditions?

If so, should any supply pre-conditions be limited to: the customer identifying themselves, providing name and address, contact details for billing purposes, fees and relevant charges for connection, payment of any security deposit and providing safe and unhindered access to their water meter?

CSV agrees that along with an obligation on service providers to supply comes an obligation on the customer to meet limited pre-conditions. This approach would be consistent with energy market regulation and with general consumer law.

However CSV does not agree with all of the pre-conditions listed on page 40 of the Statement of Issues. While it is agreed that identification, contact details, payment of relevant fees and charges, and access to meters are reasonable pre-conditions, CSV takes issue with credit history checks and security deposits.

In the past, various consumer groups have prepared arguments for robust conditions around credit history and security deposits in the case of energy.⁹ CSV argues that this approach also applies to water. Credit history should not be considered and in its place the utility payment history of the customer should be considered. This would allow for the fact that many people pay utility bills before meeting other living costs and that their credit history does not constitute a proxy for their ability or willingness to pay utility bills.

Likewise CSV only supports the use of security deposits under very strict conditions, such as under section 8 of the South Australian Energy Retail Code (ERC). CSV's position is detailed under Issue 11 (below).

⁹ See for example SACOSS (2010) Submission to the National Energy Customer Framework.

Issue 7: Customer charter

Should all licensed entities be required to develop a customer charter and provide a copy to their customers? If so, what basic information should other water industry entities be required to provide to their customers?

Should a water retail services industry code only set out “benchmark” or ‘minimum” requirements that each of the businesses must comply with in relation to customer charters, or should it be more prescriptive?

CSV strongly recommends that all licensed water entities be required to develop a customer charter. As noted in the Statement of Issues, this is a key consumer protection measure. All customer charters should follow the SA Water model, and this model should form the basis of a minimum requirement to be set by ESCOSA.

Issue 8: Enquiries, complaints and dispute resolution

Should all licensees be required to have complaints handling procedures, including the allowance for escalation of disputes, in place?

Should all licensees be required to participate in an independent industry ombudsman scheme?

Are there other enquiries or complaints handling issues that a water retail services industry code should cover?

All entities should be required to have the relevant complaints handling procedures in place, and should be included in the relevant customer charter (see comments above).

Likewise, all entities should be required to participate in an independent industry ombudsman scheme. CSV noted in its submission to the Bill that requiring even small water service providers to participate in such a scheme (preferably through an expanded EIOSA) would lead to some cross-subsidy between entities and that this was a small price to pay for adequate consumer protections.

Issue 9: Billing

Should all billing requirements apply only to SA Water or should they apply to all licensees? If not, what billing information should other water industry entities be required to provide?

Are there other billing and billing information issues that a water retail services industry code should cover?

CSV recognises the issues involved with enforcing expensive billing requirements on small regional and remote service providers and recognises that the costs of compliance will ultimately be passed on to consumers.

Therefore CSV agrees that the basic requirements outlined in the Statement of Issues are sufficient and meet key consumer protection needs. Additional information such as that provided by SA Water should not be required of all licensees.

As an alternative, ESCOSA could require a minimalist approach for smaller regional and remote entities, requiring them to maintain additional information and supply it to customers upon request. CSV considers that the minimum expectations would include:

- If the bill is based on meter reading or an estimate;
- Consumption and charges for the period;
- Changes to tariffs during the period;
- Contact details for the licensee;
- Information regarding disputes and hardship provisions; and
- Contact details for the ombudsman scheme.

However CSV does not support relaxing requirements to assist new market entrants to build a customer base.

Issue 10: Payment, payment difficulties and customer hardship

Should the payment and payment difficulty requirements apply only to SA Water or should they apply to all licensees?

Should a water retail services industry code prescribe the minimum requirements for a customer “hardship” program?

Are there other payment, payment difficulty or hardship issues that a water retail services industry code should cover?

CSV strongly recommends that minimum payment and payment difficulty requirements should apply to all licensees to ensure equal consumer protections across South Australia.

For CSV's views on customer hardship programs, see comments on Issue 2 above.

Issue 11: Security deposits

Should licensees be permitted to require security deposits in certain limited circumstances?

If so, in what circumstances should licensees be able to require security deposits?

CSV supports the use of security deposits only under strict conditions. Section 8 of the Energy Retail Code (ERC) provides the important protections for consumers:

8.2. Residential customers

A **retailer** must not require a **residential customer** to provide a **security deposit** unless:

- (a) the **residential customer** has left a previous **supply address** without settling an outstanding **energy** debt owing to that **retailer**, the debt **A-38** remains outstanding, and the **residential customer** refuses to make arrangements (acceptable to both parties) to pay the debt; or
- (b) the **residential customer** has within the previous two years been responsible for the use of **energy** contrary to clause 5; or
- (c) the **residential customer** is a new **customer** and has refused or failed to produce **acceptable identification**; or
- (d) the **residential customer** has not provided credit history information; or
- (e) the **retailer** has reasonably formed a view that the **residential customer** has an unsatisfactory credit rating,

and the **retailer** has, in accordance with clauses 7.6 and 7.7 offered the **residential customer** an instalment plan or other payment option and the **residential customer** has refused, or failed to agree to, the offer.

Using section 8 of the ERC as the template for security deposits for water customers will ensure that customers will not be unduly disadvantaged through allowing for security deposits to be raised. It would also assist in providing a consistent approach across essential services.

Issue 12: Disconnections, restrictions and reconnections

Should protections around restriction of supply for non payment apply only to residential and small business customers, with large customers subject to normal credit procedures?

Are there other disconnection related issues that a water retail services industry code should cover?

As noted in its comments on Issue 2 (above), CSV does not support the disconnection of residential customers due to non-payment. Disconnection of residential customers should only be used in cases of serious criminal breaches of relevant health and environmental health legislation.

Issue 13: Customers with special needs

Are there any special needs requirements that need to be addressed in a water retail services industry code?

If so, what are the relevant special needs requirements? Could they be addressed through supply being restricted as an alternative to permitting disconnection where permitted to do so under a water retail services industry code?

CSV strongly agrees with ESCOSA's comments regarding the provision of multilingual services and information in large print. These are particularly important for older people who have English as a second language or who have impaired vision.

CSV further notes that all information needs to be conveyed through appropriate media, and not just on the internet. The expectation that everyone has access to the internet and the skills to utilise it is widespread throughout the community and unrealistic. In response to a CSV information technology survey in 2009, 19% of respondents had not used a computer and 29% did not have access to the internet. This should not constitute a barrier to the information required by water consumers to make informed decisions in a competitive market.

As per CSV's comments on the Bill, disconnection should not be used as a punitive tool for residential customers who have not paid their bill, and should be limited to serious breaches of relevant laws. However the use of flow restricting devices can be justified in circumstances in which customers have repeatedly failed to pay their bills or to meet the conditions of a payment plan or other hardship provisions.

CSV recommends that flow restriction be used in place of disconnection for residential customers, and that the use of flow restriction devices be allowed under

similar conditions to those applying to disconnection for non-payment in the energy industry.

Issue 14: Price disclosure

Does the Commission need to have a separate price disclosure code for the water industry, or should provisions be included in a broad-based water retail services industry code?

What price information should be included? Should all water industry entities be required to provide price information?

Failing coverage of price disclosure being provided in the Bill, CSV believes that it can be included in an overarching industry code. The prevalence of complementary codes in energy creates a confusing environment for consumers and advocates and any simplification that can be achieved in the water industry is welcomed.

Pricing information should be provided by all licence holders and should be based on the Energy Price Disclosure Code.

Issue 17: Customer service standards

Are telephone and written responsiveness performance standards important to customers?

*Are there any other customer service standards that should be applied?
Should such standards apply to all licensed water industry entities, or initially confined to SA Water?*

Should consistent customer service standards be adopted across the energy and water sectors in South Australia?

The provision of clear, concise and quick responses to all forms of communication is very important to many older people. CSV therefore maintains that guaranteed service levels (GSLs) that apply in the energy industry should also apply in the water industry.

Mandated telephone response times are particularly important to ensure that older people, particularly in regional or remote areas, are not disadvantaged by significantly higher telephone call costs when contacting their service provider. For this purpose CSV would also like to advocate that no- or low-cost phone numbers are provided for use by licence holders, and understands that this is in keeping with common practice across a number of industries.

However CSV understands that small regional and remotes licence holders will in many cases be unable to comply with strict GSLs due to capacity issues. Therefore these entities should be required to comply with less stringent GSLs based on capacity. Decisions on these obligations should be made on a case-by-case basis, should be limited to areas where there is no competition, and should be reached in consultation with local community members.

CSV does not advocate for a relaxation of GSL requirements for new market entrants in metropolitan areas or other areas where competition exists.

Issue 18: Customer contracts

As the Bill gives the Commission the power to regulate the standard terms and conditions to be established under deemed statutory contracts between water entities and customers, what form should that regulation take?

For example, should the Commission simply require terms and conditions to be consistent with specified matters or principles, or should the Commission require compliance with a set of specified terms and conditions contained within an industry code?

As noted in its submission to the Bill, CSV strongly advocates for more comprehensive legislation that removes any ambiguity as to the role of ESCOSA in relation to the retailer–customer relationship generally such as in the NERL. In addition, the ‘customer versus consumer’ issue requires resolution prior to any decisions being taken regarding customer contracts.

However in the context of the questions raised in the Statement of Issues, CSV strongly favours the more robust approach regulatory approach wherein forms of contract are set by ESCOSA. The ERC should be used as a template for regulation of the water industry.

Issue 19: Metering

Should the Commission develop a Water Metering Code? That is, specify the requirements for services such as:

- the provision of metering installation, meter reading and the associated data services;***
- meter certification, accuracy and testing;***
- meter reading, data validation and substitution; and***
- the requirements of a Water Measurement Management Plan?***

Is the metering information currently available from SA Water adequate for customers?

If not, what additional information should be provided to customers?

Should all customers have a separate (individual) water meter?;

If it is thought desirable for all customers to have an individual water meter then it is important to determine who should be responsible for installing the meter, reading the meter and issuing the bills, including who should pay?

As mentioned above, CSV favours a sensibly consistent approach across essential services and so metering in the water industry should be regulated in the same way that energy metering is regulated.

This section also raises a very important question: should all customers have a separate water meter? This is a vexed question and immediately re-raises the 'customer versus consumer' question. Under CSV's reading of the Bill, it is still uncertain whether consumers who do not have meters will be considered customers at all, or whether they will receive similar consumer protections to metered customers.

One way to avoid this ambiguity in the case of large multi-tenanted or corporate-owned properties would be to ensure that all customers have their own meters, thus ensuring a direct relationship with the retailer. CSV notes that this issue has previously been raised in relation to water metering on large Housing Trust properties.

However much like energy, it is not always practical or cost-efficient for each dwelling to have its own meter, and that an 'inset network' situation will necessarily occur in some circumstances. CSV strongly opposes allowing for inset networks and cross-subsidies within inset networks where it unfairly disadvantages those who use less water. This issue has been raised by many CSV members who are Housing Trust tenants and who pay more for their water due to lack of metering.

CSV recommends that the issue of individual meters forms part of the consumer impact study mentioned above and in its submission to the Bill.

Issues 20-21: Performance monitoring generally

CSV agrees with the approach outlined in the Statement of Issues and supports ESCOSA taking a similar approach to that taken in energy markets. It is important to consumers that licence holders are held to their licence conditions through performance monitoring and that findings are reported regularly. Of particular interest to CSV are:

- The number of concession recipients and hardship customers;
- Direct debit default numbers;
- Price fluctuations;
- Compliance with hardship provisions; and
- Telephone responsiveness and compliance with guaranteed service levels.

Issue 23: The Commission's role as price regulator

Are there any good reasons why the Commission shouldn't apply direct price controls to SA Water's drinking water and sewerage services?

What is the appropriate form of regulation for SA Water's other services?

Are there other providers of retail services for which price regulation of some form is required? If so, what form of price regulation should be applied?

As stated previously, CSV supports a similar approach to water and sewerage price regulation as currently exists in the energy industry. Therefore SA Water should be treated as the 'Standing Contract' retailer and have the prices for its services directly controlled by ESCOSA. This approach should also be taken in regulating other service providers.

Issue 24: Price regulation – the typical approach

A key issue for the Commission is whether or not the typical approach used by Australian regulators should be applied to SA Water, in the current context of significant increases in capital expenditure intended to increase the security of water supply in South Australia.

Although CSV supports strong price regulation, it does not support allowing for revenue to be collected by providers which is not spent. Simply meeting service standards does not remove the obligation to only allow capital expenditure (capex) to be recovered if it *is* spent, not if it *may be* spent.

Additionally, similar approaches in energy markets have seen distribution companies defer capex until late in the regulatory period so as to give the impression that these costs are rising in the lead-up to the next regulatory period. This can lead to greater

revenue allowances and ultimately higher retail prices than necessary to meet standards. Based on these observations, CSV favours a more strict approach to capex allowance for water service providers.

Issues 25-26: Demand forecasting generally

CSV believes that demand forecast information should be sought that disaggregates the total of water users as much as possible. Clearly residential demand should be separate from small business. Additionally, any further 'digging down' into geographical location, household profile, concession holders etc. would ultimately be useful not only for network planning and price regulation, but for consumer advocates. The public availability of disaggregated energy consumption data has traditionally been limited and this represents an information disparity that unfairly disadvantages consumer advocates and ultimately consumers.

In regard to 'peak' demand, CSV suggests that this issue be further explored with SA Water, other operating service providers and consumer groups.

Issue 30: Supply mix

How can the Commission be assured that the drinking water supply mix is optimised, given the additional supply resource of the Adelaide Desalination Plant?

CSV has no principled objections to the use of desalinated water and supports the widening of water supply sources generally, particularly given South Australia's climatic conditions and a historical overreliance on catchment and River Murray water.

CSV also understands that desalination plant technology currently requires constant use and that increased production of fresh water needs to be done in incremental steps (e.g. 10%). Additionally, the consortium with stakes in the Adelaide Desalination Plant (ADP) no doubt has a return on capital agreement with the state government and with SA Water. Both of these factors will mean that desalinated water will become – and remain – a part of Adelaide's drinking water supply mix regardless of its necessity.

While CSV does not have specific advice to give to ESCOSA on this issue, it is concerned that the resulting decision(s) and codes or guidelines lead to the best outcome for consumers in terms of both affordability and quality of supply.

Issue 32: Ex-post analysis of investment

Should consideration be given to assessing and potentially disallowing historic investment as part of this review process? Over what past period should any such assessment cover?

In order to ensure that older people and all South Australians are provided with fair and reasonable water and sewerage prices going forward, CSV believes that ESCOSA should assess historic investment and disallow it if imprudent and/or inefficient. CSV sees no reason why consumers should be burdened with historic 'bad debts' incurred prior to regulation.

In addition, robust scrutiny of past expenditure is necessary as service providers will inevitably over-emphasise historic spending in order to justify higher prices (see comments on Issue 24 above). CSV holds the view that there should be no exceptions to this scrutiny, and that all capital expenditure be examined closely and assessed against strict criteria.

Issue 34: Drinking water price structures

Views are sought on the appropriate tariff structure for SA Water drinking water charges.

CSV notes that SACOSS, in its submission on the Bill¹⁰, has provided in-depth comment on water pricing. CSV agrees with SACOSS that it is the end result in terms of access and affordability that are important for consumers, whether they be low income or older people.

The Issues Paper rightly refers to the National Water Industry (NWI) Pricing Principles and the economically efficient cost-reflective approach of a two-tiered pricing system (i.e. a fixed supply charge and a single volumetric charge). CSV's key concern is that taking this approach in the absence of any concrete, legislative links between the economic role of ESCOSA and the social policy role of government will lead to unwelcome outcomes for many older people.

CSV has long shared the view with other community sector organisations that the entitlement to essential services such as water should lead to a pricing approach that allows for a basic amount at an affordable price, with the bulk of the revenue required by providers being reflected in higher prices for additional use.

More importantly, the costs of essential services such as water should not be artificially separated from the concessions provided to make them more affordable. In the case of water, SA has an important opportunity to link costs (including tariff structures) with concessions through legislation.

¹⁰ SACOSS (2010), Submission to the *Water Industry Bill 2010*

CSV therefore recommends that the concession be linked to the service charge (currently \$142.40 p.a.) plus a basic amount of, for example, 200L per day at the tier one tariff rate of \$1.28/kL. This would allow for a basic, assured level of water for health and wellbeing and would not rule out higher charges for higher use. CSV recognises that ESCOSA's role is limited in this regard, however it is presented with the unique opportunity to work with government to develop an economically efficient and socially responsible water pricing and concessions regime.

Issue 35: Statewide Pricing

The Commission requests comments on issues surrounding universal access and how the requirement for cost reflective pricing and transparency can be best applied and reconciled with statewide pricing.

CSV strongly supports statewide pricing on the basis that consumers in regional areas are not disadvantaged. The current approach wherein SA Water reports on CSOs to maintain statewide pricing is supported as a policy position regardless of the NWI pricing principles regarding cost reflectivity.

Issue 36: Low income households

The Commission requests views on the issues surrounding protection of low income households during transitional moves to cost reflective pricing.

CSV has previously stated its views on the need to ensure that households on low and fixed incomes have their entitlement to a basic amount of water ensured through legislation. CSV's position is more fully in its submission to the Bill (attached) and elsewhere in this submission.

Issue 36: Sewerage pricing

The Commission seeks views on the pricing of sewerage services along with the potential to more closely align pricing with usage moving forward.

CSV continues to advocate that sewerage costs should be separated from water consumption costs. Short of installing meters on sewerage systems, it is not viable to take a volumetric approach to sewerage pricing, and CSV considers that attempting to use water consumption as an indicator of sewerage outflow should not be seriously contemplated.

In addition, sewerage services differ markedly from water services and should best be viewed as a property charge. This is particularly important for tenants and ties in with previous CSV comments on the 'consumer' versus 'customer' issue (see p. 12 above). It is recommended that sewerage services continue to be levied against property and that water consumption charges are directly charged to consumers, regardless of housing status.



COTA Seniors Voice

Water Industry Bill 2010

Submission

2011

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COTA Seniors Voice

COTA Seniors Voice (CSV) is South Australia's peak seniors' organisation with an individual membership of around 20,000 and over 250 seniors' organisation members with a combined membership of more than 60,000. In addition, CSV has 80 associate members who are aged care providers, local government bodies, health units and other service and educational institutions. CSV membership networks and programs are state-wide.

CSV has a longstanding record of contribution to State Government policy for older people, their carers and families, and also delivers a range of programs and services for older Australians.

CSV is concerned that older people's access to affordable quantities of essential services such as water and energy is under threat and supports the view that everybody should have affordable access to sufficient quantities of essential services for health, wellbeing and social participation.

South Australia and its Older Population

The extent and rate of growth of the group of people considered to be aged has significant implications for State Government legislation such as the *Water Industry Bill*.

South Australia has an ageing population, greater than any other state or territory in Australia. At present, 1 in 7 South Australians are aged 65 years and over. By 2021 it will be 1 in 5 and by 2051 it will be 1 in 3. At the same time, people aged 85 years and over will quadruple from 1 in 57 South Australians being aged over 85 to 1 in 15 being aged over 85 by 2051.¹

Many older people in South Australia are also dependent on government benefits. In 2007-08 106,600 South Australian households had retirement pensions as their principal source of income.² More recent data shows that 188,000 older South Australians receive Age and Department for Veteran's Affairs benefits³, of whom approximately 120,000 receive the maximum rate.

These figures show that there are not only that there are more older South Australians, but that many of them are reliant on limited incomes to meet their basic needs.

¹ Australian Bureau of Statistics (2005) Populations Projections

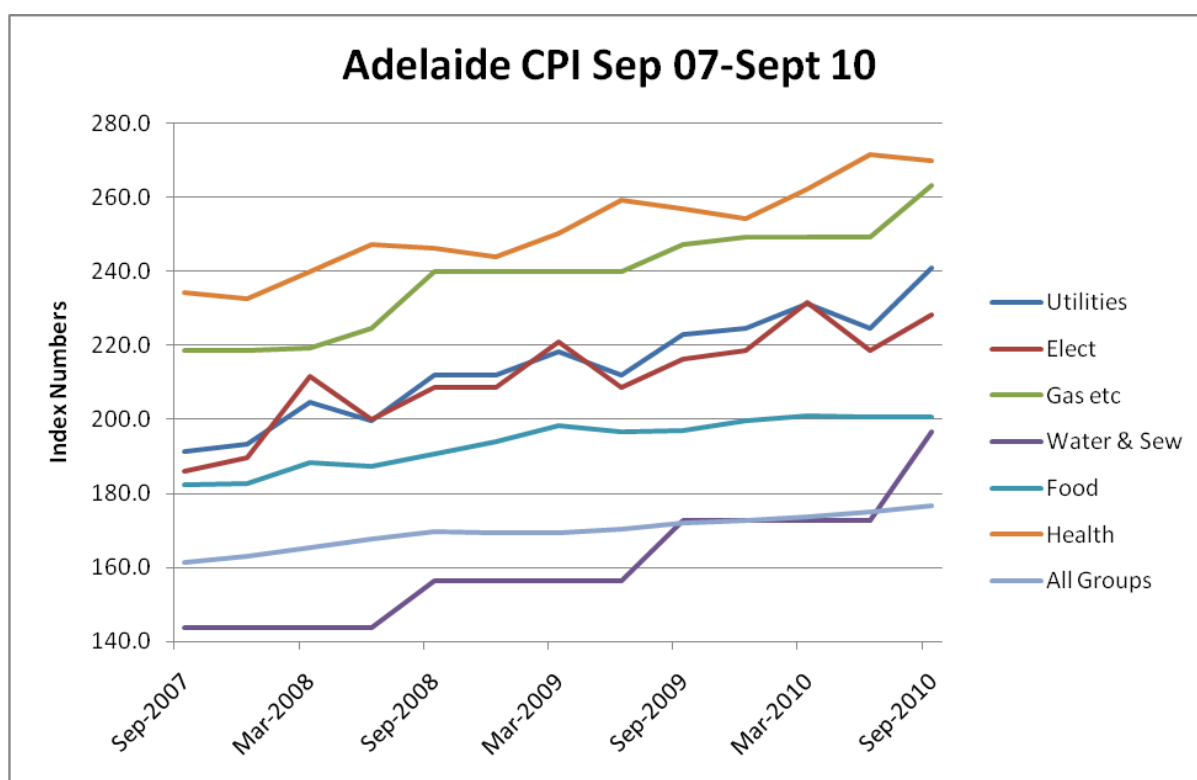
² Australian Bureau of Statistics (2009) Household Income and Income Distribution, Australia, 2007-08

³ FaHCSIA (2010) Income support customers: a statistical overview 2009

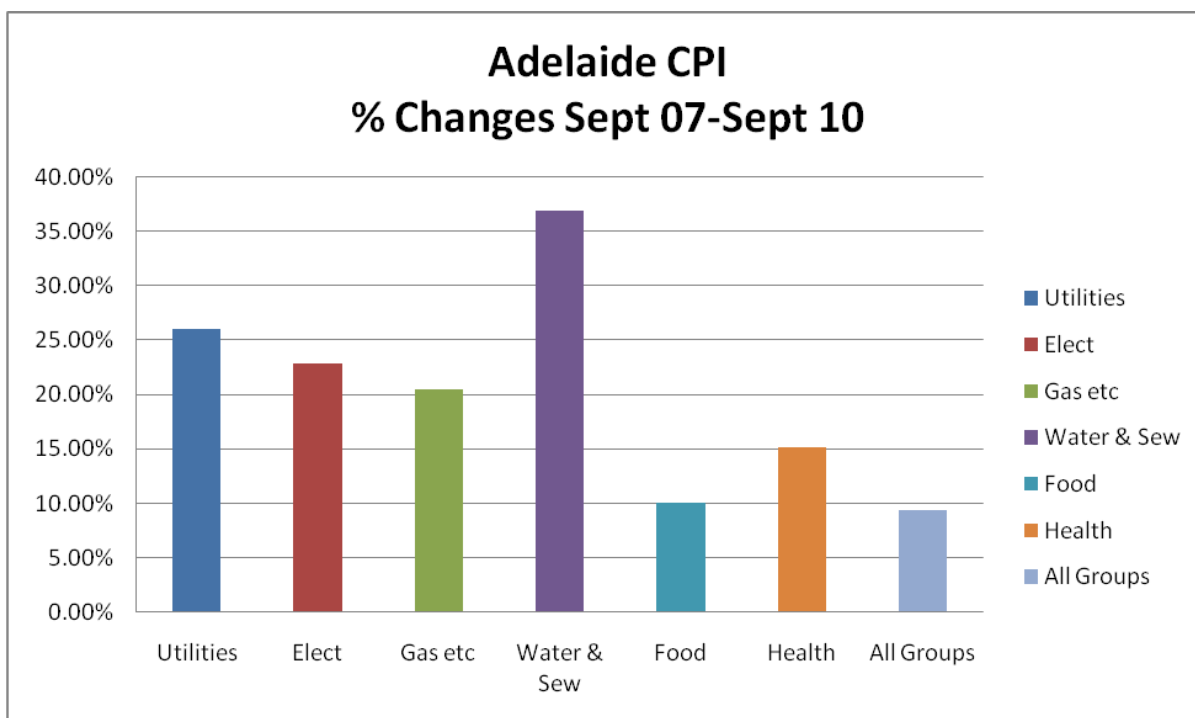
Older People and Essential Services

There is no doubt that the cost of essential services is affecting older people. Rising costs for electricity, gas and water all diminish the ability of households – particularly those on low and fixed incomes – to manage their weekly finances and to maintain health and wellbeing. This is of particular concern because after housing costs, utility bills are often ranked highest in order of importance and thus are paid before other costs such as food and medical costs.

The increasing burden of essential services can be seen in the CPI data. These show that electricity; gas and other household fuels; and water and sewerage costs have risen well above the general, or 'all groups' CPI (see below) over the last three years.



The cost of water and sewerage services in particular has risen faster than other essential services, and at over three times the rate of CPI (see below).



CSV continues to maintain that even small nominal increases in the price of utilities can have significant proportional and actual impacts on the lifestyle of older people. There is a proportion of the population that is now only just able to manage their existing financial commitments due to the disproportionate amount of income spent on essential services. This is because many people on low and fixed incomes, including many older people, spend more as a percentage of their income on essential services than those on higher incomes.

Given the recent increases in the prices of other essential goods and services such as food, fuel and water, any further increase in water prices is likely to place these households under financial duress. It is clear that strong price regulation, progressive tariff structures and realistic concessions are required to ensure affordable access.

The Water Industry Bill

CSV welcomes this opportunity to submit to the *Water Industry Bill 2010* (the 'Bill') consultation and notes that it will also provide comment to the Essential Services Commission's (ESCOSA) *Economic Regulation of the South Australian Water Industry Statement of Issues* ('Statement of Issues').

CSV has both general comments to make regarding both the Bill as a whole, and specific areas within the Bill. The comments can be found below.

General Comments

The entitlement to water

There is no doubt that water is essential to life and must therefore be treated as an entitlement rather than a commodity. CSV notes that the entitlement to water forms a part of SA Water's business and that water supply is not 'disconnected' due to failure to pay as in the case of energy.

However to ensure that the Bill takes the right direction as we head towards a third party access regime and increased competition, the entitlement to an essential amount of water needs to be explicitly recognised and enshrined in legislation, preferably through an additional section in Part 3. Only by doing this now can all South Australians feel some comfort as the reform agenda takes shape.

The consumer impact of reform

The privatisation and promotion of competition within the energy industry holds important lessons for the current move towards a more competitive water industry. While proponents of competition repeatedly point to the savings that can be made by actively participating in the market through market contracts, CSV holds the view that those on 'standing' or 'default' contracts will always require strong price protection.

As has been stated to ESCOSA and the Minister for Energy, there remain a substantial number of energy customers (nearly one-third) who choose to remain on the electricity standing contract. A recent report by Colmar Brunton identifies a number of significant features of this group, including older age and low income.⁴ It is likely that this will also be the case in a competitive water market.

In order to gain an adequate understanding of the impacts of the Bill and of the broader reform process, CSV strongly recommends that a consumer impact study is undertaken as soon as possible. While CSV has as its focus the needs of older people, the impact on all consumers needs to be known prior to important decisions being made.

The main elements of the consumer impact study should include:

- Independence – the study should be undertaken by a body independent of government and water industry interests, with methodology to be decided in consultation;

⁴ Colmar Brunton (2010), 'Monitoring the Development of Energy Retail Competition in South Australia and Consumer Preference for Market Contract Information'

- A focus on access and affordability for all water users, inclusive of owner-occupiers, tenants and residents of facilities where water costs are passed through;
- The different impacts on metropolitan, regional and remote consumers regardless of water supplier;
- A strong focus on consumer protections in its terms of reference;
- A cost-benefit analysis should be a key focus – the costs and benefits of proposed changes and of a ‘business as usual’ approach for low income and vulnerable groups;
- A thorough and careful consideration of the potential impacts of any third party access regime on consumers; and
- The relationship between proposed legislation and other legislation including the *Australian Consumer Law* (Cwlth), the *Residential Tenancies Act* (SA), the *Retirement Villages Act* (SA), the *Residential Parks Act* (SA) and the *Aged Care Act* (Cwlth).

It is particularly important that the relationships between the Bill as proposed and other state and Commonwealth legislation is recognised, explored and made explicit in the final legislation. Failure to do this will lead to further confusion among market participants (not least consumers) regarding rights, obligations and protections.

The need for comprehensive legislation

CSV is also concerned that the Bill does not go far enough in enshrining important elements of reform into legislation. This is in part because the Bill is based on the *Electricity Act 1996* and thus will rely on ESCOSA developing a complex suite of codes and regulations to deal with the detail.

CSV notes the introduction of the *National Energy Retail Law (South Australia) Bill 2010* to the House of Assembly in October 2010. This piece of legislation is much more comprehensive than the Bill and constantly refers to the *National Energy Retail Rules* (the Rules’) and the *National Energy Retail Regulations* (the ‘Regulations’).

The NERL itself (apart from any additional requirements under the Rules or Regulations) includes three important divisions which prescribe the obligations of essential services retailers in regard to customer hardship, payment plans and energy marketing.

Many of these requirements are important to older people, who often face a range of issues such as: lack of access to electronic payment arrangements; transport and mobility issues that hinder their ability to physically pay bills; vision impairment requiring bills and other information in large type; and English as a second language, requiring all information in a range of languages. All of these issues need to be addressed through the Bill to ensure that these needs are met by licence holders at no additional cost to consumers.

By developing the legislation, rules and regulations as a complete, complementary package (the National Energy Customer Framework or NECF) the Department of

Resources, Energy and Tourism (DRET) has allowed stakeholders to view and comment on the legislation and subordinate requirements prior to implementation.

CSV would like to see the Bill redrafted and greatly expanded to mirror the NERL to 'future proof' this important piece of legislation for South Australian consumers.

Hardship provisions

As per CSV's comments above relating to the need for the Bill to be more comprehensive, it is important that customer hardship provisions are clearly spelled out in the legislation. The NERL includes a number of requirements for essential services retailers, including:

- A statement on the purpose of customer hardship policies – to identify customers experiencing payment difficulties and to assist them in meeting their requirements;
- The requirement for retailers to develop a customer hardship policy that meets the regulator's guidelines;
- The minimum requirements for hardship policies; and
- The need for the regulator to approve any hardship policy prior to implementation.

CSV insists that section 26(4) of the Bill be strengthened to include these requirements.

Additionally, the NERL includes in section 47 a general principle on 'de-energisation' (disconnection) of hardship customers:

47 – General principle regarding de-energisation (or disconnection) of premises of hardship customers

A retailer must give effect to the general principle that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a last resort option.

Given that all people have an entitlement to water (see above), a strengthened section should be added to the Bill, which states that no customer can be disconnected for any other reason than a serious criminal breach, including under the relevant health and environmental health legislation. This theme is also dealt with below in the section on Part 6, Division 2 of the Bill.

Advocacy

As water industry reforms take shape, it will become increasingly important to ensure that consumers are provided with strong, well resourced advocates to ensure that their concerns are heard by government, water businesses and regulators. Changes to energy markets have highlighted this need, and consumer advocates have been acknowledged to provide otherwise overlooked points-of-view to various decision-

making bodies. Moreover, recognising the entitlement to water naturally leads to the conclusion that those who are entitled to water must also be entitled to resources for the purpose of advocacy.

CSV strongly recommends that a dedicated funding stream is allocated to consumer advocacy and that this funding is administered by either the Department for Water (DFW) or ESCOSA.

‘Consumer’ versus ‘customer’

One of the overriding concerns of CSV in relation to the Bill is the issue of ‘consumer’ versus ‘customer’. Without clarifying this issue at the outset, the government runs the risk of relegating tenants of public and private rental housing, residential parks and retirement villages to a lesser status under the law than property owners.

CSV recognises that even in energy legislation not all energy consumers are customers – not all members of a household are considered customers for billing or consumer protection purposes. Additionally, there still remains the important issue of inset networks and exempt sellers, currently being dealt with by the Australian Energy Regulator (AER).

There is however one important difference in that energy customers must arrange connection, disconnection and pay their bills as individual customers regardless of property ownership status. In effect the energy account(s) ‘follow’ the customer from residence to residence.

This has historically not been the case with water and sewerage services, both of which have been ‘rated’ against property rather than charged to actual consumers. While sewerage services can and should continue to be charged in this way as a fixed cost, there is a need to rethink the way water use and charges are assigned to consumers. Given water is charged in an inclining block tariff (IBT), it is an anachronism to levy costs on property owners who have little or no direct relationship with water consumption on their tenanted properties. This could lead to consumers (tenants) being disconnected due to non-payment by the customer (property owner).

In essence, thought needs to be given to the idea that water ‘consumers’ (in the energy sense) should become ‘customers’ through a direct contractual relationship mechanism built into the Bill. This would legislate for consumers in a range of settings to have guaranteed access to hardship provisions and the ombudsman scheme. It is important in this regard that older people and people on low incomes are not financially worse off under these changes, and that transitional arrangements are put in place to offset any financial disadvantage.

CSV believes that the current arrangements under the *Residential Tenancies Act 1995* and the *Residential Tenancies Regulations 2010* are insufficient in that they do not and cannot afford the protections required for water consumers, particularly

tenants. Given that many older people reside in residential parks, retirement villages and public and private rental accommodation, the lack of coverage threatens to disproportionately disadvantage these groups, particularly as older people who do not own their own home are one of the most vulnerable groups in society.

CSV recommends that DFW consult with ESCOSA and consumer groups on this important issue.

ESCOSA's approach to regulation

While ESCOSA has proven itself to be a generally effective, reasonable and consultative regulator over its lifetime, CSV is concerned that some recent decisions have been flawed. The recent Electricity Retail Price Path Determination is the prime example of this flawed approach, and CSV has formally questioned the absence of genuine concern for consumers from the final decision.

The evidence of a shift away from consumer concerns and towards purely economic reasoning is clear in its Statement of Issues, which references its role under the *Essential Services Commission Act (2002)*:

'That paramount statutory imperative [Section 6 of the ESC Act] is necessarily interpreted in an economic context of efficiency, particularly so in light of the fact that sections 6(b)(iv) and (v) expressly refer to efficiency considerations. Furthermore, the second reading speech for the ESC Act makes it clear that the terms used in section 6 are economic terms relating to efficiency and therefore that economic concepts should be used in analysing and applying the provision...'⁵

CSV notes that 6(v) refers to the benefits to consumers of competition and efficiency, and therefore should be read as being a social as well as an economic imperative. Additionally, the reference to the second reading speech of the ESC Act is erroneous as on this occasion the Minister noted the *consistency between* the long term interests of consumers and financial viability leading from greater efficiency, and not the strict *greater efficiency equals a purely economic approach* as read by ESCOSA.⁶

CSV thus considers it vital that the objects of the Bill be framed in such a way as to make the principles of price regulation clear and unambiguous for ESCOSA to follow.

With particular regard to water regulation, CSV notes that in *Water for Good* (p. 142) the government states that the government will (through the Bill) 'develop a regulatory framework to':

⁵ ESCOSA (2010) Economic Regulation of the South Australian Water Industry: Statement of Issues, p. 7

⁶ Hansard, House of Assembly, Wednesday 10 July 2002

- *Establish a clear separation between economic objectives, to be pursued by ESCOSA, and non-economic objectives (i.e. health, social and environmental objectives) to which ESCOSA must have regard, but for which the State Government will retain primary responsibility*⁷

CSV is concerned that this not only detracts from the functions of ESCOSA under the ESC Act, it also leaves social responsibility for water pricing impacts solely at the mercy of political considerations in the area of concessions. While the need for concessions to ensure affordability will remain a constant under current and proposed frameworks, the lack of formal relationship in legislation is concerning. CSV believes that this issue can and should be addressed through the Bill.

Specific Comments

Section 3: Objects

CSV generally supports the content and wording of the Objects of the Bill, with one important exception. Section 3 (e) refers to the protection of the 'interests of consumers of water and sewerage services' without reference to affordability and access. This is not in keeping with the National electricity objective in the *National Electricity (South Australia) Act 1996* (Section 7), The *Essential Services Commission Act 2002* (Section 6) or the National Energy Retail Objective in the *National Energy Retail Law (South Australia) Bill 2010* (Section 13).

CSV insists that in order to ensure consistency across essential services and correct interpretation and application of provisions in the Bill, strong reference must be made to retail pricing. Without such a reference, the Bill can easily be interpreted using Section 3(c) as allowing costs to be passed through with little or no regard for water or sewerage pricing for consumers.

Based on these concerns, the following change (emphasised) to 3(e) is suggested:

*(e) to protect the long term interests of consumers of water and sewerage services **with respect to access and affordability**;*

Alternatively, 3(b) can be reworded (addition emphasised) as such:

*(b) to promote efficiency, competition and innovation in the water industry **for the long term interests of consumers with respect to price, quality, safety and reliability of water and sewerage services**;*

In addition, an important guide for the work of ESCOSA is inherent in 6(b)(v) of the *Essential Services Commission Act 2002* (the ESC Act), which states:

(v) ensure consumers benefit from competition and efficiency

⁷ <http://www.waterforgood.sa.gov.au/water-planning/the-plan/>

The inclusion of this object is vital to ensure that the potential social good of competition is not lost sight of in light of economic ideology (refer comments above).

This is an important issue that extends beyond arguments over legal semantics, and CSV hopes that the next iteration of the Bill will better recognise and reinforce the need for social and economic goods to flow to consumers, as well as financial gain to water and sewerage service providers.

Section 4: Interpretation

As mentioned above in greater detail, CSV is concerned that false distinctions between ‘consumer’ and ‘customer’ may be made in relation to the provision of water and sewerage services.

Unlike energy, where customers are also consumers (except in the case of inset networks and excluding additional members of households), the provision of water and particularly sewerage services has historically been legally attached to property ownership. While financial responsibility for water costs are dealt with in the *Residential Tenancy Regulations 2010* (Section 12), this is limited and does not extend to providing the entitlement to consumer protections in a competitive market.

CSV believes that only by the separation of sewerage ‘rates’ (for property owners) from water ‘tariffs’ (for consumers of water for billing purposes) can the correct distinctions be made going forward. This will be particularly important as further work is done to prepare a third party access regime and a ‘competitive market’ is formed.

While these concerns represent a broader issue of responsibility and consumer protections, CSV believes that Section 4 (particularly ‘consumer’, ‘customer’ and ‘retail service’) will require revision and refinement based on these important decisions. CSV will be making more detailed comment on this issue to the ESCOSA Statement of Issues Paper consultation.

Section 14: Consumer advisory committees

CSV welcomes the requirement for ESCOSA to establish an advisory committee and its power under Section 14(2) to utilise its existing energy Consumer Advisory Committee (CAC) for this purpose. CSV notes that the expansion of the CAC would serve the purposes of ESCOSA under Section 14A of the *Electricity Act 1996* and would assist in bringing the regulation of water into line with that of other essential services.

Section 26: Licence conditions

CSV does not take issue with the wording of section 26 and notes its approval of 26(1)(g) and (h): the requirement for dispute resolution processes and for licensees to participate in an ombudsman scheme.

CSV has previously called for water to be included under an expanded Energy Industry Ombudsman (EIOSA) scheme. It is important that all water license-holders participate in the scheme to ensure equitable protections for all older consumers across the industry, regardless of location. While it is understood that the difference in size of licence holders may lead to cross-subsidisation by larger licence-holders, CSV believes that this is a small price to pay for industry participants for adequate protections.

However CSV is concerned that there is a serious omission in section 26 in regard to hardship provisions and the requirement for retailers to develop and implement hardship policies that meet certain standards. As mentioned above (see 'General comments'), hardship provisions are a core protective mechanism for consumers experiencing payment difficulties, many of whom will be on low or fixed incomes such as pensions. DFW should ensure that licensees and potential licensees are obliged through legislation to develop and apply these important policies.

Section 27: Third party access

While CSV has no specific comments to make regarding the content of Section 27, it harbours concerns regarding the potential impacts of third party access regimes as witnessed in other jurisdictions. The experience of other jurisdictions and the potential impacts on South Australian consumers needs to form a key component of the consumer impact statement (see above).

CSV plans to monitor the work of DFW in its preparation of the third party access regime and provide comment where appropriate.

Section 36: Price regulation

In general CSV supports the powers granted to ESCOSA for the purposes of price regulation. CSV continues to support strong price regulation in the energy industry and believes that as an essential service water should also be the focus of strong price regulation. Section 36(1) is therefore supported.

However CSV does not support 36(2) in that it attempts to subvert the powers of ESCOSA under Section 31(4) of the *Essential Services Commission Act 2002* (ESC Act). 31(4) states that ESCOSA may stay a determination or decision pending the outcome of an appeal or review:

(4) The Commission may stay the operation of the price determination or decision to which the application relates.

Section 36(2) of the Bill undermines this power (emphasis added):

*(2) Despite the provisions of the Essential Services Commission Act 2002, the operation of a determination of a kind referred to in subsection (1) is **not to be stayed** pending the determination of an application for review or appeal under Part 6 of that Act.*

CSV submits that ESCOSA should be permitted to exercise its powers under the ESC Act in the area of water regulation just as it does in the area of energy regulation, and that 36(2) be removed from the Bill.

In addition, CSV also cautiously welcomes 36(4) which allows for the Treasurer to dictate a pricing order to be complied with by ESCOSA. (While as mentioned above) CSV generally agrees with the principle that all essential services should be treated in a similar fashion in regard to regulation, the progressive distancing of the state government from energy pricing has led to unwelcome cost increases. This is likely to become more pronounced in water regulation given the distancing of economic from social, health and environmental regulation as proposed in *Water for Good* (see comments above).

However it is concerning to CSV that there is no legislative link between ESCOSA's 'economic' role and the 'social' role of government. Simply allowing for concessions and community service obligations (CSOs) will not provide sufficient price protection for older people – in recent times water concession rates have been entirely eroded by cost increases. CSV notes that the maximum concession rates for owner-occupiers and tenants alike are not claimed by a majority of water consumers and that more than double the average of 190kL per annum would need to be consumed to qualify for this maximum.

This historical lack of connection between costs and concessions is simply not good enough and Section 36(4) provides an opportunity for government to partly address its complete failure in the area of concessions. CSV holds the view that the need for this important connection is critical and that it is possible to enshrine this link – at least in the case of water services – through the Bill.

By maintaining a policy oversight over water pricing the government has the opportunity to prove that it can commit to socially progressive policy through the most essential of services. Below are some suggested core principles to guide the pricing order, and CSV would welcome the opportunity to further discuss these principles prior to the implementation of the pricing policy:

- All people are entitled to a basic amount of water that is affordable and accessible to meet health and wellbeing needs
- Pricing structures should be predicated on the acknowledgement that water is an essential service required for health and wellbeing;

- Additional water use above the level necessary for health and wellbeing should be charged in such a way that costs can be recovered;
- Prices should not be structured in such a way that consumers in rural, regional or remote areas are disadvantaged compared to those in metropolitan areas; and
- Pricing policies should be accompanied where necessary by financial assistance measures such as concessions that accurately reflect and address the lack of affordability to ensure affordable access.

Part 6, Division 2 – Protection and use of water supply

It is clear on an initial reading of the Bill that Division 2 of Part 6 is at least in part designed to protect service providers in the event of low water supply or other critical circumstances. This is duly noted. However, the powers given under sections 61 and 62 need to have additional clauses added to ensure protections from these measures.

CSV recommends that it be made clear in the Bill what these measures *cannot* be used for. For example, devices used to restrict the flow of water to a property can theoretically be used as a measure against those who have not paid their bills for any number of reasons. Without proscribed uses for these powers both within the hardship provisions (as recommended above) and in Part 6, CSV fears that flow restriction devices may at some stage be used for the purposes of restricting flow to customers in hardship.

Summary

In the context of the rising costs of essential services and the erosion of energy price protections for older people and other vulnerable consumers, it is vital that the *Water Industry Bill* provides the full range of protections through legislation. CSV believes that the lessons of energy industry reform should be reflected in a legislative instrument that serves South Australians with respect to the most vital of essential services.

In summary, COTA Seniors Voice calls for a revised Bill that:

- Enshrines the entitlement of all South Australians to a basic amount of water for a healthy life, regardless of income;
- Is based on a thorough consumer impact study which includes a cost/benefit analyses for a range of vulnerable metropolitan, regional and remote consumers;
- Is comprehensive, covering all areas of consumer interaction with industry and leaving the minimum to regulatory interpretation;

- Separates sewerage and water consumption charges, with the former charged against property under current arrangements and the latter to be charged to consumers;
- Provides for transitional arrangements for residential consumers who are disadvantaged by legislative changes; and
- Has a particular focus on price regulation, with clear linkages between the economic and social roles of the regulator and government.