



**COTA SA
Submission**

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

Draft Advice

January 2012

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COTA SA

COTA SA ('COTA') 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, COTA has 80 associate members who are aged care providers, local government bodies, health units and other service and educational institutions. COTA membership networks and programs are state-wide.

COTA 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.

COTA is concerned that older people's access to affordable quantities of essential services such as water and energy is under threat. COTA supports the view that everybody should have affordable access to sufficient quantities of essential services for health, wellbeing and social participation and welcomes the opportunity to comment on the Economic Regulation of the south Australian Water Industry: Draft Advice ('Draft Advice').

GENERAL COMMENTS

COTA has previously submitted comments on the current process following the release by ESCOSA of its Statement of Issues.¹ In this submission COTA raised a number of general concerns regarding the approach to water regulation. These concerns related to both the *Water Industry Bill* (the 'Bill') as it was then drafted and the Statement of Issues and some remain relevant to the Draft Advice, including:

- The distinction between 'consumer' and 'customer'²: COTA remains concerned that water customers are still defined in the Bill as property owners first and foremost³, although the Minister for Water has the power to further define other classes of consumer as customers. COTA believes that ESCOSA is obligated to advise the government through the Treasurer that this anomaly must be addressed to allow for a useful and manageable consumer protection framework.
- ESCOSA's approach to regulation: In its previous submission COTA outlined its concerns with the stated regulatory approach of ESCOSA based on its interpretation of the *Essential Services Commission Act 2002* ('ESC Act'); the Minister's second reading speech of the ESC Act; and *Water for Good*. COTA once again insists that the different nature of water and the entitlement to water preclude a purely economic approach to regulation. COTA notes that this argument is implicitly agreed to by ESCOSA at p. 16 of its 'Consumer Protection Framework for the South Australian Water Industry: Explanatory Memorandum' ('Memorandum') where economic regulation, public health imperatives and the 'social' notion of an entitlement to water meet:

¹ This submission was made under COTA's previous operational name, COTA Seniors Voice (CSV). The submission is available on ESCOSA's website:

<http://www.escosa.sa.gov.au/Publications/DownloadPublication.aspx?id=1940&versionId=2001>

² Refer CSV submission to Statement of Issues, pp. 8-9..

³ See definition in Cl. 4 of the *Water Industry Bill 2011*.

Unlike other essential services regulated by the Commission, the disconnection of water and sewerage services for non-payment is not feasible, as public health must be protected at all times.

Moreover, without linking these important considerations together, the ‘customer versus consumer’ issue can be raised in rental accommodation. This is because without a prohibition on disconnection for non-payment, theoretically a tenant (the consumer) could be disconnected due to the actions or inaction of the landlord (the customer).

While COTA still remains concerned about these issues it also recognises that the role of ESCOSA is limited according to legislation and the specific comments below relate to this role.

LICENSING FRAMEWORK

2.3 Licensing or exemption

COTA supports ESCOSA’s position in regards to licensing. It is agreed that the onus should be on entities to apply for a licence and where appropriate also apply for any exemption which may or may not be granted by ESCOSA. This provides certainty for consumers and potential providers alike.

Further, ongoing issues in the regulation of exempt sellers of energy (or owners/operators of ‘inset networks’) by both ESCOSA and the Australian Energy Regulator (AER) highlight the need to ensure that all providers of water are clearly identified and regulated accordingly at the outset of the new regime. Whilst there are clear differences between energy and water in terms of the number and nature of ‘exempt’ or small-scale sellers, it is desirable to have an understanding as early as possible to ensure the best outcomes for consumers.

2.4 Applying for a licence

As noted at p. 31 of the Draft Advice, COTA has previously stated its position that ESCOSA should have broad powers to ensure that licence applicants have the ability to fulfil their obligations to customers. However COTA recognises that water entity obligations to customers need to be balanced against undue onus and therefore supports ESCOSA’s approach in undertaking further research to ensure this balance.

2.5 Licence Conditions

As per its earlier submission, COTA maintains that consumer protections such as hardship policies are integral to maintaining access and affordability and thus should be legislated. However COTA also recognises that the role of ESCOSA is limited and that industry codes will have force of law.

In regard to the general powers of ESCOSA in relation to existing licence conditions, COTA supports the flexible approach outlined at Draft Advice 3, provided future new market entrants are not provided with too many concessions to allow them to compete with SA Water.

CONSUMER PROTECTION FRAMEWORK⁴

3.2 The application and form of water industry codes

COTA does not support the first element of Draft Advice 4: the creation of a Water Retail Code. The essential nature of water and the key differences between water and energy (recognised by ESCOSA) mean that a separate residential water retail code would best serve the interests of consumers. COTA notes that consumer protections in the water industry should focus on residential customers, with business customers being subject to a different code. This additional code should also include services that go beyond the traditional supply of potable water and sewerage services, such as third party access and recycled water supply.

COTA also reiterates its concerns regarding differences in retail service and protections for SA Water and non-SA Water customers and the need to minimise these differences.

3.3 Coverage of a water retail code

As ESCOSA is aware, one of COTA's key concerns is that consumer protections are robust and provide similar levels of protection to those afforded to energy customers. Like ESCOSA, COTA is cognisant of some important differences between water and energy markets and therefore the need to incorporate different protections within a water *residential* retail code ('Code').

COTA broadly supports ESCOSA's advice on this issue and its stated aim of achieving 'best practice' through implementing learnings from retail energy market codification.

ESCOSA is also well aware that COTA remains concerned that the issue of consumer versus customer has still not been resolved satisfactorily and that under the current draft legislative definitions and without the intervention of the Minister for Water many tenants will not be afforded codified protections.

In its Memorandum, ESCOSA asks for comment on which provisions of the Code should be extended to consumers. COTA's response is that all provisions should be extended to residential consumers and that without this full extension a two-tiered consumer protection framework will exist under which tenants are treated differently.

However COTA does recognise that issues will arise with the extension of provisions of the Code to consumers within exempt networks such as residential parks, some retirement villages and other forms of shared metering arrangements. Many older people reside in such arrangements and COTA would be happy to discuss this issue further with ESCOSA.

3.4 Standard form customer contracts

COTA supports the approach taken by ESCOSA in its decision to prescribe contractual terms and conditions for water retail services. Particularly in the current non-competitive environment, it is of paramount importance that (residential) customers are provided with a level playing field and a

⁴ Comments in this section refer to both the Draft Advice and Memorandum documents.

sense of certainty when it comes to the conditions of their service. COTA notes that ESCOSA has communicated this approach (which is based on provisions in the Energy Retail Code) in more detail in the Memorandum.

It is also reasonable that licensees be allowed to apply for approval for non-standard terms and conditions. This will allow small entities, including local government, to remain viable while still affording ESCOSA the ability to oversee and if necessary reject unreasonable exemptions or changes.

However COTA submits that ESCOSA should undertake/implement two additional elements:

- Based on the notion that increased competition may lead to a more light-handed regulatory approach in relation to contractual terms and conditions, advice to the Treasurer should include provision for future reviews of competition. Any such review should be transparent and seek public input. COTA is disappointed that the *Water Industry Bill 2011* as presented to the House of Assembly on 27 July does not include provisions for public consultation on the development of a Third Party Access Regime. This provision was in the original Draft Bill.
- Requests for exemption from standard form contractual terms and conditions by any entity should be made public, with comment sought. This would be in keeping with current practice in energy business licensing procedures.

Customer Charter

COTA fully supports the proposal for a Customer Charter as outlined in the Memorandum. A constantly emerging issue for consumers is that of information asymmetry. One way in which to begin to address this is by providing basic information and links to further information in a Customer Charter.

Enquiries, Complaints and Dispute Resolution

COTA supports this provision in the Code, particularly the requirement that information be provided in an easily-understood form. It is also particularly important that large type and versions in other main languages are provided for older people with vision impairment or who are from Culturally and Linguistically Diverse (CaLD) communities.

In regard to dispute resolution, COTA reiterates its position in favour of extending the role of the Energy Industry Ombudsman of SA (EIOSA) scheme to incorporate water. This has been flagged and discussed in numerous forums, including the second reading speech of the *Water Industry Bill*, but not publicly discussed in any detail.

Billing

COTA considers billing to be one of the most important ongoing interactive elements of the provider-customer relationship for any essential service. As well as providing all the relevant information regarding tariffs, meter reading etc, bills should always include information on the availability of – and applications processes for – concessions.

Payment and Payment Difficulties

ESCOSA's approach to customers with payment difficulties is supported by COTA. The development and enforcement of minimum standards for payment cycles, payment methods, concessions and rebate information etc are important in ensuring water customers are able to manage their costs.

However anecdotal evidence from older energy customers and from energy retailers suggests that older people are less likely to identify as having payment difficulties than younger customers. This in turn leads to older people being underrepresented in hardship programs despite often being low income. COTA recommends that given South Australia's rapidly ageing population, ESCOSA maintain a watch on the way in which providers communicate payment options to customers with a view to working with providers to reach diverse customer groups.

Hardship Programs

COTA is pleased that ESCOSA is proactively developing hardship program provisions to sit within the Code. While (as mentioned above) older people are underrepresented in energy hardship programs, COTA strongly supports the development and enforcement of strong hardship protections for all retail customers.

COTA supports the provision as presented in the Memorandum but recommends that Centrepay be explored as an additional means of providing payment flexibility.

Restrictions and Disconnections

As highlighted in its submission to the Statement of Issues, COTA does not support the disconnection of residential water supplies for non-payment. COTA is reassured (although not surprised) to find the ESCOSA agrees in its Memorandum. While COTA would prefer that flow restrictions were not used for non-payment, it recognises that there are circumstances in which retailers have exhausted all other means of recovering debt. In these situations it is preferable that flow is restricted rather than disconnected.

Subsequently COTA does fully support the principle that flow restriction should be the last resort for a water provider. COTA also broadly supports the obligations prior to restriction and the limitations on restriction, noting that they are congruous with similar provisions in the Victorian Essential Services Commission (ESC) water Customer Service Code ('ESC Code').⁵

However COTA recommends that additional detail be provided in the Code, including:

- An explicit and public prescribed minimum amount that must be outstanding prior to restriction: the ESC Code sets a minimum debt of \$200 (s7.2(a)) below which a water provider cannot restrict flow to a customer. COTA recognises that ESCOSA has flagged a 'prescribed minimum amount'⁶ but recommends that this amount and the reasons for its value be transparent.

⁵ <http://www.esc.vic.gov.au/NR/rdonlyres/D8B6324D-1531-4BD2-B9A6-80FE9E0A44D1/0/CustomerServiceCode.pdf>

⁶ The Energy Retail Code (ERC) s9.7(a) also has provision for a minimum amount outstanding prior to disconnection, although this amount is not published.

- Limitations on flow restrictions: COTA recommends that ESCOSA follows the lead of the ESC in setting a minimum flow rate below which providers cannot restrict flow to a residential address. The two-litres-per-minute figure set in Victoria may not be appropriate for SA and so ESCOSA should undertake further consultation on this issue.
- Explicit protections for tenants: pending resolution of the customer versus consumer issue, explicit protections for tenants are required. While the issue of customer versus consumer remains unresolved, COTA recommends that tenants are provided with explicit protections. These should include provisions in the Code that disallow flow restrictions for non-payment by landlords.⁷
- Compensation for wrongful restriction of supply: COTA recognises that the Draft Advice proposes that the Code include a range of measures to avoid flow restriction to customers. However in order to further incentivise compliance with payment difficulties provisions COTA recommends that a Guaranteed Service Level (GSL) payment model be introduced along the lines of the ESC Code. Under Schedule 1 of ESC Code, provider are required to pay customers \$300 for:

Restricting the water supply of, or taking legal action against, a residential customer prior to taking reasonable endeavours (as defined by the Essential Services Commission) to contact the customer and provide information about help that is available if the customer is experiencing difficulties paying.⁸

COTA is genuinely concerned that protections in the area of flow restriction be made strong early to ensure that the transition to regulation does not result in restriction for some customers.

Reinstatement of Supply after Restriction or Disconnection

COTA supports the approach to the reinstatement of full supply, in particular the principles around fee recovery. COTA commends ESCOSA for recognising the potentially restrictive nature of reconnection fees generally – in this case the cost of removing the flow restriction device which COTA assumes also includes the cost of installing the device.

3.5 Service standards

COTA acknowledges the issues raised in the Draft Advice concerning the development and application of service standards to SA Water and other smaller entities but remains concerned that service standards for customers are not compromised.

COTA does accept that for SA Water, current KPIs (as proxy for service standards) are a consideration in its current funding arrangements and should not be significantly changed during the transition period. COTA also supports the entering into MOUs with other agencies such as the Department of Health for some key indicators.

⁷ COTA notes that the 4.2 of the *Water Industry Bill 2011* does allow for the Minister to designate classes of customer. It is to be hoped that consumers in a range of tenancy situations will be designated through this process and thus be afforded equal protections to property-owning customers.

⁸ ESC Code, p. 27.

However COTA does not accept that for local governments, logging and reporting on customer contacts related to water services is not practical in the context of the wide range of services provided to customers and ratepayers. As noted above in the context of other provisions, individual exemptions should be sought individually, with a public and transparent process. The onus should be on a local government provider to prove that meeting a service standard is impractical.

However, COTA once again notes the importance of service standards such as reconnection and telephone response times, particularly for older people who are less mobile and less likely to be connected to the internet. ESCOSA is therefore encouraged to closely review SA Water's current standards (as proposed for the first regulatory period) with a view to constant improvement.

In regards to other water providers, COTA proposes close monitoring of Ombudsman⁹ contacts as a means to ensuring that minimum licence standards are being met.

⁹ This is based on the assumption that the role of the Energy Industry Ombudsman of SA (EIOSA) scheme will be extended to include water entities (refer comments at p. 6 (above)).

PERFORMANCE MONITORING

4.1 Principles underpinning the performance monitoring framework

COTA supports ESCOSA's approach to performance monitoring with limited reservation. COTA notes that ESCOSA is concerned with maintaining current reporting requirements in the short term whilst working through the Urban Round Table Group (URTG) to amend the reporting requirements under the National Performance Framework: Urban Performance Reporting Indicators & Definitions Handbook (the 'Handbook').

Whilst COTA does not dispute that this is a valid approach in order to maintain consistency with the National Water Initiative (NWI) framework, ESCOSA should recognise that South Australian consumers will still look to it as the regulator to monitor performance and will not consider the NWI framework when doing so. While ESCOSA should have reference to national processes, agreements and initiatives, the long terms interests of South Australian water consumers are paramount and must trump other considerations where necessary.

PRICE REGULATION

6.1 Legislative framework

While COTA recognises that the role of ESCOSA is subject to legislative control (through the ESC Act, Water Industry Bill etc) it is important to make a couple of comments regarding the framework and ESCOSA's interpretation of it.

In general ESCOSA's interpretation of the legislative framework is straightforward and requires no further comment. However COTA fully supports ESCOSA's comments regarding the Treasurer's Pricing Order and the National Water Industry (NWI) Pricing Principles in regards to independent price regulation. The open-ended wording of clause 35(4) of the Water Industry Bill does leave it open to the Treasurer to unreasonably impugn on the independence of ESCOSA in its price regulation role, potentially leading to sub-optimal outcomes for consumers.

COTA also agrees with ESCOSA that there is no legislative requirement to apply the NWI Pricing Principles in its regulatory decisions. While there will necessarily be some referral through efforts to achieve consistency with other jurisdictions, COTA urges ESCOSA and the Treasurer to consider the short, medium and long-term interests of SA water consumers as paramount. Where implementation of NWI Pricing Principles may be detrimental to consumers' interests a different approach should be taken.

PRICE REGULATION OF SA WATER DRINKING WATER AND SEWERAGE

Determining efficient costs

COTA supports ESCOSA's approach as outlined in Draft Advice 10, inclusive of:

- A direct form of price control wherein only prudent and efficient and 'prescribed' (relevant) costs are passed on to consumers;
- Determination of an appropriate rate of return for SA Water, based on the cost of capital and reflective of efficient costs; and
- The adoption of a model which allows ESCOSA to 'exclude inefficient capital expenditure incurred from SA Water's regulatory asset base'.

In relation to the ability to exclude inefficient expenditure from the regulated asset base (RAB), COTA draws to the attention of ESCOSA the current energy Network Regulation Rule Change request process being undertaken by the Australian Energy Market Commission (AEMC), specifically the proposal put forward by the Australian Energy Regulator (AER).¹⁰

Under its proposed changes to the National Electricity Rules (NER) and National Gas Rules (NGR), the AER proposes that of capital expenditure that is found to be inefficient, only 60% can be rolled into the RAB for the following regulatory period. This disincentivises network overspend because the business cannot recover costs on its entire inefficient investment.

¹⁰ See <http://www.aemc.gov.au/Electricity/Rule-changes/Open/Economic-Regulation-of-Network-Service-Providers-.html>

COTA strongly encourages ESCOSA to maintain a watch on the current Rule Change process to ensure that SA Water – a similar monopoly network and service provider – is regulated in the most appropriate way.

As part of the same consolidated Rule Change process mentioned above, the Energy Users Rule Change Committee (EURCC) have also proposed a different approach to calculating and applying the cost of debt – particularly the debt risk premium or DRP – to government-owned energy network businesses. The proposal suggests that the lower costs of government debt are not passed on to consumers through the AER’s regulatory process, which may hold lessons for ESCOSA’s approach to SA Water.¹¹

COTA sees no reason for water consumers to pay higher costs than required in order to treat SA Water as a type of business which it is not. Allowing a government owned business to collect additional funds to be paid to the government in dividends is regressive taxation and needs to be avoided.

COTA notes that the government ownership of SA Water has been explored by ESCOSA at p. 88 of the Draft Advice. In addition to the general issue of government ownership, other related issues regarding government policy decisions as they relate to the efficient provision of drinking water need to be addressed by ESCOSA. Importantly, the principle of efficiency should extend beyond capital expenditure and include operational expenditure for price regulation purposes.

An example for consideration is the decision that the Adelaide Desalination Plant (ADP) will use 100% ‘green energy’ under a contractual arrangement with AGL. This arrangement does not reflect efficient business practice and COTA does not believe that the additional costs incurred by using renewable energy should be passed on to consumers. COTA strongly suggests that SA Water should open negotiations with AGL to cease the contract to avoid further inefficiencies and that none of these costs are borne by consumers.

Form of price control

COTA believes the use of a revenue cap form of price control for SA Water would best serve the interests of consumers due to the relative inelasticity of water use. However COTA supports ESCOSA’s intention to make a decision regarding the form of price control during the price review process as per Draft Advice 11.

Tariff structures

COTA does not support the use of a short run marginal cost (SRMC) approach to water pricing. SRMC or ‘scarcity pricing’ would be a complicated and difficult to use methodology that also has the potential to disproportionately affect low use water consumers like older people.

Using a more long term approach such as basing part of the total charge (fixed or consumption) on the long run marginal cost (LRMC) with the addition of annual adjustments to reflect water scarcity also has its problems. If adjustments in price are made ex-post, this is not a real-time price signal,

¹¹ COTA has provided specific comment on this issue in its submission to the ‘Advice on a Regulatory Rate of Return for SA Water: Draft Advice’, available from: <http://www.escosa.sa.gov.au/Publications/DownloadPublication.aspx?id=2096>

with the adjustment taking place in the following year. This is difficult to justify to consumers, particularly those who do not use much water and who are on low incomes.

COTA does support the retention of the current inclining block tariff (IBT) structure, despite recent moves by the government to ‘flatten’ the incline on this structure. As noted in the Draft Advice, COTA is not alone in maintaining that an IBT best serves the interest of low-use water consumers.

On the issue of sewerage pricing, COTA recognises that current property-value based pricing is reflective only of asset wealth and not income – and therefore is not based on ability to pay. This approach can disproportionately impact on older people who own their own home but have low incomes. For these reasons COTA welcomes ESCOSA’s intention to explore sewerage pricing, and recommends that abutment charging also be considered as part of the review.

ESCOSA also identifies statewide pricing as an area for further investigation. COTA fully supports the continuation of statewide pricing as a means to ensuring that water is affordable in rural and regional areas and regardless of cost reflectivity.

COTA also supports an investigation of capacity charges for residential water supply based on the approach used in other jurisdictions. COTA notes that this will potentially lead to work by SA Water to reach the necessary understanding of its customer base. It may also lead to consumer-driven meter changes as a means to managing costs.

PRICE REGULATION OF OTHER PROVIDERS OF DRINKING WATER AND SEWERAGE SERVICES

In recognition of the significant burden of strong price regulation on small water entities, COTA supports the light-handed approach proposed by ESCOSA. COTA considers it appropriate that price transparency and monitoring during the initial regulatory period would allow changes to be made for the subsequent period if considered necessary.

COTA further notes that it will encourage price monitoring of small entities by its stakeholders to ensure that older people are not paying more for their service than necessary.