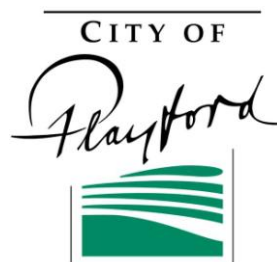
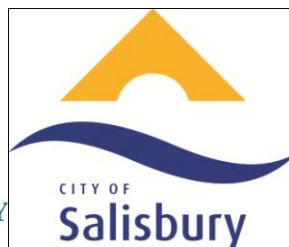


**SUBMISSION TO THE ESSENTIAL SERVICES  
COMMISSION OF SOUTH AUSTRALIA IN RESPONSE  
TO THE ECONOMIC REGULATION OF THE SOUTH  
AUSTRALIAN WATER INDUSTRY – DRAFT ADVICE**

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



## 1. INTRODUCTION

This submission is made on behalf of the City of Tea Tree Gully, the City of Salisbury, the City of Charles Sturt, the City of Onkaparinga and the City of Playford (**Councils**) in response to the request for submissions to the Economic Regulation of the South Australian Water Industry – Draft Advice (**Draft Advice**), released by the Essential Services Commission of SA (**Commission**).

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

The Councils have previously made formal submissions in relation to the Water Industry Bill 2010 and the Commission's Statement of Issues. The Councils also provided informal input during the recent debate of the Water Industry Bill 2011. The Councils value the continued opportunity to be involved in the consultation process.

This submission highlights the Councils' key areas of concern, after considering the Draft Advice.

The Councils formally request a meeting with the Commission to take place early in 2012, to discuss the Councils' issues in more detail. The Councils submit that local government (and the Councils in particular) can make a valuable contribution to the development of the regulatory regime, given the significant involvement local government will have in the new water industry.

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

The Councils' submission follows.

## 2. EXECUTIVE SUMMARY

While the Act itself will form the bones for the regulation of the water industry (and largely creates the benefits), the meat is to be found in the various codes and guidelines that are being developed by the Commission. It is these that will have the most impact on the Councils in terms of the regulatory burden.

The Councils support the Commission having taken a relatively light-handed position with respect to non-SA Water entities, in the short to medium-term. The Councils also support the gradual "phasing-in" of the various regulatory requirements (i.e. service standards).

However, much of the "flexibility" built in to the proposed regime is based on the Commission granting exemptions on a case-by-case basis.

The Councils remain concerned with how this will operate in practice. In particular, the Councils are concerned that this approach may give rise to:

- uncertainty;
- inconsistency;
- additional costs;

- delays.

### 3. LICENSING FRAMEWORK

#### 3.1 Licensing or exemption

The Commission has made clear that the default position under the Act will be that all entities who engage in an activity of providing “retail services” (either water or sewer) will be required to be licensed. This means there will be no general exemption from the requirement to be licensed for local government, even for those councils who only operate CWMS.

However, the Commission does have the power to grant an exemption from the requirement to be licensed and the Commission has indicated that such exemptions may be granted on a case-by-case basis. The onus will be on the particular entity to demonstrate why it should not be licensed.

The Councils remain concerned with how such an exemption process will operate in practice and the resource implications required to make applications on an ongoing basis.

#### 3.2 Application for a licence

The Councils previously submitted that deeming provisions ought to apply to local government in relation to much of the information required to be submitted as part of a licence application (e.g. in relation to financial capability etc).

This position has not been accepted by the Commission. However, the Commission has proposed to develop a set of prudential standards that applicants will be required to satisfy. The Councils welcome the opportunity to provide feedback in relation to the draft standards, once prepared.

The Commission has also prepared a **draft Licence Application Form** (and accompanying Advisory Bulletin) for review and comment.

##### **draft Licence Application Form**

Part 2. This Part requires details of the services for which the licence is sought. It is unclear whether this is merely asking for a general description (e.g. “water – non-drinking”), or if anything more detailed is required (e.g. a description of all the applicable systems).

Part 3. This Part deals with the applicant’s suitability to hold a licence (which is presumably where the prudential standards will come in). Much of the detail requested is not applicable to local government. For example, reference is made to “shareholders”.

Given that SA Water is to be automatically granted a licence on commencement of the Act (and therefore has no need to lodge an application), there is even more reason for the terminology to be equally appropriate for local government, as it is likely that local government will make up the majority of applicants, at least in the first instance.

It is unclear whether the details required of the “Officers” of the applicant ought to be limited to those involved in the water business, or would extend to any

Officers who make decisions in relation to the “business” of the applicant. In the case of local government, any water business will represent only a small part of the operations of each entity.

There does not appear to be anywhere in the application form for applicants to request an exemption to certain mandatory licence conditions. However, this request will presumably need to be made at the time a licence is applied for.

The proposed licence application fees and annual licence fees have not been included. The Councils would welcome an indication of what these fees are likely to be.

### 3.3 Licence conditions

The Councils previously submitted that certain of the mandatory conditions were not appropriate for local government and generally ought not to be imposed.

The Commission has proposed that it will consider granting exemptions from mandatory licence conditions on a case-by-case basis.

While the Councils are supportive of a flexible approach, the Councils are concerned with how this approach will operate in practice, particularly given the resource implications for smaller councils in being required to put together exemption applications.

The **draft Water Industry Retail Licence** is discussed in further detail below.

#### **draft Water Industry Retail Licence**

The licence conditions themselves are fairly general and brief.

Some of the licence conditions may be problematic for the Councils from a practical perspective. For example, Condition 9.1 requires the applicant to establish and maintain separate accounts in respect of the operations authorised by the licence. This may not be possible or practical. Condition 12 relates to insurance and does not take into account local government’s special position with respect to the Mutual Liability Scheme and reinsurance by the State Government. There is no policy under that arrangement.

However, it is the reference to (and requirement to comply with) *industry codes, industry rules, technical or safety requirements* and the *Water Retail Code* that are of most concern to the Councils. Until these documents are finalised, the Councils cannot finalise their position with respect to licence conditions.

The **Water Retail Code** is discussed in further detail below.

## 4. CONSUMER PROTECTION FRAMEWORK (WATER RETAIL CODE)

### 4.1 Water Retail Code generally

While the Councils’ preference was for multiple codes (together with voluntary codes or guidelines), the Councils support the Commission’s proposal for flexibility within the single code to be adopted.

Again, the Commission has stated that it will take into account the particular operations of individual licensees when determining which provisions of the Water Retail Code will apply and may exempt entities from specific requirements on a case-by-case basis.

The Councils remain concerned with how this will operate in practice.

The Councils welcome the opportunity to have ongoing involvement with the development of the Water Retail Code.

#### 4.2 **Standard form contracts**

The Councils support the Commission's conclusion that flexibility with respect to the use of standard form contracts is important.

The Councils support the ability to be able to apply for approval for varied terms and conditions.

The Councils remain concerned with the impact of the Act on existing (often long-term) contracts.

#### 4.3 **Service standards**

The Councils support the Commission's view that recognition of the scale and scope of operations undertaken by individual licensees is needed, rather than requiring all licensees to meet standards primarily developed for SA Water, which are unlikely to be able to be met by local government in all instances.

The Councils welcome the opportunity to be involved in the development of appropriate service standards commencing in 2012/2013.

### 5. **REPORTING**

#### 5.1 **Performance monitoring (Water Industry Reporting Guideline)**

The Councils support the initial focus on SA Water and welcome the opportunity to be involved in the development of separate reporting requirements for local government, achieving a balance between the benefit of the information gathered and the cost of providing it.

#### 5.2 **Compliance reporting and auditing**

##### 5.2.1 ***Reporting***

The Councils generally support an "exception-based" compliance scheme.

The draft **Compliance Systems and Reporting – Water Industry Guideline** is discussed in further detail below.

However, the Councils are concerned, among other things, with the potential governance implications of the proposed compliance scheme.

For example, will the existing audit committees of each of the Councils be sufficient to sign off on compliance reports, or will separate

Compliance Committees be required to be established for the purposes of compliance under the Act?

Again, much of the terminology used is not applicable to local government. For example, local government does not have Boards of Directors. Will approval by the elected members of each council satisfy the requirement for compliance reports, once signed off, to be approved by a Board of Directors?

#### 5.2.2 **Auditing**

Again, the Councils have mandated audit requirements. It is submitted that these audit requirements ought to be sufficient to satisfy the Commission and the requirement to have approved audit plans.

The water services provided by the Councils will only form a small part of the (often mandated) functions of the Councils.

### 5.3 **Compliance Systems and Reporting – Water Industry Guideline 1**

#### **Water Industry Guideline 1**

The Commission proposes a multi-tiered approach, requiring different methods of reporting based on the significance of the obligation breached.

The Councils remain concerned that meeting the compliance reporting obligations will be a significant burden, in terms of time and resources, with local government already being subject to substantial regulation.

## 6. **PRICE REGULATION**

### 6.1 **Other providers of drinking water and sewerage services**

The Councils support the Commission's proposal that initial price regulation (during the first price period commencing 1 July 2013) will be of a "light-handed" nature, involving price-monitoring/pricing principles.

### 6.2 **Trade waste**

The Councils support the Commission's proposal for a relatively light-handed form of regulation.

### 6.3 **Recycled water (wastewater and stormwater)**

The Councils support the Commission's proposal to apply "light-handed" pricing approaches to recycled water.

### 6.4 **Miscellaneous other services (e.g. connections and disconnections and meters)**

The Councils support a pricing principles approach.

The Councils welcome the opportunity to be involved in the public price review for SA Water in the lead up to 1 July 2013 and any ongoing consideration of price regulation and development of pricing principles.