

Review of the *Water Industry Act 2012*

Feedback form

BACKGROUND

This feedback form is designed to accompany the discussion paper developed as part of the review of the *Water Industry Act 2012*. Please refer to the discussion paper in providing your responses.

GENERAL INFORMATION

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I give permission for my submission to be made public Yes No

Any other comment: [Click here to enter text.](#)

DISCUSSION QUESTIONS: REGULATION

The following questions relate to section 2 of the discussion paper.

2.1	Do you think that the introduction of the Water Industry Act has helped to achieve the objects of the Act? If yes, why? If not, why not?	<p>The Water Industry Act has aimed to open up the water industry and provide new and more market-oriented ways of providing services to customers.</p> <p>Looking forward, the method for service provision that is enabled by the future form of the legislation needs to recognise that:</p> <p>(1) Consumers are at the heart of the water utility provider's mission.</p> <p>(2) There is a danger for monopoly utility providers including water providers to go 'off mission' because they do not face competition and are often at a significant distance from their ultimate customers (sometimes with intermediating retailers in different arms of the same or different businesses).</p> <p>(3) Consumer protections are vitally important and provide a basis for clarifying minimum customer expectations around the level of service.</p>
2.2	What have been the advantages of regulation of the water industry?	Click here to enter text.
2.3	What have been the disadvantages of regulation of the water industry?	Click here to enter text.

DISCUSSION QUESTIONS: LICENCING AND EXEMPTION

The following questions relate to section 4A of the discussion paper.



4A.1	Is a single licensing regime appropriate? If yes, why? If not, why not?	We support an open, transparent, and consistent method of licensing water providers. This could be achieved under either a single licensing regime or a tiered licensing regime. Under either regime: (1) There should/would be clarity and consistency around license terms and granting of exemptions; and (2) Different treatment of providers should/would be on the basis of clearly defined criteria. We consider it very important for residential customers to have adequate protections under the licensing regime, so either regime would need to provide for consumer protections for residential customers. Under a tiered regime, it would not be reasonable to exempt certain providers (such as small providers or providers with few connections) from providing adequate consumer protections.
4A.2	If you disagree with a single licensing regime, how do you think a tiered licensing system should operate? Should it exist in the legislation (including regulations), or remain at the discretion of the Commission?	Click here to enter text.
4A.3	If a tiered licensing system were introduced, what factors should define the tiers (e.g. number of connections)?	An important consideration in determining which type of licensing system should apply is whether the customers are residential or non-residential. This is because water supply is critical to residential customers and they generally have less resources than business customers in negotiating with water providers.
4A.4	Do you think that there should be any changes to the formal licence exemption regime that exists under the Act? If so, what should they be?	Any exemptions should come with a requirement to provide consumer protections including access to the Ombudsman.
4A.5	If an automatic exemption regime was introduced into the Act, what factors (or combination of factors) should define the exemptions and why (e.g. water type, number of connections, purpose of use, nature of business)?	One factor would be the types of customers. An exemption for residential customers would need to be on the condition that adequate consumer protections are provided.
4A.6	Do you have any other comments about the current licensing regime, or any additional suggestions on ways it could be improved?	Click here to enter text.
4A.7	Do you have any other comments about exemptions?	Click here to enter text.

DISCUSSION QUESTIONS: PLANNING FOR WATER SECURITY

The following questions relate to section 4B of the discussion paper.

4B.1	Do you think the current demand and supply statements adequately allow for planning for future water security? If yes, why? If not, why not?	Click here to enter text.
4B.2	Do you think that demand and supply statements should encompass both potable and non-potable water supply, and all potential alternative water sources? If yes, why? If not, why not?	Click here to enter text.

4B.3	Who should be responsible for preparing the demand and supply statements?	Click here to enter text.
4B.4	Is the regional scale that is currently used for regional demand and supply statements an appropriate scale? If not, why not, and what do you think the appropriate scale is?	Click here to enter text.
4B.5	The Act currently requires the state water demand and supply statement to be reviewed and reported on annually. What do you think is the appropriate frequency for review?	We believe that it is appropriate for the statement to be reviewed & reported on annually however there may be times where exceptional circumstances (eg extended drought) would make it relevant to prepare additional statements and reports.
4B.6	Information contained in the statements has the potential to motivate new market entrants and therefore increase competition in the water sector. What additional information do you think would be required in the statements to increase water sector competition?	Click here to enter text.
4B.7	Do you have any other comments in relation to planning for water security, or any additional suggestions on ways it could be improved?	Click here to enter text.

DISCUSSION QUESTIONS: THIRD PARTY ACCESS

The following questions relate to section 4C of the discussion paper.

4C.1	How successful do you think the third party access regime negotiate/arbitrate framework has been in opening up the water industry to new water industry entities? Please explain your answer.	Click here to enter text.
4C.2	Do you think there are other aspects of the Water Industry Act that either help or hinder a new third party access regime commencing? Please explain your answer.	Click here to enter text.
4C.3	How does the required pricing methodology impact (positively or negatively) on the uptake of third party access opportunities?	<p>The current retail-minus pricing methodology bakes existing incumbent inefficiencies into access prices for services provided to the third party access seeker. This is likely to chill new entry.</p> <p>The sidebar on page 13 of the Issues Paper provides an example of how the retail-minus is likely to chill competition. It talks about an incumbent that offers a final service at \$10 or a service to access seekers for \$7 where the incumbent can save \$3 by permitting entry. We can think of this as two services, the \$7 service and the \$3 service, both of which are required by customers.</p> <p>The example illustrates that:</p> <p>(1) The opening up of access is not likely to place any downward pressure on the provider for the \$7 service.</p> <p>(2) If the incumbent is inefficient in only saving \$3 in not supplying the final product but could efficiently have saved \$4, then the retail-minus pricing methodology could also be said to have protected the incumbent from competition in the \$3 service.</p>

4C.4	How else could the Water Industry Act facilitate third party access to the water supply and sewerage networks?	<p>A regulator could:</p> <ol style="list-style-type: none"> (1) Break total service provision into sub-services; (2) Set prices for each of these sub-services on the basis of efficient cost; (3) Allow third parties to select sub-services that it would like to purchase from the incumbent, and provide the remainder of the services themselves. <p>This would place downward pressure along the whole supply chain and result in customers enjoying lower prices.</p> <p>Third parties could even be allowed to take over the provision of sub-services (and manage the relevant assets) where they were willing to provide the sub-services at a cost lower than the incumbent.</p>
4C.5	Do you have any other comments in relation to the negotiate/arbitrate third party access regime included in the Water Industry Act?	<p>Negotiate/arbitrate arrangements in other industries (gas, electricity) are generally accompanied by benchmark pricing. For example, in the gas industry, there is a generally defined reference service such as firm forward haul, with a published benchmark price. This assists access seekers in negotiating prices and in determining whether to take matters to arbitration.</p> <p>Negotiate/arbitrate arrangements need published benchmark prices to provide some type of yardstick for third parties.</p> <p>If a regulator set prices for sub-services, these could be published as benchmark prices.</p>
4C.6	Do you have any other comments in relation to third party access?	<p>Third party access can put downward pressure on prices for the ultimate benefit of final customers. For this reason, third party access plays an important role from a customer perspective in obtaining access to efficiently priced services.</p>

DISCUSSION QUESTIONS: AVAILABILITY CHARGING

The following questions relate to section 4D of the discussion paper.

4D.1	Should water industry entities be able to charge landowners for the ability to connect to a water or sewerage supply that is available? If yes, why? If not, why not?	Click here to enter text.
4D.2	If charges are allowed, should the person paying be considered a customer under the Act and therefore have the various customer protection policies available to them?	Click here to enter text.
4D.3	Do you have any additional comments in relation to availability charging?	Click here to enter text.

DISCUSSION QUESTIONS: REQUIREMENT TO CONNECT TO INFRASTRUCTURE

The following questions relate to section 4E of the discussion paper.

4E.1	Should water industry entities be able to require adjoining land holders to connect to sewerage infrastructure? If yes, why? If not, why not?	Click here to enter text.
4E.2	Is the current mechanism (requiring the Minister to approve a scheme which allows a water industry entity to require adjacent landholders to connect to sewerage infrastructure) the best way to achieve this? If yes, why? If not, why not?	Click here to enter text.
4E.3	What factors should the Minister consider in determining whether or not to approve a scheme under section 48 of the Act?	Click here to enter text.
4E.4	Do you have any additional comments in relation to the requirement to connect to infrastructure?	Click here to enter text.

DISCUSSION QUESTIONS: TECHNICAL REGULATION AND REPORTING

The following questions relate to section 4F of the discussion paper.

4F.1	If you are a water industry entity and have been required to prepare a safety, reliability, maintenance and technical management plan; did you find the preparation of the plan useful? If yes, why? If not, why not?	Click here to enter text.
4F.2	Do you think there is an opportunity to streamline the preparation of safety, reliability, maintenance and technical management plans (SRMTMP)? If so, how?	Click here to enter text.
4F.3	Are there aspects of the requirements of an SRMTMP (as described by regulation 21) that you think should not be required? Are there additional things that you think should be included ?	Click here to enter text.
4F.4	If you are a water industry entity, do you find the reporting requirements of different regulators to be overlapping? If so, how?	Click here to enter text.
4F.5	Can you identify any opportunities for streamlining reporting requirements between all technical regulators and the essential services commission?	While we are not an entity we do believe it may be possible to streamline reporting requirements – if nothing else by bringing assessment and reporting timelines into accord and examining if there is duplication of effort in the preparation of reporting that might also be streamlined.
4F.6	Do you have any other comments in relation to technical regulation and reporting?	Click here to enter text.

DISCUSSION QUESTIONS: DEFINITION OF A RETAIL SERVICE

The following questions relate to section 4G of the discussion paper.

4G.1	Is the definition of "reticulated system" in the <i>Safe Drinking Act 2009</i> suitable for use in the <i>Water Industry Act 2012</i> ? If not what alternatives can you suggest?	The specific definition of a retail service could take a range of forms. The focus of SACOSS is on whether the definitions deliver adequate consumer protections for residential customers. From SACOSS' perspective, the important thing is that the definition of a retail service needs to ensure that it includes residential customers, such that residential customers obtain the consumer protections provided to customers of a 'retail service'.
4G.2	Can you envisage any form of water retail service that you think should be licenced under the <i>Water Industry Act 2012</i> , but would not deliver water to customers consistent with the Safe Drinking Water Act definition of a reticulated system? If so, what?	Click here to enter text.
4G.3	The current definition within the Water Industry Act allows for exclusion of services from being a retail services through this component of the definition: "service, or any service of a class, excluded from the ambit of this definition by the regulations". Do you think there are any services, or classes of services that should be excluded from the definition of a retail service by regulation? If so, what, and why?	We note that Councils have proposed to exclude community wastewater management schemes from the definition of a retail service because they are providing a community service and are regulated in a range of ways by the Local Government Act and other legislation. This raises the possibility that private providers now or in the future of such services would not be regulated, or would be regulated differently to Council providers. Neither of these outcomes is desirable. More importantly, regulation under the other forms of regulation may not be appropriate to meet the original objectives of regulation set by the Water Industry Act 2012. Removing retail regulation would only be appropriate if the other forms of regulation had the same purpose and scope as the Water Industry Act.
4G.4	Do you have any additional comments in relation to the definition of a retail service?	Click here to enter text.

DISCUSSION QUESTIONS: PUBLISHING STANDARD TERMS AND CONDITIONS

The following questions relate to section 4H of the discussion paper.

4H.1	Is it necessary to publish standard contract terms and conditions in the <i>Government Gazette</i> ? If yes, why? If not, why not?	No, subject to adequate publication in another form which it is accessible and promoted to all customers in a variety of forms and for free.
4H.2	Could appropriate customer notification be achieved through publication on a water industry entity website? If not, do you have any alternative suggestions?	It would seem reasonable to publish notifications on the water industry entity website so long as this is accompanied by other forms of notification for residential customers with limited access online. Other forms could include pamphlets provided in billing letters, and advertised offers to mail out pamphlets.
4H.3	Do you have any additional comments in relation to publishing standard terms and conditions?	Click here to enter text.

DISCUSSION QUESTIONS: POWERS AND DUTIES RELATING TO LAND AND INFRASTRUCTURE

The following questions relate to section 4I of the discussion paper.

4I.1	Should the notification requirements be the same for work on both public land and private land? If yes, why? If not, why not?	Click here to enter text.
4I.2	What do you think are appropriate notification requirements?	Click here to enter text.
4I.3	Should additional clarification be added to the requirement to "make good" damage caused by the exercise of section 45 of the Act? If so, what should be added and why?	Click here to enter text.
4I.4	Do you have any additional comments in relation to powers and duties relating to land and infrastructure?	Click here to enter text.

DISCUSSION QUESTIONS: CEASING OPERATIONS AS A WATER INDUSTRY ENTITY

The following questions relate to section 4J of the discussion paper.

4J.1	Do you have any comments relating to the ability of the Commission to take over operation of a water industry entity?	Click here to enter text.
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DISCUSSION QUESTIONS: ADMINISTRATIVE OR MINOR ISSUES

The following questions relate to section 5 of the discussion paper, which covers a range of minor issues and potential amendments.

Section 18 - licencing	
1. Is there a need for the licencing requirements to be clarified for circumstances where multiple companies are involved in delivering requirements to meet licence conditions?	Click here to enter text.
Regulation 24 – water conservation long term measures	
2. Do you think the Regulations should be amended to remove the requirement for permits to exempt water users from long term water conservation measures are still required? If yes, why? If not, why not?	Click here to enter text.
Section 98 – fire plugs	
3. Is a fire plug scheme (and this section of the Act) still needed? Please explain your answer.	Click here to enter text.
Section 15 – technical reference committee	
4. Is the technical advisory committee required? If yes, why? If not, why not?	Click here to enter text.

5. If the technical advisory committee continues, who do you think should be part of the committee?	Click here to enter text.
6. What do you think the role of the technical advisory committee should be?	Click here to enter text.
Section 37 – Customer hardship policies	
7. Should local government be able to use existing hardship provisions under the <i>Local Government Act 1999</i> , to meet the needs of customer hardship policies under the <i>Water Industry Act 2012</i> ? If yes, why? If not, why not?	<p>It would be highly unreasonable to limit hardship to the existing hardship provisions under the <i>Local Government Act 1999</i>.</p> <p>This would effectively be to determine the hardship regulations and policies that apply based on the identity of the supplier, namely a Council.</p> <p>It would seem strange to define hardship policies differently for water than other essential services such as gas or electricity simply because the service provider is typically a Council. Hardship policies typically provide for the circumstances where a service can be withdrawn. Properties without water can effectively become uninhabitable. Across utilities such as gas and electricity, hardship policies are being reworked to reflect the essential nature of the services provided, and to recognise the severe impact of withdrawing services. The policies are typically overlooked by an economic regulator such as the AER or ESCOSA.</p> <p>Rather than hardship policies for water provision being determined on the basis of the supplier (such as a Council), customer hardship policies need to be crafted based on the particular type of service provided.</p> <p>Additionally, regulating hardship on the basis of the <i>Local Government Act 1999</i> would not cover situations where services are provided by a party other than a Council. Either customers supplied by private providers would not have access to hardship provisions or such customers would be subject to different regulations and policies. This would be inappropriate and inefficient. At the same time, the private providers would not operate under the same competitively neutral conditions as Councils. While private provision of water services is currently low, this could change in the future. Greater third party access, or industry restructuring could result in greater private provision.</p> <p>At a minimum, before deciding to change the form of regulation of hardship to that provided by the <i>Local Government Act 1999</i>, an analysis should be carried out of:</p> <p>(1) How hardship policies under the <i>Local Government Act 1999</i> may differ from regulation under the <i>Water Industry Act 2012</i>;</p> <p>(2) How appropriate and effective hardship policies under the <i>Local Government Act 1999</i> are, in helping to address customers circumstances of hardship in relation to water supply;</p> <p>(3) The impact of differential regulation of private providers from Councils.</p>
Section 25(p) – scheme for payment exemptions	
8. Should certain organisation groups be exempt from part of their water payments (e.g. charities, churches or schools)?	<p>The great majority of our members are organisations who may currently benefit from certain exemptions in relation to water payments and to reverse these arrangements would come at a financial cost to each of those organisations. Meeting any new and additional payment obligations would be an impost and thus divert funding currently used to undertake charitable activities.</p> <p>We recommend maintaining these types of exemptions.</p>
Section 67	

9. Should sub metering agencies be subject to the same requirements as water industry entities?	It is unclear from the Issues Paper if the sub meter agencies are providing services to the water providers or directly to the end customers. If sub meter agencies are providing services to the water providers, and the water providers are ultimately responsible for the provision of services to customers, then it would seem reasonable to regulate the water providers. If the sub meter agencies are providing services directly to end customers, then it may be reasonable to regulate them separately. In this case, the relevant form of regulation might be general consumer protection legislation such as the Australian Consumer Law and relevant counterparts in South Australia.
10. Do you think legislation needs to be clarified for this to occur, or is this an administrative or licensing issue? Explain your answer.	Click here to enter text.
Section 99	
11. Do you object to this section being removed from the Act? Please explain your answer.	<p>Section 99 requires ESCOSA to review the costs and benefits of individual metering to all Trust homes.</p> <p>As a general rule, SACOSS considers that it is desirable to give residential customers transparency and information around the services that they are charged for. On this basis, it would seem reasonable to provide meters to residential customers in Trust Homes.</p> <p>ESCOSA reviewed the costs of retrofitting Trust Homes in 2012-13 and conducted a cost-benefit analysis on the basis of costs and benefits at that time.</p> <p>That was 6 to 7 years ago. Since then, there are likely to have been significant changes in the costs of meters, the benefits of meters, meter functionality, and in the ability to use online tools to process and use the information generated by meters. More changes in the parameters of the cost-benefit analysis are likely to occur going forwards.</p> <p>SACOSS recommends retaining the provision to support periodic revisiting of the issue. Further SACOSS also recommend ESCOSA be charged with exploring the best way it might be possible to ensure all residential customers – not just Trust tenants - might have access to individual metering arrangements. This is particularly important given the numbers of new multiple occupancy properties being constructed in both metropolitan and regional SA.</p>
Section 4 - definitions	
12. Do you agree with the suggested amendments? If yes, why? If not, why not?	Click here to enter text.
Section 9	
13. Do you agree with the proposed changes to the functions of the Technical Regulator? If yes, why? If not, why not?	Click here to enter text.
14. Do you agree with the further definition of safety and technical standards? If yes, why? If not, why not?	Click here to enter text.
15. Do you agree with the exclusion of stormwater from the regulatory role of the Office of the Technical Regulator? If yes, why? If not, why not?	Click here to enter text.
16. Do you have any further comments in relation to the functions of the Technical Regulator?	Click here to enter text.
New provision	
17. Do you have any comments about the proposed introduction of this provision?	Click here to enter text.
Regulation 39	

18. Do you have any comments about the amendment to Regulation 39?	Click here to enter text.
Regulation 34	
19. Do you have any comments about the amendment to Regulation 34?	Click here to enter text.
New Regulation	
20. Do you support the inclusion of a new regulation to address these issues? If yes, why? If not, why not?	Click here to enter text.

DISCUSSION QUESTIONS: BROADER WATER REFORMS

The following questions relate to section 6 of the discussion paper.

6.1	Do you see any opportunities to achieve broader water reforms through future amendments to the <i>Water Industry Act</i> ? Please explain your answer.	There is opportunity as part of this process to review the consumer protection framework for water services and determine if it is adequate for the future. The underlying objectives of consumer protection in water provision should be aligned with the consumer protection objectives in other utilities.
6.2	Do you see opportunities for the water industry in other areas of water reform?	The legislation could improve incentives for water recycling by requiring recycling where possible. This could be supported by sectoral analysis of water recycling opportunities and prioritising this in sectors and circumstances that use water on a large scale.
6.3	Do you have any further comments related to broader water reforms?	Click here to enter text.

ADDITIONAL FEEDBACK

Please add any other comments you have about the review of the *Water Industry Act 2012* or the regulation of the water industry.

<p>SACOSS notes that the review process has invited consultation at this point and proposes the next opportunity for consultation emerges post the tabling of the Review Report in Parliament. It may be desirable to take a draft version of the Review Report back to at least key stakeholders to ensure that issues have been taken up as recommended before then submitting the Review report to the Minister and then the Parliament.</p>
