



November 2021

SA Water – Ministerial Directions

Background

Currently, the Minister for Environment and Water can direct SA Water to undertake particular expenditures, and those costs are recovered in full from SA Water’s customers through water bills. The Treasurer’s Pricing Orders work to ensure these monies are not subject to the independent scrutiny or consumer input of other expenditure proposals in the regulatory process. The costs of complying with these Directions are simply mandatory, and have to be recovered in full from SA Water customers.

The Essential Services Commission of South Australia (the Commission) is the independent economic regulator of SA Water. The Commission’s Regulatory Determination for 2020-2024 included over \$461 million in unscrutinised SA Water expenditure directed by the Minister, which will be recovered from SA Water customers through their water bills in the next four years.¹ The expenditure includes costs the Commission may otherwise have deemed not to be prudent and/or efficient, but we don’t know, as those expenditures are not subject to the scrutiny or efficiency targets imposed on other expenditure in the Determination.

In 2018 the Marshall Liberal Government made a commitment to establish an independent inquiry into water pricing to improve the pricing of water in South Australia ‘ensuring that consumers are not ripped off by a State Government’. Whilst the goal of the inquiry was to report on cost reflective pricing, the scope of the inquiry established by the Treasurer **specifically excluded** from consideration the costs of meeting Ministerial Directions issued by the Minister for Environment and Water.²

Policy Response

The primary objective of the independent economic regulation of SA Water (as provided for under the *Essential Services Commission Act 2002* and the *Water Industry Act 2012*) is to protect the long-term interests of South Australian water consumers with respect to price, quality and reliability of water and sewerage retail services. The operation of the Treasurer’s

¹ Direction to SA Water pursuant to section 6 of the *Public Corporations Act 1993*, 28 May 2020. The Directions issued to SA Water by the Minister for Environment and Water on 28 May 2020 amount to \$173,097,000 in operating expenditure and \$287,992,000 in capital expenditure for the regulatory period 2020-2024. See link: <https://www.escosa.sa.gov.au/ArticleDocuments/21489/20200611-Water-DirectionsUnderSection6PublicCorporationsAct1993-GazetteNotice.pdf.aspx?Embed=Y>

² Owens, Lewis, *Inquiry into Water Pricing in SA - A Cautious Conclusion*, December 2018, p.3 https://www.treasury.sa.gov.au/data/assets/pdf_file/0010/93646/2018-12-A-Cautious-Conclusion-report.pdf

Pricing Orders was initially intended to be a transitional measure during the move to a new regulatory regime in 2013,³ but together with the Ministerial Directions, has become a tool for government to increase SA Water's revenue outside of the independent regulatory process.

Funding the costs of Ministerial Directions through Regulatory Determinations is not in the long-term interests of consumers - it results in costs that are not publicly scrutinised, hidden in customers' bills and sends distorted price signals to water users. The Commission has cautioned against this practice, previously stating 'the costs of meeting any Ministerial Directions should be transparently determined, and funded by direct, transparent community service obligation payments, and not by water consumers'.⁴

The timing of the most recent Ministerial Directions and Pricing Order (two weeks before the final Determination) undermined the extensive consumer engagement and input which took place during the 18 months before the Commission's Final Determination, leading to uncertainty and distrust of the regulatory process. Also, this practice does not comply with the *National Water Initiative (NWI) Pricing Principles* agreed to by COAG in 1994.⁵ Under the NWI Pricing Principles, Governments agreed that 'if a decision was made not to apply these principles in a particular case, the reasons for this would be tabled in parliament'. To our knowledge the various programs and projects which make up the \$461m in expenditure have not been tested for cost-effectiveness, and the reasons for this have not been tabled in parliament.

Best practice regulation depends on certainty, transparency and community benefit. Consumers should pay no more for water than is allowed by the Commission exercising its independent, statutory decision-making powers.

SACOSS Proposal

1. That the government legislate for, or commit to, all Ministerial Directions for SA Water expenditure to be either funded directly from Treasury, or at least included in the regulatory review of SA Water expenditure by the Essential Services Commission of South Australia.

³ Essential Services Commission of South Australia, *SA Water's Water And Sewerage Revenues 2013/14 -2015/16 Final Determination*, Statement of Reasons, May 2013, p.1
https://www.escosa.sa.gov.au/ArticleDocuments/488/130527-SAWater_Water_SewerageRevenu.pdf.aspx?Embed=Y

⁴ Essential Services Commission of South Australia, *SA Water's Water And Sewerage Revenues 2013/14 -2015/16 Final Determination*, Statement of Reasons, May 2013, p.127-128
https://www.escosa.sa.gov.au/ArticleDocuments/488/130527-SAWater_Water_SewerageRevenu.pdf.aspx?Embed=Y

⁵ National Water Initiative Pricing Principles, p.3
<https://www.agriculture.gov.au/sites/default/files/sitecollectiondocuments/water/national-water-initiative-pricing-principles.pdf>