



**Consumer Engagement and Regulatory Determinations:  
Report on a 2018 United Kingdom Study Tour**

**October 2018**

*Consumer Engagement and Regulatory Determinations:*  
Report on a United Kingdom Study Tour  
October 2018

First published in October 2018 by the  
South Australian Council of Social Service

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## **Acknowledgements**

This report has been prepared by SACOSS. SACOSS wishes to acknowledge the assistance of Heather Smith, Conservation Council of South Australia and Mark Gishen, South Australian Wine Industry Association, who participated in the study tour and contributed to the meeting summaries. However, SACOSS notes that the commentary and conclusions here are essentially those suggested by SACOSS.

The study tour which culminated in this report was initiated by SACOSS, and undertaken with support from the Essential Services Commission of South Australia (ESCOSA) and SA Water. This assistance was sincerely appreciated.

## About SACOSS

The South Australian Council of Social Service is the peak representative body for the non-government health and community services sector in South Australia, and has a vision of Justice, Opportunity and Shared Wealth for all South Australians.

SACOSS does not accept poverty, inequity or injustice. Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, business, and communities for actions that disadvantage vulnerable South Australians.

SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low income consumers in South Australia.

SACOSS has a long-standing interest in the delivery of essential services. Our research shows that the cost of basic necessities like electricity impacts greatly and disproportionately on vulnerable and disadvantaged people.

SACOSS has a strong membership base of around 300 people and organisations from a broad cross-section of the social services arena. Members of our organisation span both small and large agencies, peak bodies, service providers, individuals, and some government departments. SACOSS is part of a national network, consisting of ACOSS and other State and Territory Councils of Social Service.

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## Introduction

Consumer engagement in regulatory determinations has been a growing priority amongst regulators and other stakeholders over recent years. This Report summarises findings from a study tour held between 21 and 24 August, 2018. The primary purpose of the study tour was to seek to better understand the United Kingdom (UK) frameworks for stakeholder engagement in regulatory determinations and to catalogue any lessons learnt for application in the South Australian context. This was particularly relevant given ESCOSA's decision to implement a new process for SA Water's upcoming revenue determination which is designed to generate higher levels of engagement with consumers.

At the conclusion of the study tour, study tour participants considered key themes for further exploration. These themes are the focus of this report. Study tour details are provided in the Appendices, including a detailed summary of each meeting in Appendix C.

Given that the stakeholder engagement process to be applied to SA Water in its forthcoming revenue determination has already commenced implementation, it was agreed that the report from the study tour would be released within a few weeks of the actual tour. This time constraint determined the structure for the report and placed some limitations around the comprehensiveness of the reporting. As far as possible, existing material has been referenced in this report to enable further exploration of some more detailed matters.

## Study Tour Background

The Essential Services Commission of South Australia (ESCOSA) has designed a stakeholder engagement framework for the SA Water Revenue Determination 2020 – 2024 (SAW RD20) that aims to involve stakeholders in the review process much earlier than in the SA Water Regulatory Determination 2016 - 2020. The ESCOSA process provides more opportunities to engage with SA Water as it develops its plans, including introducing direct customer challenge and negotiation into the preparation of SA Water's business plan.

While the ESCOSA framework has been designed uniquely for the South Australian context, it draws on work in other jurisdictions and in particular work in Scotland led by the Water Industry Commission of Scotland (WICS). The Scottish model utilises a Customer Forum to both represent customer priorities to WICS and the water business (Scottish Water) and attempt to agree a business plan with Scottish Water.

Consumer engagement in regulatory determinations has been a growing priority amongst stakeholders over the last few years, as noted by Havyatt<sup>1</sup>. The presentation by Stephen Littlechild at the 2015 SACOSS Consumer Engagement Conference has been noted by some stakeholders as having been of particular significance. Utilities businesses have ranged in their attitudes towards enhanced consumer engagement, and SA Water has been noted as an early adopter of the goal of enhanced engagement.

ESCOSA commenced formal discussions with stakeholders about its proposed SAW RD20 stakeholder engagement process in late May 2018, noting that the Commission released its Draft Framework and Approach in November 2017 and there sought the views of stakeholders on the role of customers in the determination process.

In early June 2018, SACOSS wrote to ESCOSA and SA Water seeking support for SACOSS to convene a small group of consumers involved in water advocacy to undertake a modest overseas study tour, in advance of the continued work involved in responding to SA Water's upcoming regulatory business plan. ESCOSA and SA Water responded by each agreeing to part fund the study tour, along with a SACOSS contribution. It was agreed that SA Water would also send a representative from SA Water to join the study tour group.

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<sup>1</sup> Havyatt, David (2016) *Negotiated Settlement and Consumer Engagement: UK Experience and Lessons for Australia*, Energy Consumers Australia

See for example:

Biggar, Darryl (2011) *Customer engagement: A new regulatory approach? Presentation to Joint IPART/ACCC Workshop* 24 October 2011

ENA (2014) *Evolving a Future Ready Regulatory Framework*, Energy Networks Association November 2014 at [http://www.ena.asn.au/sites/default/files/evolving\\_a\\_future\\_ready\\_regulatory\\_framework\\_november\\_2014.pdf](http://www.ena.asn.au/sites/default/files/evolving_a_future_ready_regulatory_framework_november_2014.pdf)

Henley, Mark (2015) *Changing the DNA of network tariff setting in Australia*, Uniting Care Australia

Mountain, Bruce (2013) *A summary of evidence and thinking on negotiated settlements in the regulation of energy network service providers*

SACOSS (2015) *2015 SACOSS Consumer Engagement Conference*, Presentations from a Conference held on 18 August 2015 in Adelaide



In late August, SACOSS led the study tour through Edinburgh, Birmingham and London. Participants met with senior stakeholders involved in the water industry, along with representatives from academia. The study tour participants and the meeting schedule are provided in Appendix A and B.

Aside from the SA Water nominee, the participants were drawn from the broader consumer groups already engaged in the arena of water advocacy. Participants agreed to share their learnings with other interested parties on return and there was an expectation that their expertise would be available to help the broader consumer sector consider SA Water's proposed business plan.

The meeting schedule was developed by SACOSS in consultation with ESCOSA and SA Water. An initial list of key contacts provided by Stephen Littlechild was used as the basis for selecting individuals and organisations to meet with.

Prior to the August 2018 tour, a number of Australian stakeholders had already had extensive contact with stakeholder groups in the UK and almost all reported genuine benefit from this engagement. A significant proportion of these people were drawn from either inside SA Water or through their involvement with ESCOSA as regulator. At least one consumer advocate from South Australia has also had an opportunity to explore these regulatory issues in the UK.<sup>2</sup> As far as practical, SACOSS sought to consider the advice of people who had previous contact in developing the August 2018 study tour.

The August 2018 study tour meetings were primarily focussed on learning about the relevant stakeholder engagement frameworks being used by WICS and Ofwat as well as discussing the proposed ESCOSA stakeholder engagement framework. The purpose of these meetings was to seek to better understand the jurisdictional framework and to catalogue any lessons learnt for application in the South Australian context. Given that the Australian Energy Regulator (AER) had also embarked on development of a stakeholder engagement framework to be applied to energy network regulatory determinations, there was also some consideration given to how the UK experience could inform the AER processes.

The next three sections of the report outline the frameworks in play in South Australia and the UK. Key themes are then considered, followed by a summary and recommendations.

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<sup>2</sup> Mark Henley, Uniting Communities

## ESCOSA Stakeholder Engagement Framework for Water

ESCOSA introduced a new approach to consumer engagement for its SA Water Regulatory Determination 2020<sup>3</sup>. The new approach will provide consumers with earlier and more structured opportunities to engage on regulatory issues than in previous determinations. ESCOSA believes that the new approach will better challenge SA Water to deliver the lowest sustainable prices and best service levels to customers.

The Commission has stated that it is responding to the challenge raised by stakeholders to enhance its engagement process. Submissions from SACOSS, Business SA and Uniting Communities called for greater transparency and for greater involvement of consumers and their representatives in the regulatory process. The Commission has said that its approach seeks to deliver that improvement.

The key mechanisms of the new ESCOSA approach include:

- A set of guidance papers prepared by ESCOSA,
- Guidance from ESCOSA to inform the process of negotiation between SA Water and the Customer Negotiation Committee,
- Structured input from consumer representatives,
- A direct negotiation process between SA Water and the Customer Negotiation Committee during the development of SA Water's business plan, and
- A governance structure that ensures the integrity of the process.

### Guidance Papers

ESCOSA will publish a series of Guidance Papers setting out background information, principles and its preliminary positions for the SA Water determination process. Unlike previous determination processes, this guidance will be published prior to SA Water's submission of its draft business plan, and as such will inform and assist the negotiation process between SA Water and the Customer Negotiation Committee.

### Consumer Experts Panel

ESCOSA will invite members of its existing Consumer Advisory Committee and SA Water's Customer Advisory Group to join the Consumer Experts Panel. The Panel's membership will cover a diverse group of consumers who represent customers with an interest in SA Water's service provision. Members will be expected to work directly with their constituencies to gather evidence on issues that impact them, and provide research and evidence to inform and challenge SA Water's business plan. The Panel will also be able to request that ESCOSA undertakes specific research on issues that may be contended or assist in determining how stakeholders should view a particular issue. The Panel's output will include the preparation of a Priorities Report, which will be a critical input into the Negotiation Forum (outlined below).

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<sup>3</sup> ESCOSA (2018) *SA Water Regulatory Determination 2020 Framework and Approach*

## **The Negotiation Forum**

SA Water will be required to establish and facilitate a negotiation process with a Customer Negotiation Committee to test and challenge the development of its business plan, in a constructive and non-adversarial manner.

The Negotiation Forum will comprise:

- A three-member Customer Negotiation Committee, led by an Independent Customer Chair (appointed by, but not subject to, the Commission), along with a customer representative each from SA Water's Customer Working Group and the Consumer Experts Panel (outlined above)
- A three-member SA Water Negotiation Committee sourced and supported by the highest levels of SA Water's management.

To assist it in its role, the Customer Negotiation Committee will be provided with ESCOSA's Guidance Papers and the Consumer Experts Panel's report, as well as the opportunity to seek further guidance from the ESCOSA or independent expert advice, if required.

Following the completion of the negotiation process, the Independent Customer Chair will prepare a public report that summarises the views of the Customer Negotiation Committee on SA Water's business plan, and any areas where it believes further analysis is required by ESCOSA in order to make its regulatory determination. ESCOSA will give significant weight to the Forum's outcomes where issues are successfully negotiated between the parties and are consistent with its guidance. However, it is important to note that the negotiation process is non-binding, and ESCOSA will exercise its own judgement and remain responsible for making a regulatory determination that best serves consumers' long-term interests.

## **Independent Probity Advisor**

ESCOSA will appoint an Independent Probity Advisor to provide oversight of the Negotiation Forum. The Advisor will be responsible for monitoring any probity issues that may arise during the negotiation process between SA Water and the Customer Negotiation Committee. Following the Negotiation Forum, the Advisor will prepare a public report on any issues that arise and the overall integrity of the process.

## **Regulators Working Group**

ESCOSA will facilitate greater coordination between the regulators who impact on SA Water (technical, safety, environmental and public health). The Regulators Working Group will be chaired by ESCOSA with the aim of enabling greater coordination of the expectations and obligations placed on SA Water through joint planning.

## Key Engagement Milestones

End-Oct 2018	Release of Guidance Papers
End-Oct 2018	Consumer Experts Panel produces Priorities Report
Feb-Jun 2019	Negotiation Forum
Oct 2019	SA Water submits proposed business plan for 2020-2024
Oct 2019	Independent Chair of the Customer Negotiation Committee submits report on negotiation process and outcomes
Oct 2019	Independent Probity Advisor submits report on integrity of negotiation process
Oct – Dec 2019	Consultation on SA Water’s proposed business plan and reports of the Independent Chair and Independent Probity Advisor
Feb 2020	Commission issues draft regulatory determination
Feb – Mar 2020	Consultation on draft regulatory determination
May 2020	Commission issues final regulatory determination

## Scottish Stakeholder Engagement Framework for Water

The Water Industry Commission for Scotland (WICS) introduced a new process of stakeholder engagement for the Scottish Water Strategic Review of Charges 2015-21. The aim of this new approach was to place customer representation at the heart of the process to define Scottish Water's regulatory contract, rather than adding "consumer perspective as an 'afterthought' once all major decisions are made"<sup>4</sup>.

The key elements of the process<sup>5</sup> were:

- A series of guidance notes published by WICS setting out its view on regulatory inputs including on the levels of cash expenditure, expectations for future efficiency savings, expectations for levels of service, and the financial tramlines (see below).
- The establishment of an independent Customer Forum following a cooperation agreement between WICS, Consumer Focus Scotland<sup>6</sup> (CFS) and Scottish Water.
- Quantitative and qualitative research on customer service priorities, affordability and customer expectations for the future conducted by Scottish Water and the Customer Forum<sup>7</sup>.
- A formal consultation and negotiation process between Scottish Water and the Customer Forum to agree Scottish Water's business plan consistent with the Ministerial Objectives and guidance notes issues by WICS.<sup>8</sup> This Business Plan then formed the basis of the regulatory determination by WICS<sup>9</sup>.

## Customer Forum

The role of the Customer Forum was to identify customer priorities and to secure the best outcome for customers within the ranges for the key inputs determined by WICS<sup>10</sup>. The Customer Forum consisted of nine members, including its Chair, Peter Peacock. Two members represented retailers, the remainder were chosen for their specific expertise, including a market researcher, a consumer law specialist, an environmental lawyer, a former senior bureaucrat who had become a CFS volunteer and a former water industry executive. The Chair was a highly respected former Minister with extensive experience across different levels of government, as well as the volunteer and business sectors. The Customer Forum was funded by WICS and the CFS provided administrative support<sup>11</sup>.

The Customer Forum engaged with Scottish Water over a 14 month period, followed by a formal negotiation period to agree the business plan. Following agreement on the business plan, the

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<sup>4</sup> The Customer Forum for Water in Scotland (2015) *Legacy report: Lessons learned from customer involvement in the 2015-2021 Strategic Review of Charges*, February 2015, p 7

<sup>5</sup> WICS (2014) *The Strategic Review of Charges 2015-21 Draft Determination*

<sup>6</sup> Consumer Futures (formerly Consumer Focus Scotland) was the advocacy organisation for water consumers in Scotland.

It has been replaced by Citizens Advice Scotland.

<sup>8</sup> The Customer Forum for Water in Scotland (2015)

<sup>9</sup> Havyatt, David (2016)

<sup>10</sup> Water Industry Commission for Scotland (2014)

<sup>11</sup> Havyatt, David (2016)

Customer Forum continued to provide insights to Scottish Water regarding several outstanding work streams<sup>12</sup>.

The Legacy Report prepared by the Customer Forum states that whilst the Customer Forum was initially expected to focus on discretionary investments, it pushed for discussions which ‘addressed the Business Plan in its entirety and not by discrete components, as having a global view was a *sine qua non* of understanding what trade-offs could be made and how the overall balance could be improved’.<sup>13</sup> The Report states that ‘instead of having future standards set *a priori* and then charges fixed at the minimum level required to deliver them, there was a ‘customer-informed’ debate over what level of charges was acceptable, along with what service performances were desirable. Both components of the equation were considered simultaneously to achieve a satisfactory balance’.<sup>14</sup>

## Stakeholder Meetings

Whilst not formally documented by either the WICS or Customer Forum, a number of stakeholders contacted in Scotland as part of the study tour mentioned that Joint Stakeholder Meetings were an important feature of the 2015-21 Review of Charges process (see for example, report of Meeting 1, Appendix C of this report).

Three Joint Stakeholder Meetings between different regulators of Scottish Water (water quality, EPA), Citizens Advice Scotland, the Customer Forum, and Scottish Government were regular brainstorming sessions which featured completely open discussions of problems and challenges. They were held every 4-6 weeks. Stakeholders reported that these meetings changed the nature of the dialogue around the development of Scottish Water’s business plan.

The Consumer Forum has also discussed the role of informal meetings with key stakeholders to the process:

“Although developing a productive relationship with Scottish Water was essential for the Forum to assume its role, there was also a clear recognition that there was more to the new SRC process than a two-player action. Key stakeholders to the process, whether directly involved like WICS or indirectly like the Scottish Government, needed to fully comprehend the progress of the engagement and be confident that the process was on the right track. A deliberate effort was thus made to ‘keep them in the loop’ through regular, although mostly informal, updates by the Chairman of the Forum...”<sup>15</sup>

## WICS Decisions

WICS issued a series of decisions throughout the price review process, setting out the ranges for key inputs such as operating expenditure, capital expenditure, efficiency and inflation. WICS set out its first view on these ranges prior to the release of Scottish Water’s Strategic Projections. WICS was then informed by the Customer Forum and the Strategic Projections and the release of Scottish Water’s draft business plan.

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<sup>12</sup> The Customer Forum for Water in Scotland (2015)

<sup>13</sup> Ibid, p.8

<sup>14</sup> Ibid, p.8

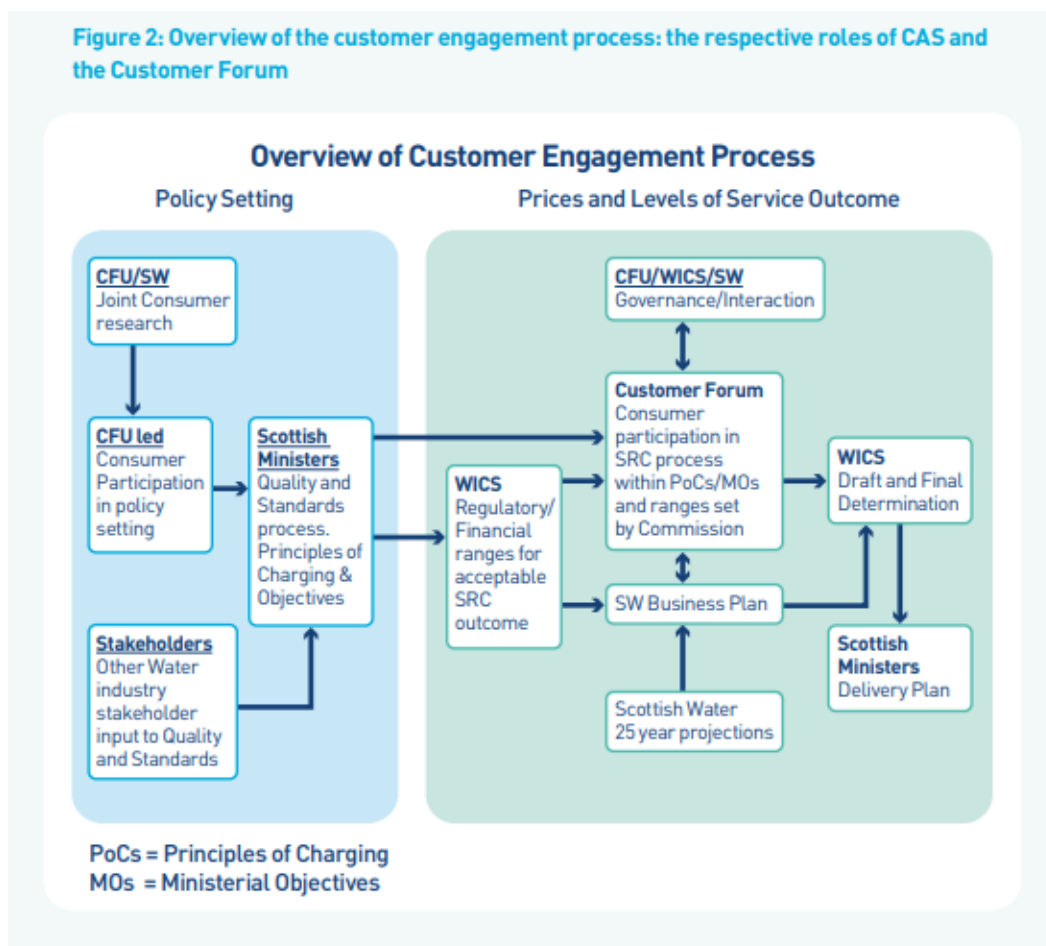
<sup>15</sup> The Customer Forum for Water in Scotland (2015) p.15

The “financial tramlines” were a new feature of the regulatory approach introduced by WICS. These are a set of financial parameters used to monitor Scottish Water’s financial strength, derived from cash-based financial ratios. Under this framework:

“financial performance is measured against an acceptable range for key measures of financial strength...Scottish Water will have flexibility to perform between the upper and lower limits of these financial tramlines. Once current and forecast performance exceeds a particular level within the acceptable range, Scottish Water will be expected to start sharing the benefits of its outperformance with customers. Similarly, below a particular level, management will set out in its Delivery Plan how and when performance will improve; this may involve an ‘interim determination of charges’, if appropriate...They will be set at a level which will ensure that Scottish Water remains financially sustainable in the long term – irrespective of its precise position within the acceptable range”<sup>16</sup>

## Policy Versus Prices and Levels of Service Outcome

Termed the “two silos” of the Scottish model, policy setting is treated distinctly from prices and levels of service outcome. This distinctive treatment is pictured below.



**Figure 1: Policy Setting, Prices and Service Outcomes in Scotland**

Source: WICS (2017) p.41

<sup>16</sup> WICS (2012) Note 7 for the Customer Forum: Financial tramlines

The Scottish Government provides the overall governance framework of the water industry in Scotland. Its policy role includes decisions on required outcomes such as water quality and compliance with European Union Directives, regional policy, fairness and investment in encouraging and facilitating economic growth. The Scottish Ministers also set out a Principles of Charging, including whether or not cross-subsidies should exist and if so, at what level.<sup>17</sup>

The two silos approach clearly defines the scope of the Customer Forum and specifically designates that policy questions are out of scope.

## Evaluation of 2015-21 Approach

The new approach was widely considered a success, including by the Customer Forum:

“The process amounted to a constructive challenge, whereby all energies were focused on finding acceptable compromises rather than debunking the other party’s positions. This created the right conditions for Scottish Water to willingly stretch itself and make the best possible offer of prices and services. In addition, this new process appears to have been less resource-intensive (and thus less costly) and more rewarding for all those involved, in comparison to previous Strategic Review of Charges”<sup>18</sup>

WICS has reported that key to the success was the clear signal from the Commission that it would be minded to accept as its draft determination an agreement between the Customer Forum and Scottish Water that was within the ranges determined by WICS.<sup>19</sup>

The 2015-21 Customer Forum has been the subject of a number of significant reviews.<sup>20</sup> WICS has subsequently identified that there is scope to improve on the following:

- Timing and profile of the WICS decisions
- The interaction between the Customer Forum and both WICS and other stakeholders
- The Customer Forum outreach
- Greater accountability by Scottish Water for its performance
- Ensuring the Customer Forum is adequately resourced<sup>21</sup>

A Co-operation Agreement between Scottish Water, WICS and Citizens Advice Scotland was signed in 2017 and established a Customer Forum with Peter Peacock as Chair. Members are not engaged to represent any interest group or organisation and are expected to work collaboratively in the customer interest.

WICS has commenced the process of determining what success will look like in 2021-2027. This includes that the primary focus of Scottish Water should be on its customers, there is better co-ordination of research activity, including the use of behavioural insights and there is significantly increased focus on the views of customers and communities. Householder customers and licensed

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<sup>17</sup> WICS (2017) *Methodology for the Strategic Review of Charges 2021-2027* at [https://www.watercommission.co.uk/UserFiles/Documents/SRC21\\_Innovation%20and%20Collaboration\\_Met\\_hodology\\_WICS\\_amended.pdf](https://www.watercommission.co.uk/UserFiles/Documents/SRC21_Innovation%20and%20Collaboration_Met_hodology_WICS_amended.pdf)

<sup>18</sup> The Customer Forum for Water in Scotland (2015) p.7

<sup>19</sup> WICS (2017)

<sup>20</sup> Including by members of the Customer Forum, Stephen Littlechild and Martin Lodge.

<sup>21</sup> WICS (2017)



providers being able to seek nomination to the Customer Forum is expected to improve its legitimacy and effectiveness.<sup>22</sup>

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<sup>22</sup> WICS (2017)

## Ofwat Customer Engagement Framework

The Water Services Regulation Authority, or Ofwat, is the body responsible for economic regulation of the privatised water and sewerage industry in England and Wales. Through the 2015-2020 price review (PR14), Ofwat used a three tiered approach for customer engagement:

- Direct engagement with their water company on issues including local services and tariffs;
- Challenging the shape of their company's overall business plan through customer challenge groups (CCGs).
- Influencing and informing Ofwat's decisions through a sector wide customer advisory panel.<sup>23</sup>

The CCG's were deliberately created to have diverse membership, including

- Consumer representatives, such as the Consumer Council for Water (CCWater);
- Customer and community stakeholders (including local authorities and businesses); and
- Those that represent particular segments of customers, such as Age UK.

While the companies were responsible for setting up and running the challenge group, they were to have an independent chair.

The role of the CCG's in PR14 was to:

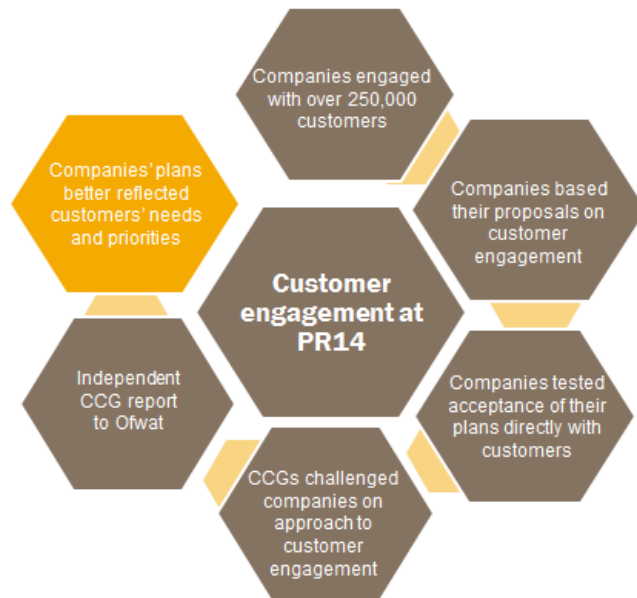
- "Review the company's engagement process and the evidence emerging from it;
- Challenge the phasing, scope and scale of work required to deliver outcomes, including legally prescribed standards and the requirements of other regulators; and
- Advise us on the effectiveness of the company's engagement, and on the acceptability to customers or otherwise of its overall business plan and bill impacts."<sup>24</sup>

According to Ofwat, the approach used in PR14 resulted in a number of benefits including increased engagement by businesses with their customers and better reflection of customer needs in business plans, as illustrated below:

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<sup>23</sup> Ofwat (nd) *Involving customers in price setting – Ofwat's customer engagement policy statement* at [https://www.ofwat.gov.uk/wp-content/uploads/2015/11/pap\\_pos20110811custengage.pdf](https://www.ofwat.gov.uk/wp-content/uploads/2015/11/pap_pos20110811custengage.pdf)

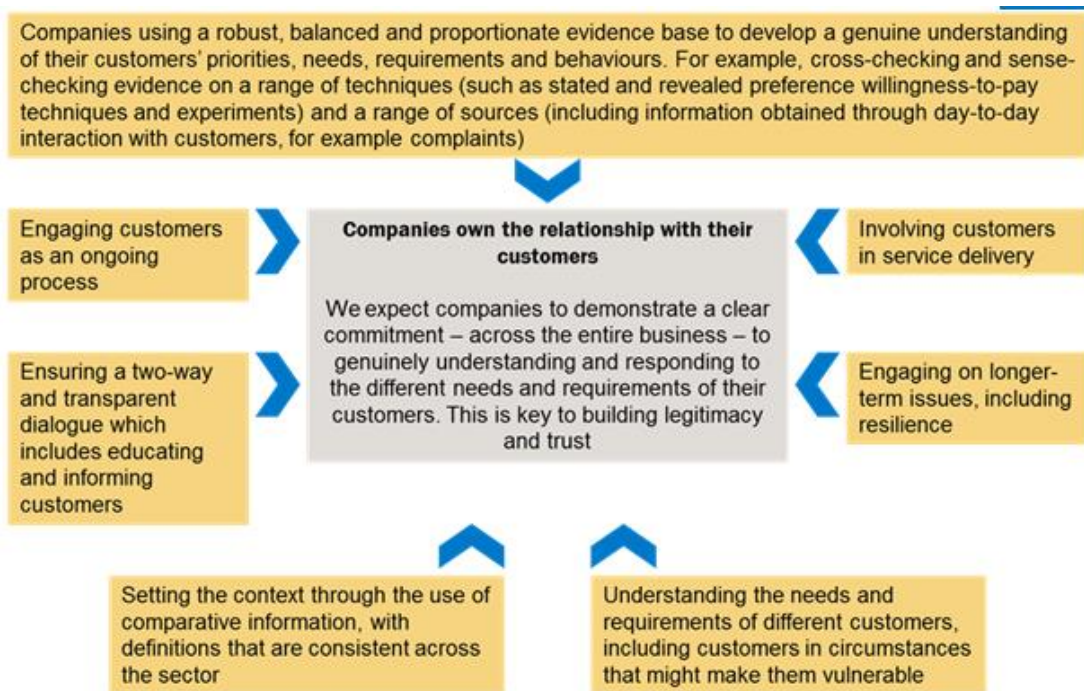
<sup>24</sup> Ofwat (nd) p.15



**Figure 2: Ofwat’s Approach to Customer Engagement at PR14**

*Source: Ofwat slide pack, presented to study tour group on 23 August 2018*

Ofwat is expecting a step change in customer engagement at the price review 2020-2025 (PR19). The Ofwat Principles of Good Customer Engagement include an expectation that companies demonstrate their commitment to customers, as illustrated below:



**Figure 3: Ofwat Principles for Good Customer Engagement at PR19**

*Source: Ofwat slide pack, presented to study tour group on 23 August 2018*

The role of the CCG’s in PR19, which has been further refined from PR14, is to provide independent challenge to companies and independent assurance to Ofwat on:

- “The quality of a company’s customer engagement; and
- The extent to which the results of this engagement are driving the company’s decision making and being reflected in the company’s business plan.”<sup>25</sup>

The Ofwat approach for PR19 includes sets out their final methodology for confidence and assurance. This includes expectations for company business plans and narratives, assurance and governance arrangements and initial assessment of business plans. Ofwat expects each company’s business plan to be accompanied by an independent CCG report to Ofwat. Ofwat have set out the questions they want the CCG reports to answer.<sup>26</sup>

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<sup>25</sup> Ofwat (2017) *Delivering Water 2020: Our final methodology for the 2019 price review* at <https://www.ofwat.gov.uk/wp-content/uploads/2017/12/Final-methodology-1.pdf> p.25

<sup>26</sup> Ofwat (2017)

## Key Themes from UK Study Tour

The UK study tour provided participants with a deeper perspective on water regulatory systems and the role of consumer stakeholders in these. Participants developed more nuanced perspectives of the role of the regulator in monopoly regulation and in particular, what is possible in frameworks for how the regulated entity interacts with consumer stakeholders. The strategic direction of the regulated entity and the criticality of its relationship with its customers have been underscored.

In considering the development of the water regulatory system in South Australia, key meta themes to emerge from the study tour are:

- Consumer Confidence – The need to monitor and continue to ensure consumer confidence in the regulatory system
- Ethical Business Regulation – There needs to be a tripartite trust relationship, between the regulator, the business and its consumers
- Success – Helping to shape the strategic direction for the business in terms of its relationship with its stakeholders
- Policy Settings – Clarifying the role of government and Parliament in determining key settings for the business
- Evaluation - The need for evaluative activity and the subsequent importance of development of purpose statements and metrics
- Long Term Sustainability – All parties need to be focussed on sustainable outcomes

Each of these themes is discussed below.

## Meta Themes

### Consumer Confidence

A strong theme from the study tour is the critical role of the consumer voice. Scottish Water talked about placing customers at the heart of the business. Ofwat talked about the golden thread from customer engagement outcomes to reflection throughout the business plan. Peter Peacock summarised that the only legitimacy the Customer Forum has is its tie back to what consumers think.

SACOSS submits that any regulatory determination process must elevate the views of consumer participants in the process. Evaluation should seek to understand consumer experiences and feelings about the process, whether the process was valuable to them and what they saw as the challenges. SACOSS believes that the confidence of the consumers whose views were sought, and their ongoing support, is critical to the long term viability of the regulatory framework.

The role of consumer representative bodies is also vital. Unlike other stakeholders, consumer representatives from these types of bodies have a direct connection back to consumers typically via a membership structure. This provides consumer representatives with a unique position, a position which is distinct from that of a consumer expert. The distinct position of a consumer representative includes:

- They interact directly with consumers, engaging in conversations and developing perspectives on systemic consumer issues based on this engagement;
- Because of their direct connection, they provide perspectives on issues which filter consumer perspectives through every issue;
- They are generally tied back to organisational missions and visions, so that their underlying ideologies are transparent and mediated through consumers;
- They are not representing the perspective of an individual, as their connections back to their organisations and directly with consumers mean they speak from a broader mandate, and;
- They are accountable back to a cohort/s of consumers, which both gives them legitimacy and keeps them answerable for their positions.

Each of the above parameters makes a consumer representative distinct from a consumer expert, who is generally an individual with no direct tie back to organisations and community.

Important questions for evaluation of consumer representative experiences include:

- Did these representatives understand their roles and responsibilities?
- What did these representatives think of the process and content outcome?
- Did these representatives have adequate funding to participate as they wanted to?

### **Ethical Business Regulation**

Participants on the study tour heard from stakeholders about the application of ethical business regulation and in particular the work of Christopher Hodges. Hodges discusses the process of reaching a decision through open, fair and informed engagement in discussion. Central to this process is trust:

“Organisations that demonstrate that they can be trusted on a consistent basis deserve the increased trust that their behaviour generates...If trust is to be maximised, social accountability is the critical mechanism. Strong social accountability can replace traditional mechanisms of legal responsibility and punishment...People should be encouraged to share information on how to improve business behaviour. This may lead to better ways of doing things...or learning from mistakes or adverse events.”<sup>27</sup>

Hodges states that a central component of ethical business regulation is the relationship of trust between the regulator and the business. SACOSS agrees this is a central consideration, along with a third element which is trust involving the consumer. The process of a regulatory determination would ideally enhance a sense of trust for the consumer – hence consideration needs to be given to how the process will maintain and develop that trust.<sup>28</sup>

### **What Will Success Look Like?**

The Scottish regulatory system is now focussed on shaping the strategic direction for the business in terms of its relationship with its stakeholders. WICS has developed some guidelines for what success

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<sup>27</sup> Hodges, Christopher (nd) *Ethical Business Regulation* at

<http://www.fljs.org/sites/www.fljs.org/files/publications/Ethical%20Business%20Regulation.pdf> pp.2-3

<sup>28</sup> SACOSS notes there is a fourth element which is government who also need to balance a relationship with the business and the electorate. SACOSS considers this element in the section relating to policy settings.

will look like, and these are focussed on increasing trust and collaboration among all stakeholders, as illustrated below:

**What will success look like?**

The successful implementation of EBR will increase collaboration and trust among all stakeholders. The result should be:

- **Empowerment:** Scottish Water will own its decisions;
- **Accountability:** Scottish Water will evidence why its performance is good. It will openly admit where it may fall short;
- **Collaboration:** Scottish Water and its regulators will work collaboratively and constructively to identify and implement lowest whole-life cost solutions;
- **Transparency:** There will be a greater understanding of what has been achieved and what still needs to be done. All stakeholders should, if they so choose, be able to understand why decisions were taken; and
- **Demonstrating progress:** Scottish Water should be able, for example, to evidence its contribution to reducing carbon, a circular economy and the Scottish Government's ambition to be a Hydro-Nation.

In short, there will have been further progress in changing the culture of the water industry in Scotland. This is an ambitious agenda. It will take time to be fully effective. However, an approach of "Seek Trust but Expect Verification" should ensure that potential benefits for customers are realised, even in the next regulatory control period.

**Figure 4: WICS Statement of Success**  
*Source: WICS (2017) p.36*

SACOSS considers the above statement of success to be a helpful tool, and that the proposed measures of success align with the general direction of ESCOSA in the case of SA Water.

### **Policy Settings**

According to stakeholders, the separation of the “two silos” of policy versus prices and levels of service outcomes in the Scottish case ensured that “the specific objective of reaching an agreement on the regulatory contract would not be clouded by challenges to this framework and attempts at making it evolve”.<sup>29</sup> The Scottish Government Principles of Charging for Water Services 2015-21 outlined a range of directives within which the price determination would proceed. This included principles around stable charges, specification of the level of charges and specifications around cross subsidies.<sup>30</sup>

SACOSS considers that this distinction between the two silos is particularly helpful and posits that there is further work to do on clarifying this distinction in a South Australian context. SACOSS recommends that ESCOSA outline the legislative and government demanded policy suite that currently applies to SA Water, in the interest of providing clarity of purpose to the Negotiation Forum and consumer advocates. SACOSS believes this will clarify the role that government and

<sup>29</sup> Customer Forum (2015) p.11

<sup>30</sup> Scottish Government (2014) *Principles of Charging for Water Services 2015-21* at <https://www.watercommission.co.uk/UserFiles/Documents/2015-21%20PoC%20Statement.pdf>

Parliament has in outlining key policy settings that are to be imposed on the business's operating parameters.<sup>31</sup>

### **Evaluation – Purpose and Metrics**

The ESCOSA stakeholder engagement framework for water is a new initiative which outlines different roles and responsibilities of the bodies involved in the process. The framework presents both opportunities and challenges for consumer stakeholders. As outlined by ESCOSA, it offers the opportunity to challenge SA Water to provide its services at the lowest sustainable price for customers of today and tomorrow. This is an important opportunity. At the same time, early engagement requires more resource commitment from all stakeholders. SACOSS submits that it is important for resources to be available to enable stakeholder participation and those stakeholders should also be able to measure and test the tangible outcomes of this resource investment.

The positing of some form of evaluation raises some significant questions. The first challenge is to identify what is being evaluated: is it the outcomes in the water business or is it also the stakeholder engagement framework and the processes it involved? SACOSS submits that it is essential to evaluate both of these, in line with thinking in the stakeholder engagement sector.<sup>32</sup>

The second challenge is to consider which body/ies would be doing the evaluation? SACOSS believes that there are good reasons for both the regulator and the business to be engaged in evaluative activity, and also that there are sound reasons for consumer stakeholders to be considering evaluation from their perspective as well.

Key to any evaluation and stakeholder engagement process more broadly, is a clear articulation of purpose:

“...clearly defined purpose statements assist with definition of task, transparency and accountability. Definitions of purpose are essential for any evaluative activity, which intends to measure the success or otherwise of the engagement. Effective engagement should be considered from both the organisational perspective and the consumer perspective – evaluations need to consider both whether consumers feel that their contribution was effective and whether the process was successful for the organisation's purposes.”<sup>33</sup>

SACOSS submits that it would be important for ESCOSA and SA Water to clearly state the purpose of their stakeholder engagement activity. SACOSS also believes that it would be excellent practice to involve stakeholders in the development of the purpose statements:

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<sup>31</sup> SACOSS notes that government also has a role in technical, safety, environmental and public health regulation. SACOSS notes that these roles are accommodated through the regulatory process via the Regulators Working Group.

<sup>32</sup> SACOSS wishes to acknowledge informal discussions with ESCOSA on this topic and refers to <https://www.darzin.com/blog/how-to-evaluate-stakeholder-engagement-and-consultation>

<sup>33</sup> De Silva, J. and Kemp, A. (2014) Preliminary Advice on the Effectiveness of Consumer Engagement by Network Businesses at [https://www.aer.gov.au/system/files/Consumer%20engagement%20advice\\_140707.pdf](https://www.aer.gov.au/system/files/Consumer%20engagement%20advice_140707.pdf) p.12.



“Those initiating the stakeholder engagement should involve stakeholders in defining the purpose of the engagement. During the engagement, the purpose should be reviewed and adjusted based on the input received from stakeholders.”<sup>34</sup>

To assess the outcomes of the stakeholder engagement, SACOSS recommends that metrics be developed. The UK hosts two different frameworks for consumer engagement in regulatory determinations and parties have different views on what constitutes the better framework. Discussion with stakeholders suggested that there may be no need to decide between which is the better framework – it may be a case of “letting all flowers blossom”. In both frameworks in the UK, stakeholders were able to report evidence of successful outcomes.

Some participants of the study tour thought that the SA Water services standards should be used as the basis of measurement for the outcomes. SACOSS would welcome discussion of this topic as part of the regulatory process, and also considers that measures of consumer sentiment may be important considerations. For example, in the UK, the Consumer Council for Water measured customer perceptions of their satisfaction with the level of service, value for money and sense of a fair system. SACOSS considers that consumer sentiment metrics such as these are likely to be an important indicator of overall outcomes.

### **Long Term Sustainability**

SACOSS is very aware of the tension between short term savings versus the need for making long term investments. In Scotland, there is open discussion about the complexity of the water industry and the following tensions:

- “The assets tend to have long and not always predictable lives;
- It is difficult to be confident in any whole life cost analysis because asset lives can only be estimated;
- Scottish Water does not have a full picture of the performance and condition of its underground assets;
- Investments in the water sector often bring indirect benefits (and costs). These externalities are difficult to value objectively; and
- The list of objectives placed by government on regulators has become longer over time.”<sup>35</sup>

SACOSS submits that these considerations are paralleled in the case of SA Water and recommends that public discussions continue on these important parameters. SACOSS is fully committed to ensuring that in driving to the most efficient delivery of an essential service the long term sustainability of SA Water remains a core consideration. This might include taking account of issues that arise as a result of population growth and spread as well as other external issues like climate change.

### **Subthemes**

A number of subthemes emerged from the study tour, which provides more detailed thinking around the regulatory framework for SAW RD20. These sub themes are:

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<sup>34</sup> AA1000 Stakeholder Engagement Standard (AA1000SES) 2015 [https://www.accountability.org/wp-content/uploads/2016/10/AA1000SES\\_2015.pdf](https://www.accountability.org/wp-content/uploads/2016/10/AA1000SES_2015.pdf) p.15

<sup>35</sup> WICS (2017) p.33

- Role of Parties Outside of Negotiation – Ensuring that all stakeholders are able to collaborate in the regulatory decisions which impact on the business
- Scope of Negotiation – Providing clarity to stakeholders and participants about what is in scope for the negotiation
- Personalities and Culture – Recognising the leadership which is required for a negotiation to work
- ESCOSA Decisions – Providing clarity to stakeholders and participants about when final decisions are made

Each of these sub themes is discussed below.

### **Role of Parties Outside of Negotiation**

SACOSS is keen to ensure that all stakeholders are able to collaborate in the regulatory decisions which impact on the business. In this context, SACOSS has discussed the role of consumer representative bodies and underscored the unique relationship they have with consumers. As a peak for the non-government health and community services sector, SACOSS is particularly aware of the role of peak organisations and the importance of their connections back to their members, as well as to the broader community. This speaks directly to the capacity of peaks to be representative in a way in which individual consumers cannot.

SACOSS is keen to look at the development of parallel frameworks in Australia and apply the learnings from these processes to South Australia. The AER New Regulatory model process has tended to focus on the negotiation process, at the expense of broader consideration of the whole process from the start of consumer engagement to the final AER decision. Consumer representatives have pointed out that even if a negotiation forum reaches agreement, there is still:

- The resolution of matters around the out of scope issues, and
- The regulator’s review of the business’s proposal and consumer engagement post the submission given that other consumer representatives may not always agree with the negotiation forum on its negotiation outcome on the in scope matters.<sup>36</sup>

SACOSS submits that it is critical that ESCOSA also consider the whole process, and not just focus on the negotiation. SACOSS welcomes the Commission’s clarity on the consumer engagement by ESCOSA post the negotiation – in particular, that the Commission will consider submissions on the business plan and the draft decision. SACOSS is seeking clarity on the status of these submissions, particularly if there are areas where these submissions depart from any Negotiation Forum agreement. In the Scottish context, WICS conveyed that it would be minded to accept any agreement reached between the Consumer Forum and Scottish Water. SACOSS believes the situation is different in South Australia and that ESCOSA has not conveyed such an understanding to stakeholders, but is seeking further clarity from the Commission on this issue.

In the context of the negotiation, SACOSS also considers that is vital for the Negotiation Forum to engage with consumer representatives. SACOSS submits that experience from the UK indicates this needs to be both formal and informal:

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<sup>36</sup> Grenning, Mark (2018) Email to AER on evaluation of New Reg, 6 September 2018

“Although developing a productive relationship with Scottish Water was essential for the Forum to assume its role, there was also a clear recognition that there was more to the new SRC process than a two-player action. Key stakeholders to the process, whether directly involved like WICS or indirectly like the Scottish Government, needed to fully comprehend the progress of the engagement and be confident that the process was on the right track. A deliberate effort was thus made to ‘keep them in the loop’ through regular, although mostly informal, updates by the Chairman of the Forum”<sup>37</sup>

The Negotiation Forum will need to work to establish legitimacy and trust: establishing legitimacy and trust in the negotiating group by all consumer interest groups is critical to ensure meaningful engagement. In this context, SACOSS draws on the references to the role of consumer representatives in the section on consumer confidence. It is clear that there is a broader group of consumer representatives outside of the customer negotiation committee. It is also clear that peak bodies with their unique position are part of this broader group of consumer representatives. It is essential that the Negotiation Forum work to establish information flows from this broader consumer representative base. Experience in Scotland indicates that some of this will need to be through informal channels.

### **Scope of Negotiation**

Central to any stakeholder engagement process is the importance of defining the scope of the engagement:

The scope of the engagement shall be defined by determining:

- The subject matter the engagement will address;
- The parts of the organisation (e.g. regions, divisions, etc.) and associated activities, products and services the engagement will address; and
- The time frame the engagement will address.<sup>38</sup>

SACOSS submits that defining the scope is critical for the actual negotiation process proposed by ESCOSA. SACOSS would like to seek clarity from ESCOSA about whether consumer stakeholders will be involved in defining the scope of the negotiation and if so, the proposed process for seeking input.

SACOSS is of the understanding that the Negotiation Forum proposed by ESCOSA is not expected to negotiate SA Water’s entire revenue proposal. SACOSS considers that this is appropriate because some aspects of the proposal will be unlikely to benefit significantly from customer views. In addition, the Negotiation Forum only has a limited time available to familiarise itself with the issues, direct relevant customer research and prepare itself for negotiations. SACOSS does want to clarify with ESCOSA whether the above understanding is correct.

### **Leadership, Personalities and Culture**

It is very apparent in the case of Scotland, that personalities and leadership play a critical role in the success of the regulatory model. Independent evaluations have also emphasised this and discussions with both Littlechild and Lodge reinforced this perception. Recognising the leadership which is

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<sup>37</sup> The Customer Forum for Water in Scotland (2015)

<sup>38</sup> AA1000SES (2015) p.16

required for a negotiation to work, SACOSS submits that a test for the negotiation forum will be the extent to which it is able to demonstrate leadership to the consumer representative sector.

Culture is also a key factor at play in Scotland. Scottish Water had to be open to putting customers at the heart of the business and then actively engage in steps to enacting that vision. SACOSS believes that SA Water has a similar foundation and there is good evidence to suggest that customers are already prioritised by SA Water. However, customers and consumer representatives will be seeking evidence of a maturity in their relationship with SA Water during SAW RD20.

### **ESCOSA Decisions**

SACOSS welcomes the moves ESCOSA has made to “be clear from the outset about the principles adopted and the expectations of SA Water before it prepares its business plan.”<sup>39</sup> SACOSS is seeking clarification from ESCOSA about the proposed Guidance Papers and whether there will be some aspects which will be representative of final decisions by the Commission. SACOSS is concerned to ensure that current opportunities for inputting in to the Commission’s decision making processes not be eroded.

Meaningful consumer participation in ESCOSA’s regulatory determination process, which is still significant after the regulatory proposal phase, remains of key importance in ensuring the long term interests of consumers is at the centre of decision making, irrespective of whether an agreement has been reached between SA Water and the negotiation forum at the regulatory proposal stage.

SACOSS believes that it is at the determination stage that economic analysis is undertaken by ESCOSA to ensure the business’ proposal is efficient, and SACOSS submits the concept of efficiency is at the core of protecting the long term interests of consumers. SACOSS further submits that questions of efficiency should not be ultimately outsourced to, or resolved by, agreements reached between the business and the negotiation forum. SACOSS submits that the obligations on ESCOSA to assess the proposal, to ensure the proposal is efficient and to engage and consult with consumers throughout its decision-making process cannot be avoided on the basis of an agreement that the regulatory proposal reflects consumer preferences. SACOSS further submits that this is still the essential role of the regulatory body.

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<sup>39</sup> ESCOSA (2018) p.10

## Summary and Recommendations

ESCOSA has stated that in developing its Framework and Approach for SAW RD20 it has designed a framework that will “put customers’ interests and the consumer voice at the centre of the regulatory process”.<sup>40</sup> SACOSS commends ESCOSA for seeking to place consumers and their interests more substantially at the heart of the business’s decisions. While SACOSS is generally supportive of the proposed stakeholder engagement process for SAW RD20 and is fully engaging through its participation on the Consumer Experts Panel, SACOSS has made a number of recommendations in this report which seek to refine how that consumer voice is centred in the process. If adopted, SACOSS believes that the recommendations would enhance consumer experience in the regulatory system.

SACOSS has made the following recommendations in this report:

1. Evaluation of the regulatory determination process should seek to understand consumer experiences and feelings about the process, whether the process was valuable to them and what they saw as the challenges.
2. Important questions for evaluation of consumer representative experiences include:
  - Did these representatives understand their roles and responsibilities?
  - What did these representatives think of the process and content outcome?
  - Did these representatives have adequate funding to participate as they wanted to?
3. Consideration should be given to how the process will maintain and develop consumer trust.
4. SACOSS recommends that ESCOSA and if necessary, the Government, outline the policy suite that currently applies to SA Water, in the interest of providing clarity of purpose to the Negotiation Forum and consumer advocates.
5. ESCOSA and SA Water should clearly state the purpose of their stakeholder engagement activity. SACOSS also believes that it would be excellent practice to involve stakeholders in the development of the purpose statements.
6. To assess the outcomes of the stakeholder engagement, SACOSS recommends that metrics be developed. SACOSS considers that consumer sentiment metrics are likely to be an important indicator of overall outcomes.
7. The Negotiation Forum should engage with consumer representatives, both formally and informally.

SACOSS is seeking clarity from ESCOSA on the following:

1. SACOSS welcomes the Commission’s clarity on the consumer engagement by ESCOSA post the negotiation – in particular, that the Commission will consider submissions on the business plan and the draft decision. SACOSS is seeking clarity on the status of these submissions, particularly if there are areas where these submissions depart from any Negotiation Forum agreement. In the Scottish context, WICS conveyed that it would be minded to accept any agreement reached between the Consumer Forum and Scottish Water. SACOSS believes the situation is different in South Australia and that ESCOSA has not conveyed such an understanding to stakeholders but is seeking further clarity from the Commission on this issue.

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<sup>40</sup> ESCOSA (2018)

2. SACOSS is of the understanding that the Negotiation Forum proposed by ESCOSA is not expected to negotiate SA Water's entire revenue proposal. SACOSS considers that this is appropriate because some aspects of the proposal will be unlikely to benefit significantly from customer views. In addition, the Negotiation Forum only has a limited time available to familiarise itself with the issues, direct relevant customer research and prepare itself for negotiations. SACOSS wishes to seek clarity from ESCOSA about whether the above understanding is correct.
3. SACOSS would like to seek clarity from ESCOSA about whether consumer stakeholders will be involved in defining the scope of the negotiation and if so, the proposed process for seeking input.
4. SACOSS is seeking clarification from ESCOSA about the proposed Guidance Papers and whether there will be some aspects which will be representative of final decisions by the Commission.

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## Appendix A: Tour Participants

Heather Smith, Advocate, Conservation Council of SA

Jo De Silva, Policy Lead, SACOSS

Mark Gishen, Project Manager South Australian Wine Industry Association Incorporated

Richard Cawley, Regulation Lead, SA Water

Ross Womersley, CEO, SACOSS

Wendy Shirley, CEO, South Australian Financial Counsellors Association  
*(unfortunately, due to family circumstances, Ms Shirley was a late withdrawal from the tour)*

## Appendix B: Tour Itinerary

Time	Detail	Where
<b>Tuesday 21 August</b>		
9:00am – 10:00am	Andrea Mancini, Senior Analyst David Satti, Head of Strategy Water Industry Commission for Scotland	Scottish Water Office, Roxburgh Room, Castle House, 6 Castle Drive, Dunfermline
10:00am - 12noon	Alan Sutherland, CEO Water Industry Commission for Scotland and Peter Peacock, Chair of the Customer Forum	Scottish Water Office
12noon – 2:00pm	Alan Sutherland, WICS Peter Peacock, CF Douglas Millican, CEO Scottish Water (SW) Tom Harvie-Clark, GM Strategy and Economic Regulation SW Alan Scott, Finance Director SW Belinda Oldfield, GM Revenue and Risk SW	Scottish Water Office
2:00pm – 3:00pm	Gail Walker, Consumer Futures Unit, Citizens Advice Scotland (CAS)	Scottish Water Office
4:30pm	<i>Teresa Perchard, Customer Challenge Group (CCG), Affinity Water</i>	<i>(Meeting cancelled)</i>
<b>Thursday 23 August</b>		
9.30am – 11:00am	Tony Smith, CE CCWater	Consumer Council for Water 1st floor, Victoria Square House, Victoria Square, Birmingham B2 4AJ
11.30am – 1.30pm	Ofwat – Anita Payne, Director of Economic Regulation / Alison Cullen, Associate Director, Engagement / Kay Greenbank, Principal Strategy and Policy	Ofwat Birmingham Office Centre City Tower 7 Hill st Birmingham B5 4UA
1:30pm – 2:30pm	Jeff Halliwell - Chair, Customer Challenge Group, Anglian Water	Ofwat Birmingham Office Centre City Tower 7 Hill st Birmingham B5 4UA
3:30pm – 5:00pm	Stephen Littlechild	Consumer Council for Water 1st floor, Victoria Square House, Victoria Square, Birmingham B2 4AJ
<b>Friday 24 August</b>		
11.15am	Martin Lodge, Professor of	Centre for Analysis of Risk and Regulation

– 1:00pm	Political Science and Public Policy at London School of Economics	London School of Economics, Houghton Street, London WC2A 2AE
4:00pm – 5:00pm	<i>Customer Challenge Group Chair - Zoe McLeod (South East Water)</i>	<i>(Meeting cancelled)</i>

## Appendix C: Summary of Meetings

*(For meeting location and time, please refer to Appendix B)*

### Meeting 1

Andrea Mancini, Senior Analyst, WICS

David Satti, Head of Strategy, WICS

Heather Smith, Advocate, Conservation Council of SA

Jo De Silva, Policy Lead, SACOSS

Mark Gishen, Project Manager, South Australian Wine Industry Association Incorporated

Richard Cawley, Regulation Lead, SA Water

Ross Womersley, CEO, SACOSS

Wendy Shirley, CEO, South Australian Financial Counsellors Association

Scottish Water (SW) is facing significant demands on investment. Pressures include climate change, impacts of flooding, managing surface water. There is a huge demand on capital. Asset replacement is a big focus. WICS is looking for a sustainable rate of replacement, investment: for a longer term view, not just 5 or 6 years. Improve visibility, transparency. Prioritise investment.

Since 2011, SW's business plans have markedly improved. They used to be very long and engineering focussed. The company has radically changed in how it communicates issues, problems, strategy, vision. "Daft Larry" questions from a customer perspective forced the company to change a lot.

WICS has focussed on what customers are getting out of the business since PD 2015-21. WICS is looking for service outcomes: enhanced levels of service, capital maintenance.

During PD 2015-21, the Customer Forum (CF) was provided with briefing papers which broke down the decision. These were a very important part of the process.

The WICS final determination PD15-21 was 2 pages long.

WICS was very keen to keep policy versus prices and service outcomes separate. The Minister's Objectives drove the process: the business, regulator and CF worked on the basis of the policy directives.

The process involved release of SW Strategic Plan, negotiation, draft determination. Consultation on the draft was for 3 months. Anyone could submit on draft.

The CF was established by a tripartite agreement. The members are not meant to be representative.

CF became the target audience. The CF changed the dynamic completely. The customer became the focus of the process.

CF interacted both with business and WICS.

The CF was engaged for 3 years. It negotiates 2 ways, acts as a conduit.

CF engages with customers and communities. CF seeks views. Research is important. Research needs to be diverse. Scope of the research is constantly increasing. Research methods include deliberative

research. There is a diverse means of obtaining views – Facebook trial, WhatsApp. Research is backed by a dialogue to understand views. Behavioural insights are seen as increasingly important.

The CF focussed on size of investment program, prices, level of investment – if CF agreed with SW, WICS was minded to agree.

There was also a role for joint stakeholder meetings between different regulators of SW (water quality, EPA), Citizens Advice Scotland, CF, Scottish Government. These were brainstorming sessions and held every 4-6 weeks. They were completely open discussions of problems, challenges. These meetings changed the nature of the dialogue. Meetings usually focussed on 1 or 2 topic areas. Status is shared understanding. Anyone can field a question. Investment prioritisation and planning used the same process. There is a desire for early engagement on capital projects.

Metering is treated differently in Scotland compared with South Australia. 150,000 businesses in Scotland are metered and charges based on consumption. Households are unmetered.

In 2008, the retail market was introduced. WICS licenses the retailers. WICS sets a default tariff for a set of services. Retail margins are around 5-10%. Obtaining customised services is seen as the big benefit of the retail market.

## Meeting 2

Alan Sutherland, CEO, Water Industry Commission for Scotland

Peter Peacock, Chair of the Customer Forum

Jo De Silva, Policy Lead, SACOSS

Mark Gishen, Project Manager South Australian Wine Industry Association Incorporated

Richard Cawley, Regulation Lead, SA Water

Ross Womersley, CEO, SACOSS

Wendy Shirley, CEO, South Australian Financial Counsellors Association (unfortunately, due to family circumstances, Ms Shirley was a late withdrawal from the meeting)

Alan outlined that it is important to get the process right and this will ensure the model can be applied to privately owned businesses as well as government owned businesses. He modelled based on Littlechild's concept of constructive engagement. The regulator has opened up a space for customer dialogue. The regulator conveyed the view that it was minded to accept a successful negotiation.

It was noted that in Scotland there is not the range of advocacy organisations as in Australia. The Scottish water sector has no voluntary consumer organisations active. Citizens Advice Scotland (CAS) exists.

The Customer Forum (CF) is not an advocacy body. Peter Peacock pointed out that in Australia there is a risk of businesses using the CF to offset the impact of advocacy organisations.

The work of Professor Christopher Hodges was discussed. He writes about principles of ethically based regulation: overcoming information asymmetry, being honest, frank, private, courteous, open and share insecurities and fragilities. The goal is to operate according to a set of rules: call people out and do not expect them to defend their position.

The CF process involved a lot of formal and informal dialogue. Chief Executives were constantly engaged.

Customers do not seem to know of the existence of the CF. CF was not appointed to be representative. It was appointed to scrutinise and analyse what customers think. The only legitimacy it has is to find out what customers think. Use company's research department.

Dealing with diversity of customer base involves judgement on the part of the CF.

CF needs to be able to justify its position in parliament.

Competing demands on SW: water pressure vs removing all lead vs rural connections vs sewerage flooding. Climate change is a big issue.

The process depoliticised the water industry. Scotland resolutely opposed water metering in the referendum in 1993. Government put in place council tax charge according to the banding of the home. Lower quality housing stock pay less – they are cross subsidised. There are also social discounts.

The work of Professor Pete Lunn was referenced.

The process is an impost on business because they can't justify a disagreement with the CF. Regulator set ranges in advance of negotiation.

OECD evaluation is in process.

CF used listening, understanding, challenge, acceptance – the way they scrutinise allowed the company to meet them half way. Not criticising, probing, aggressive, direct. Encouragement. Holding back sometimes. Being aware of key principle, underlying call.

Outlined distinction between policy focussed activity. Company ambit to address forum, parties do not use media and lobbying. Has to be acceptance for forum negotiation. Utilise existing policy framework. This does not mean policy lobbying stops. Negotiators have to accept set parameters. Decision papers were the mechanism.

It is not possible for the CF to dive in to detail. They wanted the company to abstract back up – say it to us in 100 words.

There was a question from participants about role of personality, culture. Peter and Alan thought process is robust enough to deal with differences.

CF is interested in social contract discussion. 5-6 key goals. Agreement between company and CF. Wrote a minute of agreement, outlining processes, not what to do.

The first step for CF was to learn and explore common issues, why some were considered more important. Learnt about company and its operations. Isolated issues. Creating a safe space and providing accountability.

There was discussion of making process viable beyond the current leaders. That is one of the purposes of the OECD review. Important to create a good incentive, have an assurance process, have an independent view.

### Meeting 3

Alan Sutherland, CEO, Water Industry Commission for Scotland  
Peter Peacock, Chair of the Customer Forum  
Douglas Millican, CEO, Scottish Water (SW)  
Tom Harvie-Clark, GM Strategy and Economic Regulation, SW  
Alan Scott, Finance Director, SW  
Belinda Oldfield, GM Revenue and Risk, SW  
Jo De Silva, Policy Lead, SACOSS  
Mark Gishen, Project Manager South Australian Wine Industry Association Incorporated  
Richard Cawley, Regulation Lead, SA Water  
Ross Womersley, CEO, SACOSS  
Wendy Shirley, CEO, South Australian Financial Counsellors Association (apology)

Douglas said it is important not to underestimate the role of personalities. He was worried about question of whether or not Customer Forum (CF) would do a deal. Felt there was an asymmetry in the incentive. He only relaxed when he realised Peter Peacock has a personal profile which meant he had an incentive to agree. Alan played a key role in oiling wheels, facilitating way forward. The tripartite agreement was essential.

CF was never involved in individual projects like Orroroo as in South Australia.

Douglas said that process has focussed company on what is the felt experience of customers. Sharpened their focus on customers. Deepened and broadened the company's thinking about experience of customers. Company has moved from primary technical focus to think more deeply about why they do things. The company felt they were already on putting customers at the heart journey but the CF process accelerated their rate of progress.

Douglas said the challenge is to touch customers. Wants direct contact with customers. One has to be relentless to have customers at the heart of the business. Involves workforce development. CF was a stimulus. Customer opinion moves fast.

Douglas said they process involved spending more but there was a net gain.

CF wanted to do more than just talk to business; needed direct engagement with customers.

Alan said he was interested in how Scottish Water could become more innovative. Wanted to unleash the motivation in the business, empower people to innovate. Said the regulator can stifle innovation. Said tools like benchmarking can do this. Wanted to align incentive schemes with outcomes of forum. Said setting no targets is tougher for the business, business owns its direction.

Douglas said important to have in place a Chair of CF who has a reputation to lose, who can see the way to deliver success, has broad experience.

All agreed on getting the negotiation out of the policy space. Key policy questions included prices, dividends, cross subsidies, postage stamp pricing. SW research helped shape the policy space.

Peter didn't just Chair the forum, he led the forum. Peter respected the role of the political space. He would be briefed before the forum met.



SW CE led SW's role in first CF. Second CF led by Directors in terms of SW input. Douglas said he will still try to get to as many meetings as possible – said he benefits from hearing the stimulus.

The process involved a two way shaping of the agenda – have you thought of this, how do you know that?

SW shared research program with CF. CF had its own research program.

The diversity of CF was very important. Different walks of life, different strengths, passions.

It took a lot of preparation to build relationship between SW and CF. Now they have base level of trust.

CF must represent customer views through research (and reflect these in conversations).

WICS guidance notes kept the forum in the right spaces, right checks and balances, cannot go in a wild direction.

## Meeting 4

Gail Walker, Consumer Futures Unit, Citizens Advice Scotland (CAS)

Jo De Silva, Policy Lead, SACOSS

Mark Gishen, Project Manager South Australian Wine Industry Association Incorporated

Richard Cawley, Regulation Lead, SA Water

Ross Womersley, CEO, SACOSS

Wendy Shirley, CEO, South Australian Financial Counsellors Association (apology)

2011 water watch Scotland abolished. 2014 national consumer council abolished. CAS established. 61 bureau members, 2 local authorities, consumer futures unit.

Negotiation period for CF was 2.5 years. Gail said a long process is important.

Importance of Ministerial policy setting. CAS sits here.

Price setting and service standards. Forum sits here.

Push to look at communities rather than individual consumers. CAS has strategic principles for any consumer related area. Consumer focussed principles.

First forum led to big cultural change in SW. Company learnt to share information, opened up dialogue, opened up trust.

Stakeholder meetings were held as brainstorming sessions. Chatham House rules. WICS would do a sound check every 3 months. Bilaterals were held in between to keep dialogue going, articulate ideas.

Strong need for independence of CF. CAS selected CF members. CAS ensured diversity in CF.

Important to be clear about what you are trying to achieve, scope, powers.

Process takes up a lot of CAS time – 0.5FTE.

CAS now involved in formal and informal discussions during price determination – it was not initially and this caused problems from the perspective of CAS. CAS want to be part of the discussions during the determination, both formal or informal. CAS is part of the research coordination group. Focussed on value for money, affordability. Consumer outcome perspective.

## Meeting 5

Tony Smith, CE, CCWater

Jo De Silva, Policy Lead, SACOSS

Mark Gishen, Project Manager South Australian Wine Industry Association Incorporated

Richard Cawley, Regulation Lead, SA Water

Ross Womersley, CEO, SACOSS

Wendy Shirley, CEO, South Australian Financial Counsellors Association (apology)

CC Water is funded via a levy to be the customer voice, provide customer related research and receive complaints. They were set up in 2005 and there was a consumer body inside the regulator before that time. Tony gave us a presentation with a number of graphs relating to service levels and perceptions over time. CC Water deliver around GBP500k in customer research and around 30% staff handle complaints. Majority of work focuses on businesses and regulators but although policy and govt is much smaller it can be very important.

Water was privatised in England and Wales in 1989. Characterised by a 40% increase in prices largely due to environmental improvements in line with EU standards.

2014 price review was the first serious attempt to include customer voice. The ongoing demise of trust meant that the legitimacy of the process desperately needed to improve.

Many customers are satisfied with the level of service but do not feel they are getting value for money or a fair system.

Tony said that the key importance of continuing engagement makes a pivotal difference in value for money and trust.

A non-household market was introduced in 2017.

25 million customers, 22 million domestic, 3 million business.

Trust and satisfaction both rose after 2014.

Average water bill is GBP350 per year

17 companies, some much better than others. Welsh Water have dramatically improved but they are debt-funded (no shareholders). Positively mentioned Wessex, SW, North Umbrian.

There are some inset networks but many multi-tenant buildings have individual customer charging.

End customers not property owner.

Meters have gone to places with water scarcity. No problem justifying a meter because it generally reduces costs. CCWater have a calculator to help people decide.

Relationships are essential, Tony is unlikely to be on the Christmas Card list for 50% of the water businesses (but still has relationships). CCWater used evidence to say what is and is not working for customers.

Level of adversary should depend on customer response.

Can tell when staff have been 'captured' by the business because they start advocating for the business.

Collegial approach, open dialogue is great but you must always be able to support your position with data / evidence.

CCWater has very few powers; handle complaints, publish data, apply pressure.

Shared aim, "this industry works well" therefore need to agree from the outset on the importance of customer voice.

Everything coming from the water business needs to be filtered through the 'gaming the system' lens. Need strong consumer body, strong regulator.

Some businesses would drop customer focus tomorrow if the regulator did not make them do it.

Look at the terms of reference of the CCGs (customer challenge groups) - it is very narrow. By contrast Alan Sutherland in Scotland is feeding Peter Peacock information in order to nurture the ability for the Customer Forum to strike a deal.

Customers do not perceive the CCGs to be independent. This perception of independence is also diminished by who pays those consumer voices. Industry, industry levy, regulator can all diminish the legitimacy of the voices. The CCGs and the Scottish CF are not representatives of customers.

CC Water staff have at times become 'captured' by the water businesses. One test is when they start advocating for the company.

The water business needs to be in charge of the element of stakeholder engagement that involves broader public acceptance around necessary changes. I.e. taking people on the journey / bringing people with them on the journey.

Estimated savings of GBP9m per year by helping people choose to get a meter installed when it is going to save them money.

In 2014 the CCGs endorsed plans with a higher cost of capital than necessary. This highlights some of the issues around where expertise is necessary and also WACC is probably better dealt with by OfWat. The UK still seem to be grappling with a method for calculating WACC that might work best.

Which (like Choice in Australia) and Citizens Advice Bureau (CAB) are monitoring performance of the water businesses.

In 2014 OfWat was not clear about the scope of the CCG's work.

Asymmetry of information remains a problem. The business will always have more information than the regulator or the customer representative.

Willingness to pay – use more data to triangulate.

CC water cannot appeal process review process. They can put in a super complaint and give evidence to the NACCC.

Scotland approach would be risky here. There is a risk of putting too much emphasis on the forum. They are not representative of customers.

CC water test the acceptability of the business plan. You can ask at a high level: this is what you are getting, this is the process, is it acceptable?

CCWater is developing customer metrics with Ofwat – this is at an early stage.

Resolving differences across customer cohort. Tariff basket happens every year, try to base on loads, not cross-subsidies. Risk of putting too much emphasis on the panel and their legitimacy.

## Meeting 6

Anita Payne, Director of Economic Regulation, Ofwat  
Alison Cullen, Associate Director, Engagement, Ofwat  
Kay Greenbank, Principal Strategy and Policy, Ofwat  
Jo De Silva, Policy Lead, SACOSS  
Mark Gishen, Project Manager South Australian Wine Industry Association Incorporated  
Richard Cawley, Regulation Lead, SA Water  
Ross Womersley, CEO, SACOSS  
Wendy Shirley, CEO, South Australian Financial Counsellors Association (apology)

Kay – background in economic development and banking.

Anita – background in engagement and vulnerability, formerly IPART.

Alison – focussed on affordability and vulnerability, implemented PR14, customer engagement, complaints and appeals.

Focus of model is on companies engaging with customers, not OfWat engaging with customers. Business plans that would reflect customer priorities.

PR14 involved direct customer engagement and market research. Make it easier to engage with customers. Engagement will be bigger PR19.

PR09 Gray Review highlighted OfWat micromanagement and the regulatory burden.

Therefore a need to turn companies heads toward customers and help them form their own views on the trade-offs that need to be made.

Policy statement in 2011 provided possible structure of CCG. Be clear that they are not representative.

Customer advisory panel – not to be repeated in 2019.

Customer expert meets with OfWat and CCG chairs.

The water businesses choose CCG because they need to understand who their customers are. Ofwat specify CCG needs to include CCWater, govt and debt advice. Ofwat described what a good CCG looks like, what an independent CCG looks like.

OfWat moved away massively from prescription. PR19 trying to give more clarity but still without prescription.

17 water companies.

CCG provides assurance to Ofwat on customer engagement of companies.

CCG power is in the ability to challenge. Involved in designing customer engagement, worked with companies to get outcome, some monitor delivery of business plan. Challenges are linked to priorities. Ofwat don't want CCG to drive plan. Want company to drive plan. CCG's provide transparency and accountability.

Looking at how well the company engages, plus looking at how well the company listens and incorporates feedback into business plan.

Traceable golden thread from customer engagement outcomes to reflection throughout business plan.

Company reporting reflects the role of CCGs. Eg Thames CCG quite critical.

'Expectations of customer' test. I.e. can you explain the business plan to someone who hasn't been involved in the process and it seems reasonable.

Business plans and CCG reports should talk about the composition of the customer base.

Company is held responsible for the failure to engage correctly.

Preferred CCWater to be on the groups without the Chair role.

Decision to engage is often based on resources. Some groups have local government involved. Who engages helps legitimise the process in the eyes of customers. Charities and the drinking water inspectorate have limited resources. Some CCGs have sub-groups that can ask for an open honest commentary on specific issues. Weighting is therefore based on who has the time. Hear from CCGs that the chairs are paid.

Affordability and vulnerability test existed a few years ago but not OfWat role. This test has changed.

DEFRA and Welsh assembly set out their policy statement and included vulnerability.

Social tariffs (2012) sets a limit on cross-subsidy.

Size of challenge groups – 10 to 20.

Successful ongoing engagement.

Better business plans and customer oriented culture.

Performance commitments have influenced results.

How are both customers and CCGs including customers? E.g. Blueprint for water.

- Customers
- Resilience (in the round)
- Affordability
- Innovation

Ofwat developed metrics around vulnerability and affordability.

Customer forum in Scotland is expected to develop more expertise, CCGs are more focused on scrutinising the customer engagement component and then seeing it thread through the whole business plan.

Co-creating at a local level (story of Welsh village that agreed a disruptive program of works together with the business for the best community outcomes). In the olden days, these businesses had more of a community feel.

OfWat tests plans on eight areas:

- Engaging customers;
- Addressing affordability and vulnerability;
- Delivering outcomes for customers;
- Securing long-term resilience;
- Targeted controls, markets and innovation;
- Securing cost efficiency;
- Aligning risk and return;
- Accounting for past delivery; and
- Securing confidence and assurance.



## Meeting 7

Jeff Halliwell - Chair, Customer Challenge Group, Anglian Water  
Kay Greenbank, Principal Strategy and Policy, Ofwat  
Jo De Silva, Policy Lead, SACOSS  
Mark Gishen, Project Manager South Australian Wine Industry Association Incorporated  
Richard Cawley, Regulation Lead, SA Water  
Ross Womersley, CEO, SACOSS  
Wendy Shirley, CEO, South Australian Financial Counsellors Association (apology)

Jeff Halliwell has a background in the food industry and consumer marketing.

We interviewed him as Chair of the Anglian Water CCG (since 2016). He is also the Chair of Transport Focus (consumer advocates like CCWater) and the Chair of Heathrow Airport's consumer panel for its 5 yr business plan. (Heathrow is a monopoly for airlines and the end customer voice is often lost between the airport and the airlines).

PR14 many of the Chairs were provided by CCWater. In PR19 nearly all chairs have moved to independents like Jeff. He started on this process in 2016. Two CCWater staff on his CCG.

Good support from OfWat. Regularly briefed, and have challenged OfWat back.

Anglian has 6m customers, the largest area to serve and not much gravity. Much agriculture and associated chemicals.

CCG must scrutinise and critique the consumer engagement, analyse how well the business plan reflects what consumers have said. It is not their role to do the consumer engagement.

If it is like marking their homework (as opposed to doing the homework), they need to be objective and evidence based (not anecdotal), constructive and challenging.

- Be detached
- Be independent
- Do not do the work
- Consumer centred
- Objective evidence based
- Constructively engaged
- Challenging

Challenge Anglian on the in-period performance.

Groups differ, some are talented individuals.

Jeff inherited a range of reps plus he appointed 3 senior heavyweight regulatory/economic experts to form a subgroup on economic valuation. Also has a sustainability and resilience subgroup and a vulnerability and affordability subgroup. Plus a separate panel for a different region (Hartleypool).

13 on the main forum and 35 people altogether on sub-panels. Technical knowledge essential on subpanels.

Noted that people are very interested in discussing relatively obscure aspects of the water business e.g. sludge transport.

A professional writer acts as a board secretary.

High standards for engagement.

No say over the balancing but insist that the consumer is influencing.

Jeff says the role is more representative than the CF role. Fiercely independent.

Anglian engagement has been wide, inclusive, deep, innovative with some failures. Miles ahead of Heathrow.

How much influence over engagement design? Jeff has seen how the company has matured through listening to customers. Monotone educational and demographic background on CCG and they need to appreciate that lack of diversity and compensate for it in decision making.

OfWat expects push back on ongoing role and representing customers.

Jeff very alert to mission creep (eg ongoing role).

There was concern in PR14 from previous chairs about CCGs effort being listened to by OfWat.

Aide memoir of "what we need to do".

Imported expertise that could talk to WTP.

Sub-groups allow the CCG to bring in more experts.

Getting the constructive challenge and company relationship right. Jeff has talked to the full board. Finding the right place on the challenge spectrum between hostile and cosy

CCWater bring expertise, perspective, engagement, commitment to the consumer voice.

## Meeting 8

Stephen Littlechild

Kay Greenbank, Principal Strategy and Policy, Ofwat

Jo De Silva, Policy Lead, SACOSS

Mark Gishen, Project Manager South Australian Wine Industry Association Incorporated

Richard Cawley, Regulation Lead, SA Water

Ross Womersley, CEO, SACOSS

Wendy Shirley, CEO, South Australian Financial Counsellors Association (apology)

Initially thought RPI-X was not a big problem to fix.

Looked at the negotiated settlements in the US e.g. Florida

Draw a distinction between how it actually occurred and how it could under the negotiated settlement because customers trade off things like cost of capital.

All these arrangements have not got large customers on board who care deeply about price (note contrast with US arrangements where large customers lead).

FERC, 6 month process. Negotiating for 3 months to fix price for 5 years.

Scotland key people working together for a decade and they think alike.

Old regulatory model - CPI-X

Awful process, much harder than the regulator thought it would be, stuck in the middle arguing with companies and with customer reps.

Quite a few examples of customers taking things into their own hands and being quite good at it.

Old system has an implicit assumption that the transaction costs are so high that you need a regulator to negotiate on behalf of many customers.

Old regulators know how hard it is.

New regulators more inclined to hang onto their role and not cede enough to CCGs.

Important to try to shorten the negotiation process. Large companies are interested in this.

Cannot hand over the trust in the process.

US is a representative model.

In practice people do find a way to agree.

OfGEM and OfWat are of the same view.

Put as much into negotiated settlement as you can.

Legitimacy? In the US anyone who cares enough about the outcome is allowed to be at the table.

Concern for reputation. Priority to improve SW reputation, to do so at the expense of profits is more problematic (and unlikely?). WICS only has one business. Ofwat has 17.

US culture is more accepting of markets and more thorough at creating competition and constantly concerned with what the customer wants.

No outsiders in the US. Regulator hears from everyone in a quasi legal hearing of results.

Who can represent customer views? US example, consumer org set up by the state plus large customers?

How information flows? From anyone. Witness program.

Trust within the group needs to transcend their loyalties to the company.

**Discussion about SA situation:**

Job description for the negotiators.

What will build trust?

Who is given the scrutiny opportunity? Littlechild prefers model where everyone who wants to be can be at the table.

Culture and leadership is important.

US history of customer groups fighting in the regulatory process.

UK customer groups need to build this expertise over time.

## Meeting 9

Martin Lodge, Professor of Political Science and Public Policy, London School of Economics

Jo De Silva, Policy Lead, SACOSS

Mark Gishen, Project Manager South Australian Wine Industry Association Incorporated

Richard Cawley, Regulation Lead, SA Water

Ross Womersley, CEO, SACOSS

Wendy Shirley, CEO, South Australian Financial Counsellors Association (apology)

[London is the ‘home of Fabianism’: a late 19th-century English movement that favoured the gradual development of socialism by peaceful means]

Key points of discussion:

ML recounted recent experience in UK airspace regulatory determination where only the very largest airline company had sufficient resources and capability to adequately provide meaningful input, highlighting his view that such processes of regulating monopolies are inherently costly and time consuming with the customers at least advantage. This highlights a practical flaw in Littlechild’s free market libertarian approach, which seems to propose that business is best placed to negotiate a settlement faster and will also give the best outcome for all consumers.

The experiment with the Scottish Water model, was driven in part by a desire for the regulator to reduce its resource inputs to the regulatory process.

The Scottish Water model has been successful in delivering lower costs to consumers. This success is largely attributed to the skills and abilities of the 3 key negotiators (Peacock, Sutherland, Millican) and their relationship. In particular, Peacock is key to ensuring that all interested parties, in particular ‘the environment’, are given fair consideration.

“The Scottish secret”: 3 people having a lot of informal discussions, informal understandings. Meaning of independent Chair – what is politically possible, getting on well with regulator.

Delegation of the power for settlement decisions to a negotiating group from consumers is always a contentious issue, as is the degree of ‘capture’ of any representatives involved.

Clear up-front definition of scope and responsibilities of the various elements contributing to the negotiated settlement is critical.

No model is perfect for all situations: in the case of Scottish Water, the approach of using a small group of ‘experts delegated to engage’, most likely worked better than the alternative ‘represent & challenge’ model. There is little objective evidence in the literature about the relative effectiveness of the various models. Most current models do not include the regulator using metrics for monitoring of outcomes of the determinations, other than for example, the number of people ‘touched’ by consultation, and this is a missed opportunity to really connect to consumers’ representatives.

The structure of ownership and financial arrangements of the regulated monopoly (whether private or public) is the most important factor influencing a good outcome for consumers: all businesses will ‘game’ the regulatory system and regulators can easily be deceived by ‘tricky’ accounting practices (e.g. Thames Water, see BBC4). Re-nationalisation of utilities is not a guaranteed solution but might help reduce gaming and deception.

Consumer engagement itself is no guarantee of a better outcome, and should not be used as a ‘band-aid’; ML’s preference is for a ‘technocratic’ check by regulators to ensure that it has been real

and truly considered, with metrics to confirm. The regulator must provide this technical support as consumer consultative groups will not be able to do this properly.

Littlechild has Libertarian Austrian economic values and wants to pummel liberal bureaucracy. L sees large companies holding large companies to account. Increased role for competition as market regulators fade away - dislikes bureaucratisation of process. There are other perspectives. One is for consumers to be representative, to be there but be inside the process. There is a view that having consumers inside qualitatively transforms the process.

Need to be clear what the purpose of the process is. Then you can produce metrics for it.

ML summarised key challenges in regulations as:

- Ownership model of utilities
- The market structure (especially in electricity)
- Legitimacy of the regulator (i.e. apolitical)
- Franchise failure (of utilities)
- Setting of roles and responsibilities, as well as success parameters and 'tram track' guidelines