



**Submission to ESCOSA's Draft Inquiry Report into the
regulatory arrangements for small-scale water, sewerage
and energy services**

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About SACOSS

The South Australian Council of Social Service (SACOSS) is the peak non-government representative body for health and community services 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 further serve to disadvantage South Australians in vulnerable circumstances.

SACOSS aims 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.

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Introduction

The South Australian Council of Social Service (SACOSS) is the peak body for the community services sector in South Australia, with an interest in the efficient delivery of essential services to communities across the state. We thank the Essential Services Commission of South Australia (ESCOSA) for the opportunity to comment on its Draft Inquiry Report into regulatory arrangements for small-scale water, sewerage and energy services.

ESCOSA's Draft Report proposes the following changes to the existing regulatory arrangements for small-scale and off-grid water sewerage and energy services in South Australia:¹

- Introduction of a verified trust and accountability regulatory model – including regulatory reporting requirements (VTA model)
- Harmonisation of industry codes and guidelines, and
- Mandatory Energy and Water Ombudsman SA (EWOSA) membership.

SACOSS broadly supports harmonisation of industry codes and guidelines to strengthen and align consumer protection obligations across small-scale and off-grid water and energy licensees. SACOSS considers the current consumer protection obligations contained in off-grid energy retailers and distributors' licence documents are inadequate and we would welcome the opportunity to engage with ESCOSA in the development of a separate Industry Code to apply to those entities.

SACOSS also supports mandatory EWOSA membership, but we do not consider this membership should be in place of performance reporting and monitoring of small-scale network providers against identified indicators. We believe EWSOSA membership should be *in addition to* the monitoring of all small-scale networks' regulatory obligations, including consumer protections and service obligations. Whilst we agree that customers should have access to independent complaint and dispute resolution, we consider it is important to acknowledge that many customers might not complain. For example, customers in remote communities are generally accustomed to consistently receiving lower levels of service at a greater cost (when compared with on-grid customers) and in the absence of an education campaign and assistance from community workers and financial counsellors, these customers are unlikely to complain to EWOSA. We therefore need to maintain monitoring and reporting of indicators such as disconnections, restrictions and service interruptions in

¹ ESCOSA, Inquiry into regulatory arrangements for small-scale water, sewerage and energy services, August 2020, p.1 see link: <https://www.escosa.sa.gov.au/ArticleDocuments/1003/20200807-Inquiry-SmallScaleNetwork-DraftReport.pdf.aspx?Embed=Y>

order to obtain a picture of the off-grid customer's experience, as compared with the experience of on-grid customers.

SACOSS does not support ESCOSA's proposal to move to a VTA regulatory model. We are concerned the proposed model will reduce transparency and accountability of the operation of small scale networks in regional South Australia, and may lead to negative outcomes for consumers who are already disadvantaged by not being able to access the benefits of competition (in the case of energy retailers) or the broader consumer protections afforded to on-grid customers.

The following submission supports retaining some form of publicly available reporting and monitoring to ensure consumers are not paying too much for essential services, are adequately protected from debt and disconnection / restriction, and are receiving reliable levels of service. Publicly available performance reports published annually by ESCOSA are crucial in mapping trends, identifying issues, ensuring accountability, and providing comparisons with the experiences of on-grid customers. SACOSS considers that performance monitoring and reporting will become even more important with the introduction of pre-payment meters and user-pays in the APY Lands (outlined in more detail below).

In support of this submission, and to provide ESCOSA with additional information on the importance of ensuring ongoing reporting and monitoring of essential service providers in regional and remote South Australia, SACOSS refers ESCOSA to the following reports:

- SACOSS, *Scoping Study on Water Issues in Remote Aboriginal Communities*, June 2020²
- SACOSS, *Towards Equitable Access to Clean Water and Sanitation for All South Australians: SACOSS Discussion Paper*, August 2020³
- Jeanette Gellard and Kerri Muller Innovative Influences & Kerri Muller NRM Pty Ltd, *Dealing With Rural Water Customers In Financial Difficulty*, March 2020⁴

² SACOSS, *Scoping Study on Water Issues in Remote Aboriginal Communities*, June 2020 https://www.sacoss.org.au/sites/default/files/public/200630_SACOSS%20Scoping%20Study%20Remote%20Communities_FINAL_0.pdf

³ SACOSS, *Towards Equitable Access to Clean Water and Sanitation for All South Australians: SACOSS Discussion Paper*, August 2020 https://www.sacoss.org.au/sites/default/files/public/200817_Equitable%20Access%20Water%20Sanitation%20Discussion%20Paper.pdf

⁴ Jeanette Gellard and Kerri Muller Innovative Influences & Kerri Muller NRM Pty Ltd, *Dealing With Rural Water Customers In Financial Difficulty*, March 2020 <https://www.sacoss.org.au/sites/default/files/public/Supporting%20Rural%20Customers%20in%20Financial%20Difficulty%20-%20Final%20Report%20Jan%202020.pdf>

- SAFCA, *Minor and Intermediate Retailers Research and Advocacy Project*, November 2017⁵

ESCOSA's role

Under section 5 of the *Essential Services Commission Act 2002* (the ESC Act) ESCOSA has (inter alia) the following functions:

- to **monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation Acts**
- to make, monitor the operation of, and review from time to time, codes and rules relating to the conduct or operations of a regulated industry or regulated entities
- to provide and require consumer consultation processes in regulated industries and to assist consumers and others with information and other services
- to advise the Minister on matters relating to the economic regulation of regulated industries, including reliability issues and service standards.

In performing these functions, ESCOSA must have as its **primary objective** the protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services (section 6 of the ESC Act).

At the same time, ESCOSA must have regard to the need to (section 6(b) of the ESC Act):

- promote competitive and fair market conduct;
- **prevent misuse of monopoly or market power;**
- facilitate entry into relevant markets;
- promote economic efficiency;
- **ensure consumers benefit from competition and efficiency;**
- facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment;
- **promote consistency in regulation with other jurisdictions.**

It is important to emphasise that these secondary objectives must be considered in the context of achieving the overarching objective of the protection of the long-term interests of consumers with respect to the price, quality and reliability of essential services. The objectives outlined in section 6(b) of the ESC Act are not stand-alone objectives. SACOSS

⁵SAFCA, *Minor and Intermediate Retailers Research and Advocacy Project*, November 2017

<https://www.sacoss.org.au/minor-and-intermediate-retailers-research-and-advocacy-project-safca>

believes they must be considered alongside and in support of the achievement of ESCOSA's primary objective.

Therefore, SACOSS considers ESCOSA must establish that the proposed VTA model better achieves the objective of ensuring the protection of the long-term interest of South Australian consumers, than the current regulatory reporting model (or even a more prescriptive model) prior to implementing such a significant change in the regulatory framework.

In SACOSS' view, the Draft Report does not fully explain how the proposed reduction in regulatory reporting works to achieve this primary statutory objective. This is particularly so given customers of small-scale and off-grid networks do not have any choice in provider and therefore no access to the benefits of competition. In circumstances where customers have a monopoly provider of an essential service, inequitable pricing arrangements (where some customers are subsidised and some are not), and more limited consumer protections than on-grid customers, SACOSS considers price regulation, robust performance monitoring and strong regulatory oversight is essential to ensuring ESCOSA's primary objective is achieved. Regulation (of prices and protections) should guarantee fair access to water, electricity, and gas.

Both the *Electricity Act 1996* and the *Water Industry Act 2012* provide that ESCOSA must make licenses subject to certain conditions.

Section 23 of the Electricity Act deals with licences authorising the operation of a transmission or distribution network. Relevantly, sub-sections 23(1)(n)(v), 23(1)(n)(vi) and 23(1)(n)(vii) provide that ESCOSA must make a licence authorising the operation of a distribution network subject to conditions determined by ESCOSA:

- requiring the electricity entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) **imposing minimum standards of service for customers that are at least equivalent to the actual levels of service for such customers prevailing during the year prior to the commencement of this section and take into account relevant national benchmarks developed from time to time, and requiring the entity to monitor and report on levels of compliance with those minimum standards**
- requiring the electricity entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) **limiting the grounds on which the supply of electricity to customers may be disconnected and prescribing the process to be followed before the supply of electricity is disconnected**
- requiring a specified process to be followed to **resolve disputes** between the electricity entity and customers as to the supply of electricity

Similarly, Section 24 which deals with the licenses authorising retailing, provides at subsections 24(2)(i), 24(2)(j) and 24(2)(k) that ESCOSA must make a licence authorising the retailing of electricity subject to conditions determined by ESCOSA:

- requiring the electricity entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) imposing minimum standards of service for customers that are at least equivalent to the actual levels of service for such customers prevailing during the year prior to the commencement of this section and take into account relevant national benchmarks developed from time to time, **and requiring the entity to monitor and report on levels of compliance with those minimum standards**; and
- requiring the electricity entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) **limiting the grounds on which the supply of electricity to customers may be discontinued or disconnected** and prescribing the process to be followed before the supply of electricity is discontinued or disconnected; and
- requiring a specified process to be followed to **resolve disputes** between the electricity entity and customers as to the sale of electricity;

Notably, Clause 2 of ESCOSA's *Compliance Systems and Reporting Energy Industry Guideline No. 4*⁶ deals with general principles under the regulatory framework. Clause 2.1.3 of the Guideline states:

The requirement for licensees to demonstrate compliance with applicable legislative and regulatory conditions derives primarily from the obligation placed on the Commission by the Electricity Act and the Gas Act to insert certain mandatory conditions into licences.

At Clause 2.1.5(c), the Guideline states 'sections 23(1)(n)(v) and 24(2)(i) also **mandate conditions requiring network and retail licensees respectively to monitor and report on levels of compliance with standards of service**'. SACOSS invites ESCOSA to identify how the proposed VTA model of flexible, reduced reporting requirements fits with and fulfils these mandatory conditions.

Section 28 of the ESC Act gives ESCOSA the power to make Codes or Rules relating to the conduct or operations of a regulated industry or regulated entities. As noted in the Draft Report, all small-scale electricity network and retailer's consumer protection and service

⁶ESCOSA, Compliance Systems and Reporting Energy Industry Guideline No. 4, p.3
<https://www.escosa.sa.gov.au/ArticleDocuments/614/20200729-Energy-ComplianceSystemsReporting%20-GuidelineNo4.pdf.aspx?Embed=Y>

obligations are currently contained within the licence itself. The current reporting requirements in relation to these obligations are also contained in the licence and include:

- number of complaints received by each off-grid retailer and distributor
- disconnections for non-payment of a bill made by each off-grid retailer
- the number and duration of interruptions of supply for each off-grid distributor, and
- licensees' compliance with their licence requirements.

As noted by ESCOSA in the Off-Grid Energy Networks Regulatory Performance Report for 2018-19:⁷

Monitoring these indicators allows the Commission to assess the adequacy of licensees' performance over time, determine whether enforcement action may be required and evaluate whether the consumer protections the Commission imposes as licence conditions sufficiently protect consumers.'

Given these protections and service standards are contained in individual licences, it follows that these important (although limited) obligations to assist customers experiencing payment difficulties and prohibit disconnection in certain circumstances may vary depending on the licensee. This may result in inconsistency in not only the protections customers are afforded under law, but also in the application of those protections. As part of the Harmonisation Project, SACOSS considers customer protections should be increased and reporting indicators and obligations should align with those protections to ensure accountability and demonstrate compliance.

SACOSS would support ESCOSA in making an Industry Code imposing minimum standards of service for customers of small-scale and off-grid electricity networks and retailers, but SACOSS considers ESCOSA must also require the licensee to 'monitor and report on levels of compliance with those minimum standards' in accordance with the Act. Further, the Act contemplates ESCOSA taking into account relevant national benchmarks, and SACOSS would encourage ESCOSA to look to the AER's network performance benchmarks and the National Energy Customer Framework (NECF) if a Code is made. Should ESCOSA develop an Industry Code containing service obligations and consumer protections for small scale network customers, SACOSS cautions that a move to reduce regulatory reporting requirements under the VTA model may make meeting the licensee's legal obligation to monitor and report on compliance in accordance with sections 24(2)(i) and 23(1)(n)(v) unachievable.

⁷ Energy Fact Sheet –Off-grid Energy Networks Regulatory Performance Report 2018-19
<https://www.escosa.sa.gov.au/ArticleDocuments/539/20200313-Energy-OffgridNetworksPerformanceReport2018-19-FactSheet.pdf.aspx?Embed=Y>

Section 25(1)(b) of the *Water Industry Act 2012*⁸ provides that ESCOSA must make a licence subject to conditions determined by ESCOSA requiring the water industry entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) relating to the following matters with respect to designated customers, or designated classes of customers:

- standard contractual terms and conditions to apply to the sale or supply (or the sale and supply) of designated services;
- minimum standards of service that take into account relevant national benchmarks developed from time to time;
- limitations on the grounds on which the supply of designated services may be discontinued or disconnected;
- the processes to be followed before designated services are discontinued or disconnected
- **requiring the water industry entity to monitor and report as required by the Commission on indicators of service performance** determined by the Commission

It is worth noting that Regulation 4 of the *Water Industry Regulations* provides a **consumer of retail services** is a designated customer. Under section 4 of the WI Act, a ‘consumer means a person supplied with retail services as a consumer or user of those services’. Therefore, tenants are included within the definition of customer for the purposes of the application of the Code provisions relating to disconnection of services, dispute resolution and access to Ombudsman Schemes.

The consumer protection and service obligations for Minor and Intermediate water retailers are contained within the *Water Retail Code (Minor and Intermediate Retailers) March 2015*.⁹ In addition to retail licences issued by ESCOSA,¹⁰ the following industry codes and guidelines (made under the ESC Act) provide specific information gathering provisions to support ESCOSA’s monitoring and reporting functions for minor and intermediate water retailers:

- *Water Industry Guideline No.1 Compliance System and Reporting July 2020*¹¹

⁸ <https://legislation.sa.gov.au/LZ/C/A/WATER%20INDUSTRY%20ACT%202012/CURRENT/2012.10.AUTH.PDF>

⁹ ESCOSA, *Water Retail Code (Minor and Intermediate Retailers) March 2015*
<https://www.escosa.sa.gov.au/ArticleDocuments/429/20150311-Water-WaterRetailCode-MIR-02.pdf.aspx?Embed=Y>

¹⁰ See the The Licence / Exemptions Register that lists all the licensed entities providing a water or sewerage ‘retail service’ in South Australia water licences in South Australia.
<https://www.escosa.sa.gov.au/industry/water/licensing/licence-register>

¹¹ ESCOSA, *Water Industry Guideline No 1 – Compliance System and Reporting*WG1/05, July 2020
<https://www.escosa.sa.gov.au/ArticleDocuments/616/20200724-Water-ComplianceSystemsReportingGuideline-WG1-05.pdf.aspx?Embed=Y>

- *Water Industry Guideline No.3 Regulatory Information requirements for Minor and Intermediate retailers July 2015*¹²

Water Industry Guideline No.3 contains operational performance reporting indicators relating to:

- Customer complaints
- Restrictions and legal action for non-payment
- Financial support measures
- Water infrastructure reliability
- sewerage infrastructure reliability
- statistical information

Specific reliability of supply reporting requirements for sewerage services for Minor and Intermediate retailers include:

- unplanned interruptions – number of events, customers affected and the average duration of interruptions
- number of mains’ breaks and chokes
- number of sewerage overflow events.¹³

The Guideline also contains information requirements for price monitoring and reporting. It’s worth noting that the price determination to apply to Minor and Intermediate retailers for the period 1 July 2013 to 30 June 2017¹⁴ requires Minor and Intermediate retailers to comply with the *National Water Initiative Pricing Principles* when charging for water and sewerage services and **report to** the Commission on how they are complying with those principles.

Overall, SACOSS supports the continuation of reporting requirements for Minor and Intermediate water retailers. SACOSS’ Discussion Paper¹⁵ referred to earlier highlights the

¹² ESCOSA, Water Regulatory Information Requirements For Minor And Intermediate Retailers water Industry Guideline No. 3 (Wg3/04), July 2015, <https://www.escosa.sa.gov.au/ArticleDocuments/398/20150727-Water-InformationRequirementsGuidelineNo3-MinorInte.pdf.aspx?Embed=Y>

¹³ ESCOSA, *Water Regulatory information requirements for Minor and Intermediate Retailers Water Industry Guideline No. 3 (WG3/04)*, p. 25 <https://www.escosa.sa.gov.au/ArticleDocuments/398/20150727-Water-InformationRequirementsGuidelineNo3-MinorInte.pdf.aspx?Embed=Y>

¹⁴ ESCOSA, Economic Regulation Of Minor And Intermediate retailers of Water And Sewerage Services Final Decision, June 2013 <https://www.escosa.sa.gov.au/ArticleDocuments/413/130627-EconomicRegulationMinorIntermediateRetailer.pdf.aspx?Embed=Y>

¹⁵ SACOSS, *Towards Equitable Access to Clean Water and Sanitation for All South Australians: SACOSS Discussion Paper*, August 2020

need for *more* data relating to the provision of essential services in regional remote Australia, not less. We consider the information gained from performance reporting meaningfully identifies areas of concern for customers (as outlined further below). This data is not just important for monitoring and compliance on a state level, it is also important to support transparency, accountability and to measure compliance against national and international obligations relating to equitable access to essential services in remote communities.

Proposal to introduce a Verified Trust and Accountability Model

The Draft Report states, ‘the proposed verified trust and accountability model is intended to provide a targeted, flexible approach to regulation’.¹⁶ If the VTA model is implemented, it will start from July 2021. ESCOSA has summarised the implementation of the model as follows:¹⁷

- *ESCOSA will assess and categorise licensees as Category A or Category B.*
- *Category A licensees will be those which ESCOSA assesses as meeting the ‘competent operation’ concept.*
- *The ‘competent operation’ concept means that ‘a licensee should be able to demonstrate to the Commission’s satisfaction that it is sustainably providing essential services that customers want, at the level of quality and reliability that they value, at a price that accounts for their willingness to pay, legislative requirements and affordability.’¹⁸*
- *All licensees will continue to be required to meet customer protection and service obligations (as defined in codes and licences).*
- *However, Category A licensees will only have to report annually on:*
 - *a list of office holders to assure the Commission that the licensee is a fit and proper person*
 - *connection and customer numbers, to be used primarily for calculating Commission licence fees (water) and EWOSA membership fees respectively*

https://www.sacoss.org.au/sites/default/files/public/200817_Equitable%20Access%20Water%20Sanitation%20Discussion%20Paper.pdf

¹⁶ESCOSA, Draft Inquiry Report, p.2 <https://www.escosa.sa.gov.au/ArticleDocuments/1003/20200807-Inquiry-SmallScaleNetwork-DraftReport.pdf.aspx?Embed=Y>

¹⁷ ESCOSA, Draft Inquiry Report, p.25 <https://www.escosa.sa.gov.au/ArticleDocuments/1003/20200807-Inquiry-SmallScaleNetwork-DraftReport.pdf.aspx?Embed=Y>

¹⁸ ESCOSA, Draft Inquiry Report, p.26 <https://www.escosa.sa.gov.au/ArticleDocuments/1003/20200807-Inquiry-SmallScaleNetwork-DraftReport.pdf.aspx?Embed=Y>

- *identification of any material changes to operations, and*
- *a statement of assurance that the licensee is complying with its obligations and engaging in a 'competent operation'.*
- *Tailored reporting requirements would apply to Category B licensees. These may reflect existing, or enhanced, reporting requirements on a licensee-by-licensee basis.*
- *Existing licensees, as well as any new service providers applying for a licence, will be assessed for competent operation, based on ESCOSA's experience with the licensee's performance.*
- *For new licensees, the assessment would take place as a part of the licensing process.*
- *Licensees will be subject to an ongoing process of verification of competent operation, with categorisation subject to change depending upon a licensee's behaviour in the context of the competent operation concept.*
- *The VTA model is likely to evolve with time, allowing the Commission to further reduce regulatory oversight for those licensees that consistently demonstrate competent operation.*

ESCOSA considers the benefits of this model for licensees will be 'a reduction in the nature and scope of regulatory reporting requirements, as compared to current levels', and the benefits for consumers will 'arise from the criteria themselves: they can have confidence that their provider has a competent operation'.¹⁹ SACOSS is seeking additional information from ESCOSA on the identified benefits for customers under the VTA model, and whether those benefits will be monitored and reported on.

ESCOSA's reasons for reducing regulatory reporting requirements are not entirely clear to SACOSS. ESCOSA has cited low levels of complaints with the current service provision, stating 'based on the number of customer complaints, the evidence suggests that customers generally do not appear to be expressing dissatisfaction with the service received'.²⁰ SACOSS considers that complaints data by itself should not be used to support evidence of compliance with customer service and consumer protection obligations, leading to a reduction in regulatory oversight (particularly given complaints are unlikely to occur in regions covered by the RAES scheme or where water is subsidised by a Community Service Obligation). Further, the negative impacts on licensees of the obligation to comply with the existing (relatively minor) annual reporting requirements are not clearly outlined in the Draft Report. SACOSS considers there is limited regulatory burden in maintaining annual reporting obligations for small scale networks, particularly given we understand the providers will continue to collect this data, they just won't be publicly reporting it. Overall,

¹⁹ ESCOSA, Draft Inquiry Report, p.2 <https://www.escosa.sa.gov.au/ArticleDocuments/1003/20200807-Inquiry-SmallScaleNetwork-DraftReport.pdf.aspx?Embed=Y>

²⁰ ESCOSA, Draft Inquiry Report, p.21 <https://www.escosa.sa.gov.au/ArticleDocuments/1003/20200807-Inquiry-SmallScaleNetwork-DraftReport.pdf.aspx?Embed=Y>

SACOSS does not consider there is sufficient evidence to support a reduction in reporting requirements for licensees.

The Draft Report does acknowledge that:

*'While...the evidence available is limited, this assessment suggests that, in general, licensees overall do not appear to be behaving to the detriment of their customers, when assessed against the current requirements of the codes and/or licence conditions. This may indicate that the Commission's current regulatory regime is assisting in achieving desired outcomes. However, that does not preclude changes, especially given the Inquiry's desired outcome of ensuring that any regulatory arrangements it administers remain targeted, efficient and appropriate.'*²¹

SACOSS notes the Inquiry's desired overarching outcome is to ensure the protection of the long-term interests of consumers, and we are not satisfied that reducing regulatory arrangements to make them 'targeted, efficient and appropriate' in the manner proposed will lead to, and result in, this outcome.

Importantly, there is also every possibility that over the next few years there will be a growth in the number of off-grid and small-scale network licensees as new services become available across a range of settings. If this growth occurs in the context of reduced transparency and monitoring, there is a considerable risk of poor licensee behaviour going unchecked.

If ESCOSA proposes to implement the VTA model, SACOSS strongly recommends that, at a minimum, it impose transitional arrangements whereby licensees continue to comply with their reporting obligations on consumer protections and service levels, alongside the introduction of the model, to allow for comparisons to be made with the existing model, and that a comparative review of the arrangements is undertaken before any actual transition to a stand-alone VTA.

SACOSS also considers that off-grid networks supplying communities affected by the Future Sustainability Project should be subject to additional reporting obligations during the roll-out of that program.

Current performance of small-scale and off-grid networks

²¹ ESCOSA, Draft Inquiry Report, p.22 <https://www.escosa.sa.gov.au/ArticleDocuments/1003/20200807-Inquiry-SmallScaleNetwork-DraftReport.pdf.aspx?Embed=Y>

Minor and Intermediate Retailers

ESCOSA's *Minor and Intermediate Retailers Regulatory Performance Report for 2018-19* was published in June 2020.²² The performance reporting requirements for Minor and Intermediate retailers (*Water industry Guideline No. 3*) require those retailers to provide an operational report to ESCOSA every 12 months (in line with the financial year). Collectively, Minor and Intermediate retailers provide drinking water service to approximately 5,600 customers and sewerage or community wastewater services to approximately 99,100 customers in the state.

The 2018-19 Performance Report for Minor and Intermediate retailers identified potential issues relating to pricing, water restrictions and service levels. For example, in 2018-19, the annual residential drinking water bills based on an annual consumption of 200 kilolitres (kL) for drinking water services ranged from \$662 (Clare and Gilbert Valleys Council) to \$1,273 (District Council of Ceduna). It is important to point out that there are varied arrangements in how water is paid for among remote Aboriginal communities in South Australia, with some Aboriginal communities subsidised under a Community Service Obligation. As with the RAES Scheme, in communities where water is subsidised, it is very unlikely there would be complaints or water restrictions, and this should be taken into consideration when looking at the overall data.

In 2018-19 there was a reported increase in the number of legal actions and water restrictions (939 in total) to recover debts, compared to 908 in the previous year (in contrast, over the same period, SA Water reported a total of 29 residential restrictions and 9 residential legal actions).²³ As we note in our Discussion Paper (referred to above) 'given the difference in the number of customers serviced by SA Water and Minor and Intermediate retailers,²⁴ this data points to a significant issue for customers of Minor and Intermediate retailers. As Minor and Intermediate retailers are largely regional councils and private water providers, the contrasting data on water restrictions and legal actions may point to issues of water affordability in regional locations, and call into question issues of

²² ESCOSA, *Minor and Intermediate Retailers Regulatory Performance Report 2018-19*, <https://www.escosa.sa.gov.au/ArticleDocuments/547/20200702-Water-RegulatoryPerformanceReport-2018-19-MIR.pdf.aspx?Embed=Y>

²³ Essential services Commission of SA, *SA Water Regulatory performance – times series data, 'restrictions and legal actions applied for non-payment'*, see: <https://www.escosa.sa.gov.au/industry/water/regulatory-reporting/regulatory-performance-reports>

²⁴ SA Water provides drinking water and sewerage services to approximately 1.7 million South Australians, 66 Minor and Intermediate Retailers provide drinking water services to approximately 5,600 customers and sewerage services to approximately 99,100 customers.

equity, compliance, and consumer protections, which are a crucial part of the water affordability story’.

The issue of debt is further complicated by the billing mechanisms used by Local Governments where one notice is typically sent to a customer that includes rates, sewage, water and other service charges. As noted in the Report prepared by Jeanette Gellard and Kerri Muller (referred to above):

‘In most instances Council rates notices do not differentiate between rates debt and other debt. This means that Councils cannot distinguish what part/s of their service provision are exacerbating customers’ hardship (e.g. high recovery costs for installing new sewage infrastructure vs. rates (typically the greatest cost on the bill) vs. cost of providing potable/non-potable water).’²⁵

SACOSS suggests this reinforces the importance of ensuring Minor and Intermediate retailers continue to separately report on the provision of water and sewerage services.

In 2018-19, twelve small-scale sewerage operators reported a total of 144 unplanned interruptions to sewerage operations, in addition to 24 operators reporting 435 main breaks and chokes. In total, the unplanned interruptions and main breaks for sewerage systems were up from previous years, which may point to ageing infrastructure and questions around cost recovery and expenditure. This data also calls into question the issue of whether service standards relating to reliability should be imposed on Minor and Intermediate retailers. On this point, it is worth noting that in ESCOSA’s price determination for Minor and Intermediate retailers,²⁶ it was decided not to introduce any service standards or targets for Minor and Intermediate Retailers during the regulatory period. Rather, ESCOSA determined to focus on the data provided through *Water Guideline No.3* for the initial regulatory period, and then develop service standards in future periods on the basis of that data.

Overall, SACOSS is very concerned the reduction in reporting requirements for Minor and Intermediate water retailers under the VTA model may actually work to obscure affordability issues and water access and supply inequities in South Australian communities, particularly in regional and remote communities.

²⁵ Jeanette Gellard and Kerri Muller Innovative Influences & Kerri Muller NRM Pty Ltd, *Dealing With Rural Water Customers In Financial Difficulty*, March 2020, p. <https://www.sacoss.org.au/sites/default/files/public/Supporting%20Rural%20Customers%20in%20Financial%20Difficulty%20-%20Final%20Report%20Jan%202020.pdf>

²⁶ ESCOSA, Economic Regulation Of Minor And Intermediate retailers of Water And Sewerage Services Final Decision, June 2013 <https://www.escosa.sa.gov.au/ArticleDocuments/413/130627-EconomicRegulationMinorIntermediateRetailer.pdf.aspx?Embed=Y>

Off-Grid Energy networks

ESCOSA's Off-Grid electricity networks performance report 2018-19²⁷ provides a valuable overview of the number of off-grid energy networks in regional South Australia, the areas which they cover, and the number of connections. In 2018-19, 6,420 customers were supplied through off-grid electricity networks.²⁸ The Performance Report identifies:

- an increase in unplanned electricity supply interruptions from 160 in 2017- 18 to 184 in 2018- 19, noting that 'the majority of the unplanned interruptions (112) were reported in areas in which Cowell Electric Supply Pty Ltd provides electricity distribution and retail services'
- a fall in the number of disconnections reported for non-payment of a bill from 65 in 2017-18 to three in 2018-19 (as result of the District Council of Coober Pedy's hold on disconnections due to a failure to comply with various licence obligations relating to billing, payment arrangements and disconnection processes).
- 14 customer complaints in 2018-19 reported by Off-grid retailers and distributors, with eleven of those complaints reported by the District Council of Coober Pedy.

When analysing the performance of off-grid energy networks on the basis of this data, it is extremely important to take into consideration the impact of the State Government's RAES Scheme. The South Australian government currently subsidises the cost of electricity for communities supplied under the **RAES State / Independent Operator**²⁹ and **RAES Aboriginal Communities**³⁰ schemes. Under the RAES State / Independent Communities Scheme,

²⁷ ESCOSA, Off-grid electricity networks performance report 2018-19
<https://www.escosa.sa.gov.au/ArticleDocuments/539/20200313-Energy-OffgridNetworksPerformanceReport2018-19-FactSheet.pdf.aspx?Embed=Y>

²⁸ESCOSA, Off-grid electricity networks performance report 2018-19
<https://www.escosa.sa.gov.au/ArticleDocuments/539/20200313-Energy-OffgridNetworksPerformanceReport2018-19-FactSheet.pdf.aspx?Embed=Y>

²⁹ See webpage:
https://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remot_e_area_energy_supply/raes_communities

³⁰ See webpage:
https://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remot_e_area_energy_supply/raes_aboriginal_communities

around 2,400 customers in the following 13 remote towns are provided with power subsidised by the State Government:

- The South Australian government owned infrastructure:
 - Blinman
 - Cockburn
 - Glendambo
 - Kingoonya
 - Manna Hill
 - Marla
 - Marree
 - Nundroo
 - Oodnadatta
 - Parachilna
- Independent owner-operators:
 - Andamooka
 - Coober Pedy
 - Yunta.

Under the RAES Aboriginal Communities Scheme, the State Government says around 1,000 customers and consumers are provided with subsidised power, although ESCOSA's Performance Report identifies Cowell Electric supplies 1,510 connections at the APY lands, MT lands, Yalata on ALT, Oodnadatta, Parachilna, Marla, Marree, Nundroo, Glendambo, Kingoonya, Mannahill, Blinman, and Cockburn. According to the State Government website, the RAES Aboriginal Communities Scheme applies in the following communities:

- Amata
- Iwantja (Indulkana)
- Kaltjiti (Fregon)
- Mimili
- Pukatja (Ernabella)
- Umuwa
- homelands connected to the Central Power House grid, including Yunyarinyi and Watinuma.

Power stations are also located within the following communities:

- Pipalyatjara, also servicing Kalka (APY Lands)
- Murpatja, also servicing Kanpi and Nyapari (APY Lands)
- Yalata (ALT)
- Oak Valley (MT).

Given electricity is subsidised for residents of these communities, it would be safe to assume that there would be **no complaints or disconnections for inability to pay** reported by the retailers supplying those communities. It is therefore not surprising that the District Council

of Coober Pedy is the subject of most of the complaints and has been responsible for the majority of disconnections for non-payment, given customers supplied with energy in that community are required to pay.

That said, the State Government has commenced its 'Future Sustainability' Project,³¹ which involves:

- The installation of Smart Meters to improve energy efficiency and service delivery.
- The introduction of more flexible payment options, including the development of a customer pre-payment framework, to reduce the level of customer indebtedness.
- The staged introduction of electricity charging for residents in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, Oak Valley and Yalata.

Tariffs for residential customers in community housing in the APY lands, Oak Valley and Yalata will be phased in from July 2021. Therefore, under current timetables the proposed VTA model and the introduction of 'user-pays' in remote communities will commence at the same time – in July 2021. This is of great concern to SACOSS.

The basis upon which ESCOSA has developed the VTA model would appear to be framed around the presence of limited complaints data – data that is not genuinely reflective of the actual experience of many customers in remote communities. Customers who currently do not pay for electricity are unlikely to complain or be disconnected for non-payment. SACOSS is concerned the implementation of a regime involving reduced reporting requirements and more 'flexible' regulation will potentially result in less transparency and accountability as well as lead to increased debt and disconnection for a group of extremely vulnerable customers.

In this context, SACOSS considers there should be increased consumer protections and additional reporting requirements introduced for off-grid energy networks supplying customers in remote communities, particularly during the introduction of 'user pays' under the Future Sustainability program. Additional consumer protections should include hardship provisions, obligations to offer Centrepay, protection from disconnection if receiving concessions or grants, protection from disconnection if on a hardship program. Additional performance indicators should also cover the number of customers in debt, the number of customers on payment plans, and the number of customers receiving concessions and using Centrepay.

³¹ See webpage:

https://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remot_e_area_energy_supply/future_sustainability

The Future Sustainability Project makes it even more vital that there is visibility of the impact of the move to 'user pays' and pre-payment meters on consumers. We are expecting to see an increase in consumer debt, increases in disconnections and increases in hardship. Without publicly available data, it will be particularly difficult for government departments, consumer organisations and others to be able to identify the issues that need addressing. This may lead to serious consequences for consumers, including disconnection from electricity or reduced access to safe drinking water and sanitation in remote and extremely harsh environments.

MoneyMob Talkabout operates a money support hub in the APY Lands, with a permanent base at Pukatja. MoneyMob also provides outreach services to all communities across the APY Lands, as well as Oodnadatta. In its Annual Report for 2018-19³², the Managing Director, Carolyn Cartwright, noted that:

'In 2018-2019, we recorded approximately \$862,113.71 worth of debt with 122 individual clients (only two of whom were non-Anangu). This equates to an average of \$7,066.50 per client. While this might not sound like much to those of us with a mortgage, bear in mind that the 2016 Census recorded the median weekly personal income in the APY Lands as \$283 – or \$14,716 per year. A personal debt of \$7,066.50 would equate to around 48% of that annual income, and leave precious little to live on. That's one of the reasons why, in our Strategic Plan 2019-2024, we have set a (modest) goal of reducing client debt by 5% on the baseline we find in 2019/20. The challenge is now before us, to find long-term sustained ways of achieving debt reduction for Anangu.'

The Managing Director's report also noted that MoneyMob's 'data revealed Anangu continue to need significant support to interact with Centrelink', saying that more than 31% of Anangu seen in the 2018-19 financial year (139 of the 441 individual clients) needed some assistance to navigate the system. At the moment, the biggest category of debt for Anangu is telco debt, however, as outlined above, energy consumers in the APY Lands currently do not pay for electricity. Once the introduction of tariffs for energy in the APY Lands commences mid-next year, energy debt or self-disconnection may also become a more significant problem.

In these circumstances, SACOSS needs to be confident that energy consumers supplied by small scale and off-grid licensees are afforded the protections under the licence to ensure the ongoing supply of electricity, and the additional support of payment options including Centrepay. We consider maintaining and increasing reporting requirements, as opposed to

³² See website: <https://moneymob.org.au/wp-content/uploads/2020/05/MoneyMob-Annual-Report-2018-2019.pdf>

reducing reporting requirements will be central to understanding the customer's experience during this transition.

Relevantly, Social Policy Manager Michael Klerck from Tangentyere Council Aboriginal Corporation (TCAC) in the Northern Territory has advised SACOSS that households with pre-payment meters on the Town Camps; regional centres (i.e. Darwin, Katherine, Tenant Creek and Alice Springs) and the National Partnership Agreement for Remote Housing NT Footprint with Prepayment Meters (PPM) experience a high number of involuntary self-disconnections due to poverty. TCAC has started to gain **consent as a third party** to access power data including the kWh of consumption, cost of consumption, the number of involuntary self-disconnects and the duration of involuntary self-disconnections for the Alice Springs Town Camps as a case study, and has advised SACOSS that to date the average household will have **51 involuntary self-disconnections per year with a combined duration per household of 238 hours per year.**³³ SACOSS suggests a similar outcome in the APY Lands would be devastating for the community and would be incompatible with ESCOSA's primary objective of protecting the long-term interests of South Australian energy consumers.

Increased Consumer Protections for off-grid energy customers

ESCOSA's *Off-Grid Energy Networks Regulatory Performance Report 2018-19*³⁴ states that 'customers of off-grid electricity licensees are afforded similar consumer protections to customers of on-grid energy licensees'. However, SACOSS suggests that customers of off-grid licensees are afforded much more limited consumer protections than those afforded to on-grid customers under the *National Energy Customer Framework*³⁵ (NECF).

As outlined above, the consumer protections afforded to customers of off-grid electricity networks are contained in the licence of the individual retailer / network. As set out in ESCOSA's Fact Sheet on Off-Grid Energy Networks Regulatory Performance, the consumer protections and service standards contained in the various licences of off-grid energy suppliers generally extend to:

³³ See also TCAC's submission and supplementary submission to the Homelessness Inquiry (#165) that addresses the issue of energy insecurity on the Town Camps and other parts of the NT https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/HomelessnessinAustralia/Submissions

³⁴ Energy Fact Sheet –Off-grid Energy Networks Regulatory Performance Report 2018-19 <https://www.escosa.sa.gov.au/ArticleDocuments/539/20200313-Energy-OffgridNetworksPerformanceReport2018-19-FactSheet.pdf.aspx?Embed=Y>

³⁵ The NECF is comprised of the National Energy Retail Law, the National Energy Retail Regulations and the National Energy Retail Rules. The NECF provides energy-specific consumer protections and operates alongside the Australian Consumer Law.

- *Customer supply contracts – requirements to develop standard terms and conditions on which it will connect customers’ supply and sell and supply electricity.*
- *Customer dispute resolution procedures – requirements to have procedures in place, based on AS ISO 10002-2006 ‘Customer Satisfaction - Guidelines for Complaints Handling in Organisations’.*
- *Supply obligations – requirements to maintain the quality of supply and minimise interruptions, provide notice for planned interruptions and connect customers within agreed timeframes.*
- *Customer service obligations – requirements to provide regular bills, specific information in bills and conduct regular meter readings.*
- *Dealing with billing disputes (including requirements relating to undercharging and overcharging), minimum payment methods, offering flexible payment arrangements and rules relating to security deposits.*
- *Disconnections and restoration of supply – obligations around disconnecting customer supply for non-payment, prohibitions on disconnection and timeliness for restoration of supply.*

There are no hardship provisions in off-grid energy licences. There is no obligation to advise the customer about concessions or rebates. There is no obligation to offer Centrepay, and the protections from disconnection are much more limited than under the NECF. Customers of on-grid energy retailers are able to access the benefits of competition in paying for energy and are also afforded the following protections under the NECF (as summarised by the Australian Energy Market Commission):³⁶

- **Payment difficulties:** retailers must provide, to hardship customers or other residential customers experiencing payment difficulties, information about the availability of government funded energy charge rebate, concessions or relief schemes.
- **Shortened collection cycles:** retailers may place a small customer on a shortened collection cycle, unless the customer is experiencing payment difficulties.
- **Payment plans:** a retailer must offer and apply payment plans for hardship customers and customers experiencing payment difficulties. A retailer must comply with the requirements on how to offer and when to offer payment plans.
 - The payment plan must consider:
 - the customer's capacity to pay
 - any arrears owing by the customer

³⁶ See the website of the Australia Energy Market Commission (AEMC) <https://www.aemc.gov.au/regulation/energy-rules/NECF-ACL/mapping/additional-protections>

- the customer's expected energy consumption needs over the following twelve months
 - including an offer of advance payments or in arrears by instalment payments.
 - Information: a retailer must inform the customer of certain information about the plan and payment instalments.
- **Debt recovery:** retailers must not commence proceedings for recovery of a debt if the customer is complying with a payment plan or other payment arrangement or the retailer has failed to comply with the requirements of its hardship policy, payment plans and assistance for customers experiencing hardship or payment difficulties.
- **Specific limitations of disconnection for not paying the bill:** once a customer (hardship customer or residential customer) informs the retailer that the customer is experiencing payment difficulties, a retailer must not arrange the de-energisation of the customer's premises for not paying the bill. It may only arrange the de-energisation if the retailer has offered the customer 2 payment plans in the previous 12 months and:
 - the customer agreed to neither of them
 - the customer has agreed to a plan but it has been cancelled due to non-payment.
- **Hardship policy:** retailers must develop and maintain a hardship policy for residential customers that must be approved by the AER and be publicly available on the retailer's website. Any variation to a hardship policy is subject to the approval of the AER.
 - *Obligation to inform consumers:* the NERL requires that where it appears to the retailer that a customer did not pay its energy bill due to hardship, the retailer must inform the residential customer the availability of the policy. A retailer must inform a hardship customer of the retailer's hardship policy as soon as practicable after the customer is identified as a hardship customer. A retailer must also provide the hardship customer with a copy of the customer hardship policy on request and at no expense.
 - *Policy requirements:* a retailer's customer hardship policy (or variation) submitted to the AER must comply with AER's Hardship Policy Guideline
 - *Disconnection as last resort:* a retailer must give effect to the general principle that de-energisation (disconnection) of the premises of a hardship customer due to the inability to pay is a last resort option.
 - *Contractual consistency:* the terms of a market retail contract have no effect to the extent they are inconsistent with the application of the retailer's hardship policy to the relevant customer.

- *Payment by Centrepay*: any standard retail contract offered to a hardship customer must have Centrepay available as a payment option.
- *Waiver of late payment fee*: a retailer must waive any fee payable for late payment under a customer retail contract with a small customer who is a hardship customer.

As noted earlier, SACOSS would welcome the opportunity to engage with ESCOSA on developing an Industry Code containing consumer protections and service standards to apply to small-scale and off-grid licensees, noting the requirement under the Electricity Act for licensees to report on those obligations.

Also, given the current roll-out of prepayment meters in the APY Lands, SACOSS is expecting ESCOSA to undertake a review of its Prepayment Meter System Code³⁷ (2005). ESCOSA's 2005 Final Draft Decision on a Pre-payment Meter System Code³⁸ raises still relevant concerns about the impact of pre-payment meters on consumers including:

- 'Potential for actual rates of disconnection to be hidden from support services and regulatory scrutiny
- The potential lack of safety net for prepayment meter customers – hardship policies, time-to-pay and other matters dealt with by the Energy Retail Code (now the NECF) for quarterly billed customers'³⁹

SACOSS is seeking ESCOSA carefully consider the implications of pre-payment meters and self-disconnections on consumers in the APY Lands as part of a review of the Prepayment Meter System Code. SACOSS strongly supports the implementation of robust consumer protections for prepayment meter customers, with corresponding prescriptive reporting and monitoring obligations.

³⁷ ESCOSA, Prepayment Meter Code 2005 <https://www.escosa.sa.gov.au/ArticleDocuments/805/050518-PrepaymentMeterSystemCode.pdf.aspx?Embed=Y>

³⁸ ESCOSA's Final Draft Decision on a Pre-payment Meter System Code, 2005, https://www.escosa.sa.gov.au/ArticleDocuments/805/050308-PrePaymentMeter_CombDraftFinalDec_Code.pdf.aspx?Embed=Y

³⁹ ESCOSA's Final Draft Decision on a Pre-payment Meter System Code, 2005, p.5 (see also pages 6-7) https://www.escosa.sa.gov.au/ArticleDocuments/805/050308-PrePaymentMeter_CombDraftFinalDec_Code.pdf.aspx?Embed=Y