



**SACOSS' Submission to the
Essential Services Commission of South Australia on the
SA Water Regulatory Determination 2024: Draft Decision**

20 March 2024

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Introduction

The South Australian Council of Social Service (SACOSS) is the peak representative body for non-government, non-for-profit 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 disadvantage 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 low-income consumers in South Australia experiencing disadvantage. With a strong history of community advocacy, SACOSS and its members aim to improve the quality of life for people disadvantaged by the inequities in our society.

SACOSS has a long-standing interest in the delivery of essential services. Our research shows that the cost of basic necessities like water and electricity impact greatly and disproportionately on people on low incomes and experiencing disadvantage.

SACOSS would like to thank the Essential Services Commission of South Australia (ESCOSA) for the opportunity to comment on its *SA Water Regulatory Determination 2024: Draft Decision*, dated January 2024 (the Draft Determination), that sets out the consumer protection measures, revenue allowances and performance monitoring proposed to apply to SA Water over the four years from 1 July 2024.

We refer ESCOSA to the following previous submissions made by SACOSS in relation to the SA Water Regulatory Determination 2024-28 (SAWRD24) process:

- SACOSS, *Submission on SA Water's 2024-28 Regulatory Business Proposal*, 4 October 2023,¹ and
- SACOSS, *Submission on the Water Retail Code and the Monitoring and Evaluating Performance Framework*, 31 July 2023,²

This submission builds on those previous submissions and provides further comment on:

- Overview of the SAWRD24 Draft Determination
- Issues with the Section 6 Ministerial Directions
- Capital expenditure
- Operating expenditure

¹ SACOSS, [Submission to the Essential Services Commission of South Australia on SA Water's 2024-28 Regulatory Business Proposal](#), 4 October 2023

² SACOSS, [Submission on the Water Retail Code and the Monitoring and Evaluating Performance Framework](#), 31 July 2023

- Regulatory Asset Base
- Rate of Return
- Consumer Protections
- Monitoring and Reporting
- Consumer engagement.

We have provided a brief summary of submissions, below.

Summary of Submissions

In summary, SACOSS makes the following submissions and seeks clarification from ESCOSA on the following questions and issues relating to the Draft Determination:

Issues with Section 6 Ministerial Directions, Capex and Opex

- Acknowledging the Section 6 Ministerial Directions for SAWRD24 have not yet been issued by the Minister, SACOSS is calling on the State Government to direct expenditure that is 'determined by the Commission to be efficient', in line with Clause 4.8.2(b) of the *Treasurer's Pricing Order* (issued on 5 February 2024).³
- SACOSS is seeking ESCOSA be clear and transparent in its Final Determination on the impact of Ministerial Directions, with specific reference to the following matters:
 - increasing Water Planning and Management costs over several regulatory periods
 - the impact of capital expenditure directed by the Minister on SA Water's Regulatory Asset Base (RAB) for SAWRD20 and SAWRD24, and projected long-term costs to consumers in future regulatory periods
 - clear identification of expenditures that should form part of the RAB or be excluded from the RAB, e.g. developer contributions / Tea Tree Gully capex and opex
 - tables showing the total revenue allowance with separate rows for scrutinised expenditure noted as 'prudent and efficient', and unscrutinised expenditure included as a result of Ministerial Directions
 - deliverability risks associated with the Ministerial Direction projects.
- SACOSS is seeking ESCOSA's view on whether the operating cost impact of Ministerial Directions has resulted in the exclusion of other projects supported through consumer engagement (e.g. operating expenditure associated with expanding the Wider World program and direct billing for tenants).
- With only a selection of the proposed operating expenditures examined for prudence and efficiency, can consumers be confident they will be paying no more than is necessary in operating expenditure for the safe and reliable delivery of water?
- Are the 62 opex initiatives of less than \$1m each efficient, or could these services be delivered within SA Water's current operating expenditure budget?

SA Water's Regulatory Asset Base

- For SAWRD24, SACOSS would like to see historical analysis of the opening and closing RABs for previous regulatory periods, as well as an explanation of the revising down of the RAB for SAWRD20 due to the findings of the *Inquiry into Water Pricing*⁴ (completed in 2019) and the *Treasurer's Pricing Order in 2020*, and the impact of the capital cost of Ministerial Directions on an increasing RAB over SAWRD20 and SAWRD24.

³ [Treasurer's Pricing Order for the Regulatory Period 1 July 2024-30 June 2028](#), 5 February 2024

⁴ Owens, Lewis: [Abridged Advice, Final Report of the SA Inquiry into Water Prices](#), June 2019.

Rate of Return

- For future regulatory determinations SACOSS is seeking ESCOSA obtain independent expert analysis and advice on setting the RoR.

Consumer Protections

- SACOSS is seeking ESCOSA include the following expectations within the Final Determination:
 - SA Water develop a long-term strategy to deal with the issues of concern to tenants, and
 - SA Water add housing tenure as a 'field' for their customer records as part of populating their customer management system. This would then assist SA Water to more effectively communicate with tenants in the future with virtually no cost as this approach builds on existing assets and customer conversations.
- SACOSS strongly supports ESCOSA's Draft Decision to require SA Water to:
 - establish policies and processes for early identification of residential customers who may be experiencing payment difficulties, and
 - a requirement for SA Water to employ best endeavours to contact those customers to provide information about the available assistance.
- SACOSS does not consider the reasons provided by SA Water outlining the benefits of charging for paper bills are sufficient to support a decision to change clause 4.1.4.
- SACOSS strongly opposes SA Water's proposal and ESCOSA's Draft Determination to remove the requirement to provide paper bills at no charge at clause 4.1.4 of the *Water Retail Code – Major Retailers* (the Code) and to establish a new clause 18.4 in the Code, allowing SA Water to decide whether or not to charge customers for paper bills.
- SACOSS strongly supports the inclusion of Family Violence provisions within the Code, and considers the additional consumer protections and processes for victim survivors of family violence proposed by ESCOSA are extremely important and will bring SA Water into line with other providers of essential services.

Monitoring and Reporting

- SACOSS strongly supports robust regulatory oversight of SA Water's obligations, particularly consumer protection obligations under the Code. We consider public reporting on all consumer protection obligations should be mandatory, and ESCOSA should interrogate the relevant data to identify issues of compliance.
- SACOSS supports ESCOSA's Draft Determination to embed SA Water's public reporting requirements in the Code.
- SACOSS is seeking assurances from ESCOSA that the reporting requirements relating to SA Water's consumer protection obligations, namely those included in *Proforma OP2.2 – Financial Measures* contained in *Guideline No. 2* as well as the additional hardship and debt indicators will be included in the mandatory public reporting requirements, and will be robustly monitored, reported on and enforced by ESCOSA.

- SACOSS strongly supports ESCOSA’s Draft Decision to include a definition of ‘bill debt’ and new hardship reporting indicators within *Guideline No.2*
- SACOSS strongly submits ESCOSA include the following new additional indicators relating to water bill debt:
 - The number of residential customers with water bill debt (not in a hardship program)
 - The average level of water bill debt for residential customers (not in a hardship program).
- SACOSS expects ESCOSA to require SA Water to implement appropriate systems and to provide data from the 2020-24 period on payment plan and hardship customers, as it was required to do. Where there are failures, we expect ESCOSA to investigate and act to address any breaches of Code and licence obligations. Overall, we expect a provider of an essential service to be subject to clear, robust, mandatory reporting requirements, linked to compliance and enforcement regimes.

Consumer engagement

- SACOSS does not believe there has been sufficient effective interaction with consumers and consumer advocates in the development of specific aspects of the regulatory proposal for ESCOSA to conclude that there is robust consumer support for the SA water proposal for 2024-28. Extensive ‘engagement’ on broad themes does not necessarily translate into consumer support for specific expenditure proposals.
- SA Water’s performance in responding to affordability and equitable access to water remains poor and is not adequately addressed in their proposal for 2024-28.
- SACOSS considers SA Water needs to undertake ongoing engagement with customers and informed customer advocates, and to check their analysis with customers, advocates and stakeholders by genuinely listening to alternative views.

Overview of the SA Water Regulatory Determination 2024 Draft Decision

ESCOSA’s Draft Determination revises down SA Water’s allowed expenditure for 2024-28 from SA Water’s Regulatory Business Proposal (RBP24) by \$416m, from \$5,217m to \$4,801m. ESCOSA has undertaken an analysis of samples of expenditure proposals (both operating and capital expenditure proposals) and scrutinised those proposals for prudence and efficiency, identifying savings and excluding some proposals on the basis of inefficiency.

Table 1.1: Prudent and efficient expenditure benchmarks for SAWRD24 compared with SA Water’s proposal terms (\$Dec22)

| | SA Water’s proposal for SAWRD24 (\$m) | Draft Determination SAWRD24 (\$m) | Variance (\$m) | Variance (%) |
|-----------------------|---------------------------------------|-----------------------------------|----------------|--------------|
| Operating expenditure | 2,386 | 2,272 | -114 ↓ | -5% ↓ |
| Capital expenditure | 2,831 | 2,529 | -302 ↓ | -11% ↓ |
| Total | 5,217 | 4,801 | -416 ↓ | -8% ↓ |

Figure 1: Prudent and efficient expenditure benchmarks for SAWRD24 compared to A Water’s proposal⁵

ESCOSA states:⁶

‘The draft positions are consistent with stakeholders’ submissions that some of the expenditure proposed by SA Water was neither justified nor consistent with customers’ priority that prices should be kept as low as possible while delivering on the service levels valued by customers.’

As outlined in our previous submission on SA Water’s Regulatory Business Proposal (SAW RBP), affordability is a key concern for SACOSS and South Australian households, and we commend ESCOSA for acknowledging and being guided by customers’ priority that prices should be kept as low as possible at a time of extreme cost of living pressures.

That said, ESCOSA’s Draft Determination still represents a significant increase in benchmark expenditure from the previous regulatory period (SAWRD20), with a 34% increase in capital expenditure, a 2% increase in operating expenditure and a 16% increase in total expenditure, as reflected on Figure 2 below:

⁵ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 4

⁶ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 3

Table 1.3: Prudent and efficient expenditure benchmarks for SAWRD24 compared with SAWRD20 (\$Dec22)

| | Final SAWRD20 (\$m) | Draft Determination SAWRD24 (\$m) | Variance (\$m) | Variance (%) |
|-----------------------|---------------------|-----------------------------------|----------------|---------------|
| Operating expenditure | 2,237 | 2,272 | +35 ↑ | +2% ↑ |
| Capital expenditure | 1,885 | 2,529 | +644 ↑ | +34% ↑ |
| Total | 4,122 | 4,801 | +679 ↑ | +16% ↑ |

Figure 2: Prudent and efficient expenditure benchmarks for SAWRD24 compared with SAWRD20⁷

Using the building blocks cost model, ESCOSA has calculated the draft revenue caps as the ‘forecast total efficient costs of providing water and sewerage retail services’ for SAWRD24 to be:

- \$3,550 million (\$Dec22) for water retail services, and
- \$1,785 million (\$Dec22) for sewerage retail services.

Overall, the revenue caps for SAWRD24 represent a:⁸

- **22% increase for water retail services** compared with those determined in SAWRD20, and
- **28% increase for sewerage retail services** compared with those determined in SAWRD20

SACOSS is particularly concerned about the increasing costs of essential services in South Australia, and the significant impact on low-income households and people experiencing vulnerability or disadvantage. Retail water and sewerage services are the most essential of essential services, and we know the cost of these services disproportionately impacts low-income households in this State. We strongly believe South Australian water consumers should be paying no more than is necessary for the safe and reliable delivery of water and sewerage retail services. An independent regulatory determination process should ensure the long-term interests of South Australian water consumers are achieved, along with complete transparency around what households are actually paying for in their water bills.

Of considerable concern is a 16% (real) increase from the 2020 determination to the total allowance and the substantial increase of a 34% increase in capital expenditure. We do not consider this increase to be prudent at a time of substantial cost of living pressures on a large

⁷ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 5

⁸ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 5

number of SA families and small businesses. We also do not think that this level of cost increase has been adequately tested through meaningful engagement with SA Water customers.

We understand that the rate of return is an important element in this increase, but it is not the only factor, and is pegged to increased capital expenditure being added to the Regulatory Asset Base (RAB). We also note the South Australian Government draws owner benefits through rate of return increases, as the South Australian Government's actual borrowing rates are lower than the 'market' rates applied by ESCOSA and other economic regulators. Given there is a windfall gain for the SA government from a higher weighted average cost of capital (WACC), it is not unreasonable for some of this to be shared with SA Water customers.

In circumstances where a significant percentage of the increases in expenditure come as a direct result of expected Directions to be issued by the Minister for Environment and Water under section 6 of the *Public Corporations Act 1993*⁹ (the Ministerial Directions), SACOSS is concerned about the *total* allowed expenditure for water retail services and sewerage retail services for 2024-28 being represented within the Draft Determination as 'prudent and efficient' expenditure. We do not consider this to be a transparent or accurate representation of 'prudent and efficient' expenditure, in circumstances where the total amount has been heavily influenced by the cost of section 6 Ministerial Directions which have not been assessed for prudence and efficiency.

SACOSS is calling on ESCOSA to clearly identify up front within the Final Determination what costs have been assessed as prudent, efficient, realistic and in the long-term interests of consumers, and what costs have been directed by the Minister and not scrutinised for prudence or efficiency. We are calling for, at the very least, transparency around what water consumers will be paying for in the 2024-28 regulatory period; this includes a clear analysis of the long-term impact on the Regulatory Asset Base and allowed revenue of unscrutinised expenditures directed by the Minister. Consumers have a right to know what they are paying for (both now and in the future), particularly when expenditure is included in regressive water bills to pay for government priorities.

We acknowledge the Section 6 Ministerial Directions have not yet been issued by the Minister, and we are calling on the State Government to direct expenditure that is 'determined by the Commission to be efficient', in line with Clause 4.8.2(b) of the Treasurer's Pricing Order (issued on 5 February 2024).¹⁰ Given the regressive nature of water bills, coupled with extreme and increasing cost of living pressures, it is vital to ensure that the total expenditure benchmarks determined by ESCOSA, including expenditure directed by the Minister (to be recovered from all South Australian water consumers over 2024-28 and into the future), is prudent, efficient, realistic and no more than is necessary for the safe and reliable delivery of water and sewerage services.

⁹ [Public Corporations Act 1993](#), Section 6

¹⁰ [Treasurer's Pricing Order for the Regulatory Period 1 July 2024-30 June 2028](#), 5 February 2024

Issues with Section 6 Ministerial Directions

SACOSS repeats and reaffirms our previous submissions on Section 6 Ministerial Directions contained in our Submission to ESCOSA on SA Water’s RBP24, and we acknowledge ESCOSA has identified the impact of Ministerial Directions on the integrity of the regulatory process as a key theme from submissions in its Draft Determination.¹¹

In line with previous Pricing Orders, the Treasurer’s Pricing Order published on 5 February 2024 (which applies to the SAWRD24 period), requires ESCOSA to adopt or apply the *National Water Initiative (NWI) Pricing Principles* for the Recovery of Capital Expenditure, and Principle 1 of the NWI Principles for Urban Water Tariffs,¹² *subject to* costs that are attributable to a direction under section 6 of the *Public Corporations Act 1993*.¹³

ESCOSA has noted in the Draft Determination that:¹⁴

‘For the purposes of this draft regulatory determination, the Commission has chosen not to review the two projects expected to be issued as Ministerial directions under section 6 of the PC Act (discussed in section 11.3.3.2), as such directions have, in the past, specified expenditure amounts that, under the statutory framework, must be adopted by the Commission within the revenue caps.’

The Draft Determination identifies SA Water’s major project proposals for SAWRD24:

Table 11.1: SA Water’s major projects proposal for SAWRD24 (SDec22) (rounded figures)

| Major projects | Total four-year expenditure (\$m) |
|--|-----------------------------------|
| Eyre Peninsula Desalination Augmentation | 240 |
| Mount Bold Dam Safety Upgrade | 110 |
| Metro Water Quality Improvement | 160 |
| Northern Metropolitan Growth | 370 |
| Tea Tree Gully Sustainable Sewers | 280 |
| Total | 1,160 |

Figure 3: SA Water’s major projects proposal for SAWRD24¹⁵

¹¹ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 40

¹² COAG, [National Water Initiative Pricing Principles 2004](#), p. 4 and p.9

¹³ [Treasurer’s Pricing Order for the Regulatory Period 1 July 2024-30 June 2028](#), 5 February 2024

¹⁴ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 183

¹⁵ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 178

Both Northern Metropolitan Growth and Tea Tree Gully Sustainable Sewers are projects expected to be Directed by the Minister under Section 6 of the *Public Corporations Act*. The total amount of expenditure for these projects is \$650m, or 56% of major project costs proposed in SAWRD24. This expenditure will not be scrutinised by ESCOSA for prudence or efficiency.

The following graph shows a breakdown of the impact of the proposed major projects (with underlying water and sewerage expenditure) on capital expenditure through to 2028, noting the capital expenditure associated with these projects will be included in the Regulatory Asset Base and recovered from South Australian water consumers for the life of those assets (which can be for 100+ years depending on the asset).

Figure 11.2: SA Water's proposed major projects and other capital expenditure (\$Dec22, million)⁴⁴²

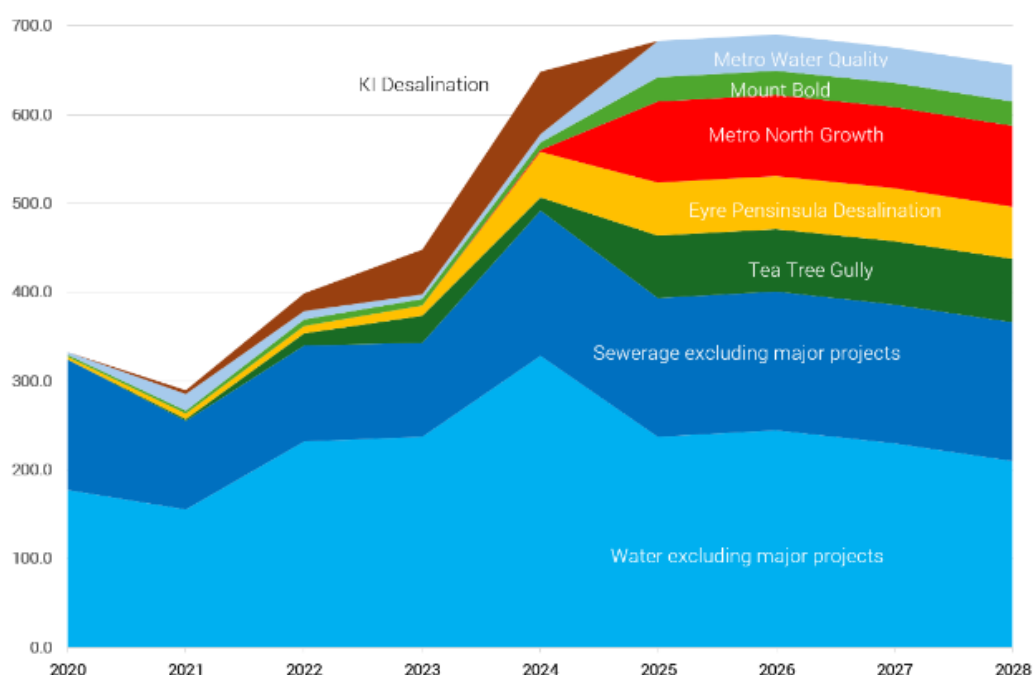


Figure 4: SA Water's proposed major projects and other capital expenditure¹⁶

It is clear that Tea Tree Gully, Metro North Growth and KI Desalination – all unscrutinised projects Directed by the Minister – will have a significant impact on SA Water's capital expenditure, RAB and long-term costs for consumers.

Acknowledging the requirements of the Treasurer's Pricing Order, in making the Final Determination we are calling on ESCOSA to consider and provide clarity on the following issues and questions associated with expenditure and projects Directed by the Minister pursuant to Section 6:

¹⁶ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 179

Developer contributions

What are the developer contributions associated with the Northern Metropolitan Growth project? Will there be transparency around developer contributions and will these amounts be excluded from the RAB?

Deliverability of the projects

Are the projects and associated expenditures realistic? We are seeking ESCOSA not only examine whether the projects are prudent and efficient, but are they also realistic – can they be delivered? Has the deliverability of these projects been assessed?

In an assessment of SA Water’s actual expenditure for SAWRD20, ESCOSA found that there have been material capital expenditure variations in five capital projects. Notably, the Kangaroo Island Desalination Plant project was planned to cost \$53m (including contributions from South Australian and Commonwealth governments), but has been estimated to cost nearly three times as much, \$144m - a \$91m overspend. This project was included in SAWRD20 as a result of a Ministerial Direction from then Water Minister Spiers (see Figure 5 below), and was not subject to scrutiny for prudence, efficiency or deliverability by ESCOSA.

J. Improving the security and water supply on Kangaroo Island

To construct a 2 megalitres per day desalination plant and associated delivery infrastructure (including energy supply) on Kangaroo Island to improve the security and supply of water on Kangaroo Island.

SA Water will fund capital expenditure of up to \$28 million over the four years to 30 June 2024 (as per the table below):

| 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|--------------|---------|---------|---------|
| \$28 000 000 | \$0 | \$0 | \$0 |

Additional capital expenditure of \$19.8 million is to be funded through South Australian and Commonwealth Government contributions.

SA Water will also fund the associated operating expenditure (as per the table below):

| 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---------|-----------|-------------|-------------|
| \$0 | \$372 000 | \$1 144 000 | \$1 173 000 |

SA Water’s construction and funding of the desalination plant and associated delivery infrastructure are conditional on securing a Commonwealth Government contribution of \$14.9 million.

Figure 5: Improving the security and water supply on Kangaroos Island, Direction J, Minister Spiers, 28 May 2020¹⁷

ESCOSA has noted that a similar deliverability risk exists in relation to SA Water's proposed capital program for SAWRD24,¹⁸ and we are concerned that consumers will face inefficient increasing costs for these projects long into the future:¹⁹

‘This amount of expenditure may be challenging to deliver on, not least given economic conditions in South Australia have been relatively strong (as explained in Chapter 3), with labour market indicators and surveys suggesting there is limited available spare capacity. The Auditor-General has highlighted the risks of a ‘heated construction’

¹⁷ Minister Spiers, [Direction to the South Australian Water Corporation Pursuant to Section 6 of the Public Corporations Act 1993](#), 28 May 2020

¹⁸ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 199

¹⁹ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 193

market. As a whole, this suggests risks of construction cost increases and project slippage due to difficulties securing labour and materials.'

SACOSS believes that the use of Ministerial Directions to include capital and operating expenditure for major projects, paid for by water consumers, not only undermines the principles of cost-reflective pricing, but also leads to deliverability risks as the project costings are not independently examined and the expenditure may not be realistic or achievable. Importantly, and outlined further in this submission below, large expenditures directed by the Minister also result in other projects supported by consumers through engagement not being pursued.

We are seeking that ESCOSA be clear and transparent in its Final Determination on the deliverability risks associated with the Ministerial Direction projects.

Transparency

Given water and sewerage services are essential, and water bills are regressive, it is vital that South Australian households have transparency around what they are actually paying for in their water bills. This is particularly important when costs are included that are 'over and above' what is necessary for the safe and reliable delivery of those services.

We refer again to ESCOSA's own call for transparency around the cost and recovery of Ministerial Directions:²⁰

'the costs of meeting any Ministerial Directions should be transparently determined, and funded by direct, transparent community service obligation payments, and not by water consumers.'

When the Ministerial Directions are issued for SAWRD24, we are calling for ESCOSA to undertake an analysis of not only the directed capital project costs, deliverability and long-term impacts on the RAB, but we are also calling for ESCOSA to clearly identify the increasing Water Planning and Management costs recovered from consumers, as compared to SAWRD16. As reflected in Figure 6 below, SAWRD20 saw the Minister Direct SA Water to contribute \$131,038,000 in operating expenditure for Water Planning and Management Charges over the 2020-24 period.²¹ This was more than double the \$57,715,000 directed by the Minister for the 2016-20 period.²²

²⁰ ESCOSA (2013) [SA Water's Water and Sewerage Revenues 2013/14 – 2015/16 Final Determination, Statement of Reasons](#), p. 127-128

²¹ Minister Spiers, [Direction to the South Australian Water Corporation Pursuant to Section 6 of the Public Corporations Act 1993](#), 28 May 2020

²² ESCOSA, [SA Water Price Determination 1 July 2016-30 June 2020: Final Framework and Approach](#), Appendix 3: Ministerial Direction to SA Water, 23 October 2014, p. 47

F. Water Planning and Management Charges Contribution

SA Water must make the following contributions to the Department for Environment and Water in each financial year of the third regulatory period in order to support water planning and management activities:

| 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|--------------|--------------|--------------|--------------|
| \$31 556 000 | \$32 345 000 | \$33 154 000 | \$33 983 000 |

Figure 6: Water Planning and Management Charges, Ministerial Direction 28 May 2020²³

South Australian households deserve clarity and transparency on what they are paying for in their water bills. In the interests of transparency, SACOSS is seeking that ESCOSA clearly set out the following in its Final Determination:

- The impact of expenditure directed by the Minister on SA Water’s Regulatory Asset Base, and projected long-term costs to consumers in future regulatory periods (noting some assets have a 100-year+ life span). This analysis should include the impact of Ministerial Directions on the opening and closing RAB for SAWRD20 and SAWRD24, including and documenting the revising down of the RAB by \$582 million (\$Dec18) as inefficient in the *SA Inquiry into Water Prices*.²⁴
- The long-term bill impacts. This is not just about cost impacts for the next four years – the increasing Rate of Return (ROR) has a direct relationship to the RAB and costs paid by water consumers. The presentation of bill impact of capital expenditure projects over the 2024-28 period (where costs are recovered over long asset lifespans) may obscure the ongoing nature and significance of that expenditure.
- Clearly review and identify expenditures that should form part of the RAB or be excluded from the RAB, e.g. developer contributions / Tea Tree Gully capex and opex.
- Separate rows in tables showing the total revenue allowance, with scrutinised expenditure noted separately as ‘prudent and efficient’ to unscrutinised expenditure included as a result of Ministerial Directions. SACOSS notes ESCOSA has undertaken this analysis in the body of the Draft Determination, but we would like to see it presented in a clear and digestible table form for consumers (SACOSS’ emphasis):

*‘... while the Commission has assessed an inferred estimate of a four-year total prudent and efficient benchmark net capital expenditure amount of **\$1,880 million for SAWRD24 (\$Dec22)**, which is comparable to the outcomes delivered in SAWRD20, the potential inclusion of capital expenditure for the Ministerial directions under section 6 of the PC Act can lead to an inferred estimate of a four-year benchmark net capital expenditure amount of **\$2,529 million for SAWRD24 (\$Dec22)**. Such an amount would be a **34 percent increase on the benchmark amount determined in SAWRD20.**’²⁵*

²³ Minister Spiers, [Direction to the South Australian Water Corporation Pursuant to Section 6 of the Public Corporations Act 1993](#), 28 May 2020

²⁴ Owens, Lewis: [Abridged Advice, Final Report of the SA Inquiry into Water Prices](#), June 2019.

²⁵ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 193

- ESCOSA’s view on transparently identifying the costs to meet all Ministerial Directions separately on consumers’ water bills.

Considerations of fairness

SACOSS has concerns about how the projects that are the subject of Ministerial Directions are identified and supported. Has there been an independent holistic analysis done on which projects the government will pursue over and above other projects? For example, the State Government has determined to transition Tea Tree Gully off CWMS.²⁶ With approximately 4,700 TTG wastewater customers added to the SA Water network, this equates to approximately \$83,255 per connection, funded through all SA Water’s customers’ water bills. Has there been consideration given to other local government areas serviced by CWMS,²⁷ or consideration given to the inequitable impact on low-income households due to the regressive nature of cost recovery for this project through water bills? Was the Tea Tree Gully sustainable sewers program quarantined from consumer engagement (it was not discussed with PBEF, but may have been at the CCG level)?

Further, as raised in our previous submission on SAWRBP24, we question the impact on other projects which were supported by consumers through SA Water’s engagement and then not pursued due to cost impacts. Has the cost impact of Ministerial Directions resulted in the exclusion of other projects that have been supported through consumer engagement (e.g. operating expenditure associated with expanding the Wider World program and direct billing for tenants)? Is this fair? SACOSS refers to these programs and the impact of the Ministerial Directions in more detail in the section on operating expenditure, below.

Capital Expenditure

As outlined earlier, SACOSS is concerned about the very significant 34% increase in allowed capital expenditure for SAWRD24, particularly in the context of increasing cost of living pressures for South Australian households.

Affordability was identified by SA Water, the State Government and ESCOSA as a primary concern and a guiding consideration for SAWRD24, and our submission on SAW’s RBP clearly supported this approach.

This submission on ESCOSA’s Draft Determination highlights our concerns with the increase in capital expenditure as a result of section 6 Ministerial Directions above, and below in our submissions on the Regulatory Asset Base (RAB).

As referred to above, the reasons for the Draft Determination clearly outline that \$1,880m is the ‘total prudent and efficient net capital expenditure amount’ having regard to all relevant

²⁶ SA Labor (2022) [Taking Control of the CWMS](#)

²⁷ Morphett Vale for example. Local Government currently [operates 175 Community Wastewater Management Systems \(CWMS\)](#) in 50 councils throughout the state.

factors, and this amount of capital expenditure is ‘comparable to the outcomes delivered in SAWRD20’.²⁸

The Draft Determination then goes on to acknowledge the impact of the proposed Ministerial Directions, stating the inclusion of capital expenditure for Ministerial Directions increases the net capital expenditure amount by \$649m to \$2,529m, representing a 34% increase in benchmark capex from SAWRD20. ESCOSA acknowledges that this additional \$649m in expenditure has not been assessed for prudence or efficiency:²⁹

‘As mentioned earlier, for the purposes of the draft determination, the Commission has included expenditure for these two major projects in line with SA Water’s proposal. In doing so, the Commission has not reviewed, in detail, the prudent and efficient expenditure requirements of these two projects.’

We acknowledge ESCOSA has separated out its Draft Determination on ‘prudent and efficient’ capital expenditure from capital expenditure directed by the Minister under Section 6, and we support ESCOSA dealing with these two drivers of capital expenditure increases differently.

That said, in the summary Table of ESCOSA’s Draft Decision, the ‘prudent and efficient’ expenditure is combined with unscrutinised capital expenditure incurred as a result of Ministerial Directions and then, in combination, total expenditure is identified as ‘prudent and efficient’:

Table 11.5: Draft decision on ex-ante capital expenditure for 1 July 2024 to 30 June 2028 (\$Dec22)

| | 2024-25 (\$m) | 2025-26 (\$m) | 2026-27 (\$m) | 2027-28 (\$m) | Total (\$m) |
|--|------------------|------------------|------------------|------------------|----------------|
| Net capital expenditure – water | 366 | 387 | 469 | 438 | 1,660 |
| Net capital expenditure – sewerage | 214 | 214 | 218 | 223 | 869 |
| Net capital expenditure – total | 579 | 602 | 687 | 660 | 2,529 |

Figure 7: Draft Decision on ex-ante capital expenditure for 1 July 2024 to 30 June 2028³⁰

In the interest of transparency, we are seeking that ESCOSA provide a separate row for capital expenditure incurred as a result of Ministerial Directions, that has not been reviewed for prudence and efficiency. As outlined in previous submissions and throughout this submission, SACOSS is extremely concerned about the disproportionate long-term impact of the cost of Ministerial Directions on the water bills of struggling South Australian households, and we believe there must be complete transparency about this impact.

²⁸ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 193

²⁹ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 195

³⁰ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 195

Operating expenditure

SA Water is proposing a normalised base year operating expenditure of \$555.6 million, plus an additional \$162.4 million in operating expenditure over 2024-28, comprising 86 separate initiatives (in effect, 86 step changes with 62 of those initiatives having a total expenditure over 2024-28 of less than \$1m each).³¹ In total, SA Water is seeking \$2,385.6m in operating expenditure for 2024-28, representing a 7% (\$149m) increase in real operating expenditure from SAWRD20, to be recovered in full from SA water consumers over the four-year period.³²

ESCOSA has undertaken a bottom-up assessment and has inferred an estimate of \$537.6m for the prudent and efficient base year of operating expenditure for SAWRD24, being \$18.2m less than SA Water's proposed efficient base year.³³ SACOSS supports ESCOSA in determining an efficient base year having regard to all relevant normalisation factors.

Table 10.7: Commission's bottom-up assessment of normalised operating expenditure base year (\$Dec22)

| | Base year (\$m) | Water (\$m) | Sewerage (\$m) |
|--|-----------------|-------------|----------------|
| SA Water proposed adjusted base year | 555.8 | 385.4 | 170.4 |
| Commission bottom-up assessment - normalised base year | 537.6 | 372.9 | 164.7 |

Figure 8: Efficient Base Year³⁴

Notably, of the \$162.4m in additional expenditure proposed, only \$69.96m in projects and initiatives was assessed by ESCOSA (see Table 1, below). \$39.7m in operating expenditure associated with the Tea Tree Gully sewerage retail services was included in the sample projects, but not assessed as the expenditure arises from a Direction from the Minister.

Table 1: ESCOSA's Review of sample projects, programs and initiatives

| Step change | Proposed expenditure by SAW | ESCOSA's assessment for prudence and efficiency |
|--|-----------------------------|---|
| Superannuation Guarantee | \$17.4m | \$9m |
| Procurement relating to TI-18 | \$0.29 | \$0 (not efficient) |
| Tea Tree Gully sewerage retail services: | \$39.7 (total) | |
| <ul style="list-style-type: none"> TTG CWMS initiative | \$11.1m | Not assessed (Section 6 Ministerial Direction) |
| <ul style="list-style-type: none"> TTG Sustainable sewers program | \$28.6m | Not assessed (Section 6 Ministerial Direction) |

³¹ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 163

³² SA Water (2023) [2024-28 Regulatory Business Plan](#), p. 262

³³ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 162

³⁴ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 162

| | | |
|--|---|---|
| Purified recycled water demonstration plant | \$6m | \$0 |
| Cyber Security | \$10m | \$10m |
| Eyre Peninsula Desalination Plant | \$36m | \$26m |
| Total of sample projects, programs and initiatives | \$69.96m (proposed by SAW) \$39.7m (Ministerial Directions) Total: \$109.39m | \$45m (assessed efficient by ESCOSA) \$39.7m (not assessed by ESCOSA) Total: \$84.7m |

Based on the review of a sample of projects, ESCOSA has determined the following inferred total estimate of \$136.1m in 'prudent and efficient' expenditure to be added (i.e. step changes) to the efficient base year:

Table 10.13: Commission estimates of additional expenditure for SAWRD24 (\$Dec22)

| | 2024-25 (\$m) | 2025-26 (\$m) | 2026-27 (\$m) | 2027-28 (\$m) | Total (\$m) |
|-----------------------------|------------------|------------------|------------------|------------------|----------------|
| SA Water proposed additions | 24.3 | 38 | 48.7 | 51.5 | 162.4 |
| Commission estimate | 21.3 | 31.4 | 39.9 | 43.6 | 136.1 |

Figure 9: ESCOSA's estimates of additional operating expenditure for SAWRD24³⁵

SACOSS considers it is important that South Australian households are clearly made aware of the \$39.7m in operating expenditure to be recovered from consumers through water bills that has not been examined for prudence or efficiency by the Commission. This represents 29% of allowed operating expenditure over the 2024-28 period.

This is even more important given the following programs identified through consumer engagement were excluded from SA Water's proposal on the basis of affordability considerations:

- **Expansion of the Wider World initiative (estimated \$20m in operating expenditure)**

*'The CCG and PBEF supported expansion of the Wider World Initiative but recognised that it would be costly to deliver. The cost of the expansion presented to the CCG and PBEF was \$20 million across SAWRD24. Ultimately, the cost impact and competing priorities lead to expansion of the Wider World Initiative being listed as an initiative not to be progressed during SAWRD24.'*³⁶

³⁵ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 170

³⁶ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 75

ESCOSA notes SA Water’s proposal not to increase expenditure on the Wider World Initiative for people with disability in SAWRD24 was based on engagement with customers about how to prioritise expenditure.³⁷ Were the PBEF and CCG consulted on the nearly \$40m in operating expenditure associated with the Ministerial Directions relating to Tea Tree Gully sewerage retail services?

- **Providing tenants with copies of water bills (estimated \$20m in operating expenditure).**

*‘SA Water explored the option of providing tenants with copies of bills as an investment project under its RBP and estimated that the project would require capital upgrades to SA Water systems and increased operating expenditure of approximately \$20 million within the regulatory period. SA Water advised that the option was not pursued **due to cost impacts on the broader customer base** and the prospect of landlords being required to provide tenants with copies of the bill through proposed changes to the RT Act.’³⁸*

Once again, this long-called for proposal to directly bill tenants (which has significant implications for the application of important consumer protections) was not progressed due to cost impacts on the broader customer base. SACOSS questions what impact the additional \$40m in operating expenditure for the TTG Sewers program has had on the progression of this important proposal.

In relation to the ‘prospect of landlords being required to provide tenants with copies of the bill through amendments to the *Residential Tenancies Act*’, it is worth noting the relevant amended section (Section 73(2)) of the *Residential Tenancies Act* deals with payment of ‘rates and charges’ for water services, providing (SACOSS’ emphasis):³⁹

*‘A tenant is **not required to pay rates and charges for a prescribed service** in accordance with subsection (2) if the landlord fails to provide a copy of the invoice for those rates and charges **within 30 days of the issue of the invoice by the authority** responsible for the supply of the prescribed service.’*

- **Upgrading Regional Water Supplies in Quorn.**

‘SA Water’s multi-criteria assessment of regional water supplies identifies Quorn as a high-priority supply for improvement BUT Expenditure for regional water aesthetic

³⁷ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 76

³⁸ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p.48

³⁹ [Residential Tenancies \(miscellaneous\) amendment Bill 2023](#), section 33

improvements was initially supported in SA Water’s RBP engagement process but was removed in the later stages to prioritise affordability.’⁴⁰

Notably, the Expansion of the Wider World Program for people with disability, and the long called-for direct billing relationship with tenants (both supported by consumers through the engagement) together are estimated to cost \$40m in operating expenditure, the same amount of unexamined operating expenditure as is included for the TTG Sewers Program.

With only a selection of the proposed operating expenditures examined for prudence and efficiency, can consumers be confident they will be paying no more than is necessary in operating expenditure for the safe and reliable delivery of water? Are the 62 initiatives of less than \$1m each efficient, or could these services be delivered within SA Water’s current operating expenditure budget? ESCOSA has rightly noted this as a risk: ⁴¹

‘A further implication resulting from the Commission’s assessment is how many more of SA Water’s 62 initiatives (which have total expenditure over the four-year SAWRD24 period of less than \$1 million each) have inefficient expenditure. This suggests caution in taking at face value the efficient and prudent expenditure being put forward.’

SACOSS repeats our call for: ⁴²

‘ESCOSA to carefully examine whether SA Water has identified all possible operating expenditure savings and trade-offs across expenditure categories to ensure that customers pay no more than is necessary for the safe and reliable delivery of water services. ESCOSA must be satisfied that SA Water has provided sufficient evidence to support the need for the proposed operating expenditure step changes. This is particularly important in the context of current and future affordability concerns, as the proposed increased operating expenditure will be fully recovered from consumers in the 2024-28 period’.

Regulatory Asset Base (RAB)

The Draft Determination found that a key driver of increased revenue for SA Water is due to an increasing Rate of Return (ROR), stating that:

‘while increased expenditure benchmarks have contributed to additional revenue requirements, the Commission’s assessment is that the increases in the revenue caps, compared to SAWRD20, have been driven largely by the increase in the rate of return.’

⁴⁰ SA Water, Long-term plan for improving drinking water aesthetics, May 2023, available at <https://watertalks.sawater.com.au/long-term-planning-for-regional-drinking-water-supplies>, and ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p.41

⁴¹ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 166

⁴² SACOSS, [Submission to the Essential Services Commission of South Australia on SA Water’s 2024-28 Regulatory Business Proposal](#), 4 October 2023

Due to increased financing costs, the ROR for SAWRD24 is higher than the low of 2.68% adopted for SAWRD20, but at 3.99% (average annual rate over 2024-28) remains below the RORs adopted in SAWRD13 and SAWRD16, as indicated in Figure 10 below:

Box 1.1 Key driver - Rate of return

Increased financing costs have resulted in a draft decision to set SA Water's allowed average rate of return at 3.99 percent (real, post-tax), calculated as of 14 November 2023. By way of comparison, the average regulatory rate of return (real, post-tax) adopted in previous determinations was:

- ▶ 4.5 percent in 2013-16
- ▶ 4.17 percent in 2016-20 and
- ▶ a low of 2.68 percent in 2020-24.

In its Regulatory Business Proposal, SA Water calculated revenue requirements using an average regulatory rate of return (real, post-tax) of 3.23%, calculated in March 2023.

Figure 10: Key Driver of increased Revenue is Rate of Return⁴³

Given we are in a higher interest rate environment, SACOSS accepts the ROR for SAWRD24 will have increased, and we acknowledge the significant impact of a higher ROR on costs for consumers. However, as outlined earlier in this submission, the ROR is pegged to the RAB and SACOSS would like to see more information and analysis by ESCOSA on the impact of increased capital expenditure over SAWRD24 on the Regulatory Asset Base. ESCOSA's Final Determination for SAWRD20 provided the following Table detailing the opening and closing RABs, as well as the impact of capital expenditure on the RAB:

⁴³ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 6

Table 7.8: The Commission's Final RAB roll-forward over from SAW RD16 to SAW RD20
(nominal to 2018/19 and Dec18S thereafter)^{44,45}

| | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|-----------------------|---------|---------|---------|---------|---------|---------|---------|---------|
| Drinking water | | | | | | | | |
| Opening value | 7643.5 | 7733.9 | 7943.3 | 8134.0 | 8106.9 | 8267.1 | 8327.6 | 8404.7 |
| Capital expenditure | 159.9 | 249.3 | 243.8 | 173.5 | 333.1 | 242.2 | 264.7 | 264.8 |
| Disposals | -0.5 | -0.0 | -0.4 | -0.4 | -0.4 | -0.4 | -0.4 | -0.4 |
| Depreciation | -183.0 | -189.9 | -196.6 | -200.1 | -172.5 | -181.2 | -187.2 | -193.4 |
| Indexation | 114.0 | 150.0 | 143.9 | | | | | |
| Closing value | 7733.9 | 7943.3 | 8134.0 | 8106.9 | 8267.1 | 8327.6 | 8404.7 | 8475.7 |
| Sewerage | | | | | | | | |
| Opening value | 3820.4 | 3876.6 | 3978.4 | 4140.0 | 4178.3 | 4141.4 | 4165.4 | 4219.7 |
| Capital expenditure | 97.6 | 129.9 | 197.6 | 150.1 | 77.3 | 141.9 | 177.2 | 143.2 |
| Disposals | -0.2 | -0.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 |
| Depreciation | -98.4 | -103.4 | -108.7 | -111.9 | -114.1 | -117.9 | -122.8 | -127.9 |
| Indexation | 57.1 | 75.2 | 72.7 | | | | | |
| Closing value | 3876.6 | 3978.4 | 4140.0 | 4178.3 | 4141.4 | 4165.4 | 4219.7 | 4,235.0 |

Figure 11: ESCOSA's Final RAB roll-forward from SAWRD16 to SAWRD20⁴⁴

For SAWRD24, SACOSS would like to see historical analysis of the opening and closing RABs for previous regulatory periods, as well as an explanation of the revising down of the RAB for SAWRD20 due to the findings of the *Inquiry into Water Pricing*⁴⁵ (completed in 2019) and the *Treasurer's Pricing Order in 2020*, and the impact of the capital cost of Ministerial Directions on an increasing RAB over SAWRD20 and SAWRD24. As noted in ESCOSA's Final Decision for SAWRD20:⁴⁶

'Since publication of the Draft Determination, a Pricing Order has been issued and requires: the application of a RAB value of \$7,250 million at 1 July 2013 for drinking water assets in December 2012 dollars.

The RAB reduction translates to \$582 million (\$Dec18). The Pricing Order did not specify the apportionment of the RAB reduction across different types of water assets. The Commission's final decision is for the RAB reductions to apply 67 percent to water pipes and 33 percent to water non-pipes (based on the current shares of pipes and non-pipes).'

⁴⁴ ESCOSA, [SAWRD2020 Final Determination](#): Statement of Reasons, June 2020, p. 236

⁴⁵ Owens, Lewis: [Abridged Advice, Final Report of the SA Inquiry into Water Prices](#), June 2019.

⁴⁶ ESCOSA, [SAWRD2020 Final Determination](#): Statement of Reasons, June 2020, p. 233

Given the RAB was revised down by \$582m for SAWD20, SACOSS would like to know what the RAB for SAWRD24 would look like without the addition of unscrutinised capital expenditure from Ministerial Directions (over both Regulatory Periods).

We know that capital expenditure is added to the RAB and returns are recovered from customers for the life of the asset - any increases in the RAB increases the amount recovered from customers through the return on assets into the future. The issue of an increasing RAB is of central importance in an analysis of increasing water costs for consumers, both now and over the long-term, and it is essential that this information is clearly presented to customers.

ESCOSA’s Final Decision on SAWRD20 set out the Regulatory asset lives for SA Water’s assets, showing that South Australian water consumers will be paying a return to the South Australian Government on some assets for up to 113 years (including on sewerage pipes installed for the TTG sewers program):

Table 7.6: Regulatory asset lives for SA Water’s assets

| Regulatory asset lives (weighted averages in years) | Remaining life (existing assets 1 July 2020) | Standard life (new assets) |
|--|---|-------------------------------|
| Drinking water | | |
| Pipes | 57 | 101 |
| Non-pipes | 44 | 101 |
| ADP | 49 | 57 |
| ADP – short-lived assets | 3 | 7 |
| Corporate | 5 | 8 |
| Sewerage | | |
| Pipes | 61 | 113 |
| Non-pipes | 31 | 50 |
| Corporate | 5 | 8 |

Figure 12: Regulatory Asset Lives for SA Water's Assets

In this context, the RAB, the asset life and the ROR are all relevant to a consideration of the long-term cost impacts for consumers in this State, and SACOSS would like to see more transparency on the impact of the Government’s Ministerial Directions on the RAB.

Rate of Return (ROR)

We understand the Treasurer is requiring ESCOSA to ‘prepare and provide’ its advice on the calculation of the rate of return on the RAB to apply for the 2024-28 regulatory period, by 30 March 2024.⁴⁷

The calculation of the RoR is extremely technical and requires detailed and specialised knowledge of economic principles and economic regulation. As consumer advocates, we do not have the knowledge or expertise to meaningfully engage in the RoR process. In the past, we have sought expert analysis of the RoR from consultant economists,⁴⁸ but given the limited six-week consultation period on the Draft Determination we have been unable to obtain that advice.

Due to the highly technical content, and in the absence of expert advice, we are unable to provide any meaningful feedback on methodologies used to determine the RoR for SAWRD24. This is disappointing, as we are acutely aware of the significant impact the RoR has on costs for consumers. The process of setting the RoR highlights how inaccessible this area of consultation is for consumers and consumer advocates, and how heavily we rely on the regulators to set ‘unbiased’ rates of return.

That said, we note the principles established by ESCOSA in determining the RoR for a ‘benchmark efficient firm’, and we support the application of those principles in the context of achieving ESCOSA’s primary objective of protecting the long-term interests of consumers.

For future regulatory determinations we are seeking ESCOSA obtain independent expert analysis and advice on setting the RoR.

Consumer Protections

SACOSS refers to and repeats our previous submissions on the *Water Retail Code – Major Retailers* (the Code).⁴⁹

Consumer Protections for tenants / consumers

SACOSS and SACOSS members have repeatedly raised our concerns about bill paying tenants, or ‘consumers’, not being afforded the same protections as ‘customers’ by SA Water. We note that ESCOSA has provided 7 pages of commentary and analysis on this topic in the Draft Determination.

SACOSS acknowledges there is a clash between different legal obligations contained in the *South Australian Water Corporation Act 1994* (relating to debts for water and sewerage retail services residing as a first charge on the land) and the hardship obligations established under

⁴⁷ [Treasurer’s Pricing Order for the Regulatory Period 1 July 2024-30 June 2028](#), 5 February 2024

⁴⁸ SACOSS, [Submission on the SAWRD2020 Draft Determination](#) p.19-25

⁴⁹ SACOSS, [Submission on the Water Retail Code and the Monitoring and Evaluating Performance Framework](#), 31 July 2023

the *Water Industry Act 2012*. ESCOSA and SA Water have been well aware of the concerns of consumer advocates about protections for tenants since 2014, and we are yet to see any meaningful legislative change to address an issue that has significant impacts for 30% of the South Australian population; including some of the state's most disadvantaged households. Even though the issue of tenants being afforded the same rights as 'customers' has been well documented and raised for many years, we understand there has been limited progress in reviewing and amending the relevant legislation.

In these circumstances, SACOSS considers that, at the very least, SA Water can unambiguously recognise the problem and develop a strategy, with tenants as well as landlords and other key stakeholders to respond to the issues, including direct access to bills, payment options, water use savings advice, hardship support and not paying for leaks. This strategy may be over an extended time period, but without any sort of strategy and direction, tenants will remain unprotected and unsupported in accessing the most essential of services.

In their draft determination, ESCOSA has made the following draft decisions regarding tenants as customers.⁵⁰

- *Enquiries, complaints and dispute resolution - clauses 3.1, 3.2 and 3.3*
- *Accessible communications – clause 4.2*
- *Customer hardship policy – clause 10.1*
- *Information for consumers – clause 20.4*
- *Notice to customers experiencing payment difficulties – clause 25.2*
- *Prohibitions on water service flow restriction – clause 26.2*

In line with our previous submissions, we strongly support ESCOSA providing clarity within the Code on the protections afforded to tenants (consumers) under the *Water Industry Act* and Regulations. In addition, SACOSS proposes ESCOSA include the following expectations within the Final Determination:

- SA Water develop a long-term strategy to deal with the issues of concern to tenants, and
- SA Water add housing tenure as a 'field' for their customer records as part of populating their customer management system. This would then assist SA Water to more effectively communicate with tenants in the future with virtually no cost as this approach builds on existing assets and customer conversations.

SACOSS submits ESCOSA should encourage SA Water to be proactive and show leadership in responding to tenants' concerns (representing around a third of SA Water's customer base). This approach would align with the application of 'principles-based' or 'ethical regulation' to the SAWRD24 process. Relevantly, the concept of principles based / ethical regulation has been

⁵⁰ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 52-53

accepted as an important aspect of regulatory decision making for SA Water determinations, and we note ESCOSA has hosted Christopher Hodges, Professor of Justice Systems, and Fellow of Wolfson College, University of Oxford to explore ‘Ethical Regulation’⁵¹ and how it can be applied.

Early identification of customers experiencing payment difficulty

SACOSS refers to our previous submissions to ESCOSA on consumer protections and payment difficulty. In line with those submissions we strongly support ESCOSA’s Draft Decision to require SA Water to:⁵²

‘establish policies and processes for early identification of residential customers who may be experiencing payment difficulties and a requirement for it to employ best endeavours to contact these customers to provide information about the available assistance.’

There should not be any barriers to SA Water establishing practices for identifying customers in the early stages of payment difficulty, through an analysis of debt and late bill payment patterns. This practice would align with SA Water’s existing obligations under Clause 25.1.1 of the Code to offer flexible payment plans to residential customers (SACOSS’ emphasis):⁵³

‘A retailer must offer and apply flexible payment plans in accordance with this clause, as soon as is reasonably practicable, for residential customers experiencing payment difficulties if the customer informs the retailer in writing, by telephone or in person by attending the retailer’s office that the customer is experiencing payment difficulties or the retailer otherwise believes the residential customer is experiencing repeated difficulties in paying the customer’s bill or requires payment assistance.’

The obligation is clearly on SA Water to offer and apply flexible payment plans ‘as soon as is reasonably practicable’ if SA Water ‘otherwise believes’ the customer is experiencing ‘repeated difficulties’ in paying their bill or ‘requires payment assistance’. SACOSS submits this ‘belief’ should be triggered by readily available data on debt and payment patterns. In complying with this obligation, it is incumbent on SA Water to establish processes and practices to create links between its debt department and customer support department in order to proactively identify customers who require assistance with paying their bills, and then to offer and apply payment plans as soon as possible. SACOSS expects ESCOSA to monitor SA Water’s compliance with this obligation.

Paying extra for Paper Bills

SA Water has sought ESCOSA consider varying clause 4.1.4 of the Code to enable customers to be charged for paper bills, further proposing:

⁵¹ Christopher Hodges, *Ethical Business Practice and Regulation - A Behavioural and Values-Based Approach to Compliance and Enforcement* with Ruth Steinholz, published in December 2017

⁵² ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 62

⁵³ ESCOSA, [Water Retail Code – Major Retailers](#), 2020, Clause 25.1

‘that certain groups of customers would be exempt from this fee, including those:

- i. on low income, customers on the customer assist program or receiving concessions*
- ii. with a disability or a serious or chronic illness, and*
- iii. who come from a remote area.’*

Clause 4.1.4 currently provides:⁵⁴

‘If a customer does not advise the retailer of a preferred form of communication, the retailer must deliver any document, bill or notice in hard copy to the supply address at no cost to the customer (unless this industry code expressly authorises a fee/cost to be charged).’

ESCOSA’s Draft Determination is to ‘remove the requirement to provide paper bills at no charge at clause 4.1.4 and establish a new clause 18.4 in the Code, which allows SA Water to decide whether or not to charge customers for paper bills’ where certain requirements are met.⁵⁵

SACOSS strongly opposes SA Water’s proposal and ESCOSA’s Draft Determination. We note that SA Water’s proposal to charge for paper bills was not included in the Regulatory Business Plan 2024-28 summary produced by SA Water, and we have not found specific reference to this topic in any of the SA Water documentation about their engagement.

We also note that SA Water does not give any detail or commitments about how these proposals for exemption would be applied. We do not know if SA Water is able to identify aged pensioners, people on low-incomes, people experiencing vulnerability or disadvantage from their customer management system, nor whether these people would be exempt. We also do not know the cost of putting in place systems to manage the exemptions, as compared to the cost of retaining free paper bills.

SACOSS is seeking that ESCOSA consider the impact of this decision on an individual level having regard to Janet’s case study:

Janet recently celebrated her 90th Birthday, a happy even at which all of her grandchildren and great grandchildren were present. Janet lives at home in the house that she built with her husband in the early 1950’s, having made every concrete brick in the house by hand.

Janet will have lived at the same address for 70 years, later in 2024. She still lives there independently. Janet has always been meticulous in paying bills on time, and so would have paid something like 280 water bills and a lesser number of water and sewerage

⁵⁴ ESCOSA, [Water Retail Code – Major Retailers](#), 2020, Clause 4.1.4

⁵⁵ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 56

bills – sewer mains were installed sometime after Janet’s house was completed. Janet has paid on time and in response to a bill received through the post.

There is no internet connection to Janet’s house and she does not use a computer. Similarly, she does not have a mobile phone as her family members and a handful of friends ring her on her ‘land line’ phone, no-one else that she wants to talk with is going to ring her on a mobile, so why pay to be spammed and scammed?

Without knowing greater details of the approach that SA Water would undertake to apply exemptions, we suspect that Janet would be charged extra for paper bills and it would be ‘her responsibility’ to know whether she was being charged. We expect Janet would then have to seek to have the exemption applied by a ‘yet to be determined’ process. Janet would then likely be required to provide evidence to SA Water to apply the exemption – an approach that would potentially take many weeks and require considerable perseverance from the customer. This outcome is unreasonable and would be unacceptable to SACOSS.

Relevantly, Figure 13 below indicates SA Water’s proposed ICT expenditure for SAWRD24, building in most instances on similar expenditure levels for SAWRD2020:⁵⁶

Table 3.1: SA Water’s proposed ICT capital expenditure for RD24 (\$ 1 January 2023, millions)

| ICT capital expenditure project | Forecast |
|---|--------------|
| Cybersecurity | 22.6 |
| Billing modernisation | 21.0 |
| Desktop productivity and end user computing | 16.8 |
| Modernise SCADA architecture | 15.5 |
| Hardware and infrastructure systems | 14.2 |
| Application environment platforms | 13.4 |
| Customer relationship management system migration | 12.6 |
| Asset management platform system migration | 10.5 |
| Storage resilience | 9.5 |
| Network and communication systems | 9.2 |
| Legacy integration migration | 6.5 |
| Operations security | 6.5 |
| Operations collaboration | 6.0 |
| Operations site enhancements | 3.8 |
| Finance management system migration | 3.6 |
| TOTAL | 171.1 |

Source: SA Water 2023, 2024-28 Regulatory Business Plan, 30 September, pages 179-181 & 193-195.

Figure 13 SA Water’s proposed ICT capital expenditure for SAWRD24

⁵⁶ SA Water, [Regulatory Business Plan](#), 30 September 2023, p. 179-195, See: FTI Consulting: 15 November 2023 “Review of ICT capital expenditure for SA Water SA Water Regulatory Determination 2024

We note that under this proposal, all SA Water customers would be paying \$21m for billing modernisation and \$12.6m for 'customer relationship management system migration', a total of \$33.6m for billing and related software.

Even applied over a million customers, this is \$33.60 per customer or \$8.40 per customer per year, which is more than the 4x \$1.21 = \$4.82pa cost that SA Water estimates as the cost per customer of paper bills. We also note that customers have been paying similar amounts over past regulatory periods for previous ICT expenditure.

SACOSS considers that if charged for paper bills, there is a high likelihood that customers like Janet will be paying twice for their bill; the direct charge for a paper bill and the embedded ICT charge to enable SA Water to bill other customers, without charging them an additional billing fee.

SACOSS makes the following submissions in relation to ESCOSA's Draft Determination:

- *'improved customer engagement by capturing and maintaining up-to-date customer contact information.'*

SA Water has had approved allowance for improved customer relationships management for the current regulatory period, this updating of consumer contact information should already have been undertaken, given that the upgraded ICT is already in place.

- *accurate contact information allowing better customer communication for faults and other.*

As with the response above, SA Water has the capacity and has had the opportunities to undertake this already.

- *customers receiving their bill earlier which provides additional time to pay the bill.*

SA Water could send paper bills out to their customers earlier to allow all customers additional time to pay.

- *potential for improved cash flow for SA Water as earlier receipt of a bill may lead to customers paying sooner, and*

The same result could be achieved, if it is material, by posting paper bills earlier.

- *reduced environmental impact and cost savings relating to postage and printing. In 2022/23 operating expenditure for issuing of paper bills and related notices (for example, reminders, high water use alerts) was around \$2.5m (postage \$2.1m and printing \$0.4m)*

Paper bills can be issued on recycled paper mitigating environmental impacts.

We do not consider the reasons provided by SA Water outlining the benefits of charging for paper bills are sufficient to support a decision to change clause 4.1.4.

It is also our understanding that SA Water has not consulted in any detail with customers likely to be impacted by this proposal. SACOSS does not consider there is any basis for supporting the proposal until there is clear evidence of support from impacted customers. SACOSS is happy for SA Water to encourage customers to move to electronic billing where this is of mutual interest and customers provide explicit informed consent.

Family violence provisions

SACOSS refers to our previous submission on the inclusion of Family Violence provisions within the Code. We strongly support these provisions and consider the additional consumer protections and processes for victim survivors of family violence proposed by ESCOSA are extremely important and will bring SA Water into line with other providers of essential services.

Monitoring and Reporting Requirements

SACOSS refers to our submission on the *Water Retail Code and the Monitoring and Evaluating Performance Framework*, dated 31 July 2023.⁵⁷ We repeat and reaffirm the submissions made within that document.

SACOSS strongly supports robust regulatory oversight of SA Water's obligations, particularly consumer protection obligations under the Code. We consider public reporting on all consumer protection obligations should be mandatory, and ESCOSA should interrogate the relevant data to identify issues of compliance. The importance of the availability of reliable data in informing policy development to address gaps, and identifying breaches of essential consumer protection obligations cannot be overstated.

SACOSS therefore supports ESCOSA's Draft Decision to embed SA Water's public reporting requirements in the Water Retail Code – Major Retailers. We are seeking assurances from ESCOSA that the reporting requirements relating to SA Water's consumer protection obligations, namely those included in *Proforma OP2.2 – Financial Measures* contained in Guideline No. 2 (set out in Figure 14 below) as well as the additional hardship and debt indicators will be included in the mandatory public reporting requirements, and will be robustly monitored and reported on by ESCOSA.

⁵⁷ SACOSS, [Submission on the Water Retail Code and the Monitoring and Evaluating Performance Framework](#), 31 July 2023

| | Quarter | | | | | | | |
|---|-----------------------|---------|---------|---------|----------|---------|---------|---------|
| | Adelaide Metropolitan | | | | Regional | | | |
| | Jul-Sept | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sept | Oct-Dec | Jan-Mar | Apr-Jun |
| Total number of residential customers participating in a financial hardship program as at the end of the quarter | | | | | | | | |
| Number of residential customers who entered the financial hardship program during the quarter | | | | | | | | |
| Average amount of bill debt (all services combined) for residential customers participating in a financial hardship program as at the end of the quarter (\$) | | | | | | | | |
| Number of residential customers who successfully exited the financial hardship program during the quarter | | | | | | | | |
| Total number of flexible payment plans operating as at the end of the quarter: | | | | | | | | |
| • residential | | | | | | | | |
| • non-residential | | | | | | | | |
| Total number of residential customers receiving a water concession as at the end of the quarter | | | | | | | | |
| Total number of residential customers receiving a sewerage concession as at the end of the quarter | | | | | | | | |

General guidance:

1. The Water Retail Code (clause 10) sets out obligations on retailers to have an approved hardship policy.
2. The Water Retail Code (clause 25) sets out obligations on retailers to offer a range of assistance measures prior to undertaking a restriction of water services.
3. The total number of residential customers receiving a concession means all customers receiving a concession, including residential customers participating in a financial hardship (customer hardship) program

Figure 1413: Proforma op2.2 - Financial Measures⁵⁸

As it stands, the Draft Decision is that:

‘The Code will set a requirement for SA Water to publish reports in relation to its service standard performance, performance during significant performance events, financial performance, key investment areas, and long-term asset management and investment planning.’

Operational performance reporting requirements are not currently listed in ESCOSA’s Draft Decision to strengthen SA Water’s public accountability in relation to its performance reporting. We are seeking these operational performance reporting requirements are included and are made mandatory and enforceable.

In line with our previous submissions, we strongly support the Draft Decision⁵⁹ to include a definition of ‘bill debt’ and new hardship reporting indicators within Guideline No.2, including:

- average amount of bill debt for residential customers upon entry into the financial hardship program as at the end of the quarter
- average amount of bill debt for residential customers upon successfully exiting the financial hardship program as at the end of the quarter
- number of residential customers who exited without successfully completing the financial hardship program during the quarter, and

⁵⁸ ESCOSA, [Water Regulatory Information Requirements – Major Retailers: Water Industry Guideline No. 2](#), Version: WG2/04, September 2020, p. 52

⁵⁹ ESCOSA, [SA Water Regulatory Determination 2024-28: Draft Statement of Reasons](#), January 2024, p. 56

- average amount of bill debt for residential customers who exited without successfully completing the financial hardship program as at the end of the quarter.

That said, as we have previously submitted, having visibility of the water debt of customers *outside* of hardship programs is essential to inform an understanding of both the level of payment difficulty being experienced by residential customers, and the extent to which those customers are receiving support from their water retailer. Therefore, we once again strongly submit that ESCOSA include the following indicators relating to water bill debt:

- The number of residential customers with water bill debt (not in a hardship program)
- The average level of water bill debt for residential customers (not in a hardship program).

SACOSS supports ESCOSA requiring SA Water to develop a Basis of Preparation. Speaking broadly, we have serious concerns that the Verified Trust Accountability (VTA) method of reporting is leading to less transparency and limited accountability for SA Water. As previously identified, there have been consistent errors in SA Water’s reporting on hardship and payment plan customers, obscuring any visibility of the experience of South Australian water customers facing payment difficulty at a time of significant cost of living pressures. SACOSS does not currently have confidence in the veracity of the data published by SA Water over the past regulatory period (since the introduction of the VTA model). We do not believe self-reporting and self-publishing is appropriate and we are calling for greater oversight from ESCOSA, with mandatory reporting and published reports from the Regulator.

We expect ESCOSA to require SA Water to implement appropriate systems and to provide data from the 2020-24 period on payment plan and hardship customers, as it was required to do. Where there are failures, we expect ESCOSA to investigate and act to address any breaches of Code and licence obligations. Overall, we expect a provider of an essential service to be subject to clear, robust, mandatory reporting requirements, linked to compliance and enforcement regimes.

Commentary on the customer engagement process generally

As the major provider of water and sewerage services (the most essential of services), SACOSS believes SA Water must regularly and proactively engage with their customers, including consumer advocates, about the issues of interest and concern to customers and specific cost-effective strategies to address these matters.

In Appendix 2.1 of the SA Water Regulatory Business Plan,⁶⁰ ‘How customers informed the strategy’, SA Water describes ‘two phases’ of consumer research that were undertaken ‘to inform the development of the corporation’s vision and strategy.’ These two phases are described as follows:

⁶⁰ SA Water, [Regulatory Business Plan, Appendix 2.1](#), 30 September 2023

- Phase 1 qualitative: 100 customers were engaged to understand their expectations for a water utility of the future. Customers created a list of 50 attributes in their own words.
- Phase 2 quantitative: 1,400 customers tested and rated the attributes, the top 25 were ranked (as per Table 2.1-1) and they gave their perceived performance of SA Water against these expectations.

Of concern to SACOSS and our members is that SA Water’s engagement strategy is based on one off focus groups and a survey, which were then ‘analysed’ by SA Water and passed by a ‘challenge group and stakeholder group’. SACOSS considers SA Water needs to undertake ongoing engagement with customers and informed customer advocates, and to check their analysis with customers, advocates and stakeholders by genuinely listening to alternative views. SA Water has provided limited detail about the range of consumer views on the specific details of key elements of their regulatory proposal.

We observe that much of SA Water’s engagement is about high-level customer priorities, from which SA Water draws detail, including costings, for their proposal. We see very limited reporting of any engagement on the detailed components of the regulatory proposal.

The appendix lists 25 ranked customer expectations and then provides a chart, given as figure 2.1-1: customer expectations – comparisons of importance vs performance for the top 13 customer expectations:

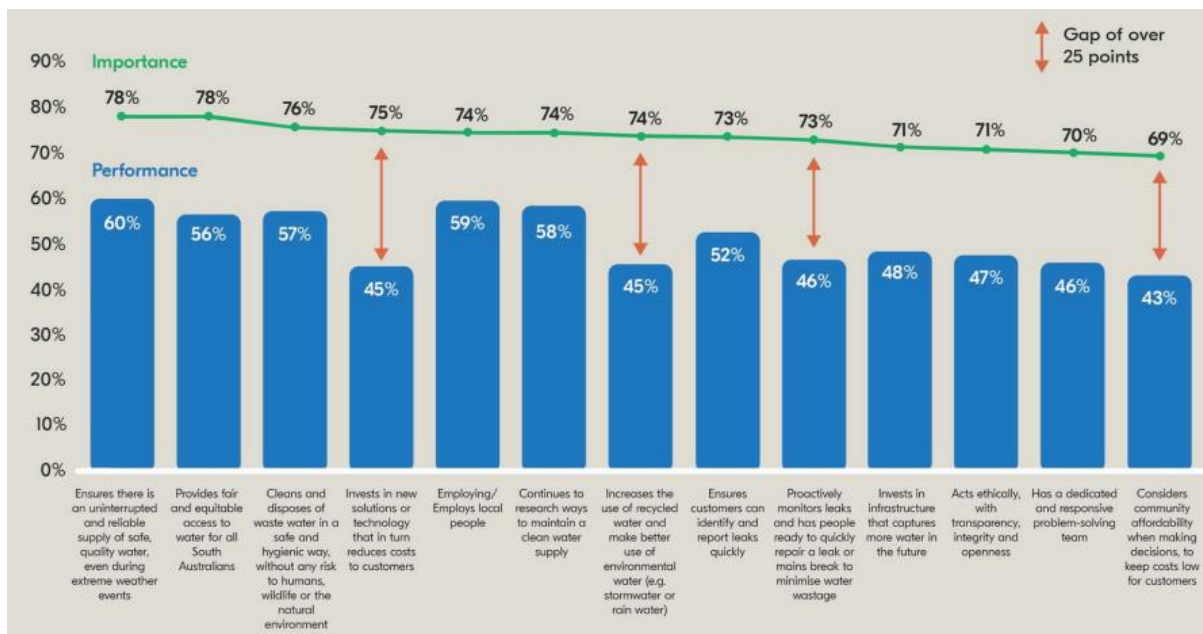


Figure 14: Customer Expectations: importance vs. performance⁶¹

Of concern to SACOSS is the gap between customer priorities and SA Water performance, even considering that these are not precise measures.

⁶¹ SA Water, [Regulatory Business Plan, Appendix 2.1](#), 30 September 2023

Notably, the second highest priority for customers is listed as *'(SA Water) provides fair and equitable access to water for all South Australians'* with a substantial gap between importance for consumers and SA water performance. The principle *'considers community affordability when making decisions to keep costs low for customers,'* has a very high gap between consumer importance and SA water performance. These priorities have been a focus of submissions from SACOSS and other community organisations for successive SA water regulatory processes, and we are concerned about the lack of progress in meeting these priorities.

SACOSS draws two observations, from the material presented in appendix 2.1 and broader application to the SA Water proposal:

- We do not believe there has been sufficient effective interaction with consumers and consumer advocates in the development of specific aspects of the regulatory proposal for ESCOSA to conclude that there is robust consumer support for the SA water proposal for 2024-28. Extensive 'engagement' on broad themes does not necessarily translate into consumer support for specific expenditure proposals
- SA Water's performance in responding to affordability and equitable access to water remains poor and is not adequately addressed in their proposal for 2024-28.

Willingness to Pay

The SA Water regulatory proposal includes the published results of a 'Willingness to Pay' survey as Appendix 4.4. SACOSS has commented previously about our views of the inadequacy of Willingness to Pay surveys, and we summarise our concerns by listing the following inadequacies:

- Capacity to pay is not asked, nor measured.
- Willingness to pay questions are not tested against other household cost items, i.e. a question of the following nature is not asked: "If you had an extra \$50, would you prefer to spend it on higher SA water Bills, medication for you children, a holiday etc? In other words, the willingness to pay for a specific SA Water expenditure increase is taken out of the context of household budgets, heavily skewing results.
- Results are generally taken as a (statistical) mean 'willingness to pay' across a sample, and then applied across the full breadth of the sample or even the population (e.g. SA Water customer base). There is no attempt to factor in distributional impacts into 'willingness to pay' analysis – this also skews results.
- Using the Daniel Kahneman 'Thinking fast – thinking slow' approach to decision making, 'willingness to pay' surveys seek 'thinking fast' responses, with inherent cognitive biases, and generally interpret results as 'thinking slow' meaning considered responses. This failure in 'willingness to pay' methodology also skews and, we suggest, dramatically overstates results.

SACOSS continues to urge ESCOSA to be very cautious in its consideration of the applicability of 'willingness to pay' surveys and associated analysis.

Timing of formalised consumer engagement / feedback

SACOSS also has concerns about the limited time provided for submissions on both the Regulatory Business Proposal and the Draft Decision. Given the extensive nature and content of these documents, it is extremely difficult for consumers and consumer advocates to respond meaningfully within a six-week time frame. These are important processes that have significant long-term impacts on the delivery of essential services and costs for consumers. SACOSS would like to engage further with ESCOSA on reviewing the process for consumer feedback on regulatory determinations.

Conclusion

SACOSS once again thanks ESCOSA for the opportunity to comment on its Draft Determination for SAWRD24. Given the central importance of affordability and equity considerations highlighted throughout the engagement process, we strongly support ESCOSA making a Final Determination that ensures South Australian households pay no more than is necessary for the safe and reliable delivery of water services in 2024-2028, and into the future.

SACOSS welcomes the opportunity to expand on any of the matters contained in this submission. Please contact Georgina Morris, Senior Policy Officer at georgina@sacoss.org.au or on 8305 4214 with any queries.