



National Water Reform 2020
Productivity Commission
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Dear Commissioners,

Re: SACOSS Submission to the Productivity Commission's National Water Reform Draft Report

The South Australian Council of Social Service (SACOSS) is the peak body for the non-government community services and health sectors in South Australia, with a long-standing interest in the efficient delivery of essential services such as water, energy and telecommunications. SACOSS' work in essential services is focused on reducing inequality and ensuring that all South Australians have their basic human needs met. Water is one of the most fundamental basic human needs and access to safe, secure and affordable drinking water is critical for our collective health and wellbeing.

We thank the Productivity Commission (Commission) for the opportunity to provide comments on the Draft Report. While our submission focuses on issues and solutions primarily relevant to South Australia, we note our commentary may have relevance to other jurisdictions under the National Water Initiative (NWI).

In general, SACOSS supports the Commission's view that elements of the NWI are no longer fit for purpose, as we continue to grapple with the impacts of a drying climate, more severe and frequent droughts and other extreme events. We note that reforms to date have focused on water resource management and to a lesser extent, outcomes for larger urban utilities. SACOSS believes that the next era of reforms presents an opportunity to improve service provision for those living in regional and remote areas, particularly remote Aboriginal communities.

Our submission provides further commentary on the following:

- Provision of water services in regional and remote communities;

- Basic level of service;
- Community Service Obligations; and
- Urban water pricing and institutional arrangements

Regional and remote communities

The extent and magnitude of problems in regional and remote communities remains unclear

As part of SACOSS' ongoing research and advocacy program, we engaged Aither to better understand the challenges and opportunities to improve drinking water services for those living in regional and remote South Australia.¹ The preliminary findings of the Aither work are of relevance to the Commission's inquiry, and SACOSS will forward a copy of the final report to the Commission once finalised. The Aither project has identified that regional and remote communities face specific and challenges when it comes to the provision of water services, and that these challenges are not adequately addressed in the current policy, legislative and regulatory framework. This dynamic has played out in South Australia, with the introduction of the *Water Industry Act 2012* (and its associated policy and regulation) improving the security, reliability and relative affordability of water for metropolitan Adelaide and other regional centres. Policies and reforms to date have mostly remained silent on addressing the gap in standards of service delivery for drinking water services in smaller regional and remote communities, where full cost recovery is difficult. As a result, some regional and remote communities are receiving poor (sometimes unsafe), unreliable and high-cost water services.

Section 6.1 of the Commission's draft assessment suggests that the NWI commitment of "*Achieving healthy and safe water supplies: Regional and remote*" has been "largely achieved", noting that "most jurisdictions are taking steps to improve regional service quality," and that "drinking water quality remains an issue in some remote communities."² This assessment remains unchanged from the Commission's review in 2017.

SACOSS submits that there is still a lack of understanding of the collective magnitude of the problem in South Australia (and likely, other jurisdictions). For example, the water quality outcomes reported for South Australia in Table 6.3 of the draft assessment report references SA Water as the reporting entity demonstrating "at least 99 per cent compliance with the ADWG in all regions, including remote Aboriginal communities."³ SACOSS understands that there are self-supplied communities where SA Water are *not* obliged to

¹ Final report forthcoming

² <https://www.pc.gov.au/inquiries/current/water-reform-2020/draft/water-reform-2020-draft-assessment.pdf>, p. 165

³ <https://www.pc.gov.au/inquiries/current/water-reform-2020/draft/water-reform-2020-draft-assessment.pdf>, p. 168

service under their Community Service Obligations (CSOs). Accordingly, these remote Aboriginal communities outside of SA Water's network may not be captured in the reporting referenced above. Given the reporting requirements applied to minor and intermediate retailers in South Australia are considerably lighter touch than those applied to SA Water, we remain unconvinced around our collective grasp on the magnitude of issues across regional and remote South Australia.

The Aither project also identified that there is currently no single source of information or understanding regarding the ownership, delivery and status of water services to regional and remote communities across South Australia. The report suggests that without this collective understanding of the state-of-play, policy responses are often ad-hoc and reactive to individual problems and can tend to focus on short-term, partial solutions.

An example of this is the Scotdesco Aboriginal Community, 100km west of Ceduna, in the Far West Coast of South Australia. The community has a population of 50 and primarily relies on rainwater for its supply (rainwater tanks connected to individual homes as well as self-managing its own rainwater catchment). In 2019, the community experienced critical water shortages due to lack of winter rainfall and required emergency water to be carted in at a cost of \$1,400 per truckload.⁴ As the Scotdesco community falls outside of the boundary of a prescribed area, it was unable to access the subsidised cost of \$300 for the same amount of water. While the situation in Scotdesco eventually found its way into the public consciousness,⁵ we suggest that this was the result of self-advocacy from the community rather than issues surfacing via the current policy, legislative and regulatory framework. SACOSS' previous work in this area suggests that water supply arrangements differ from community to community.⁶ It is therefore difficult to ascertain the extent to which certain issues are due to systematic issues (i.e common across communities) or were isolated experiences.

To address this knowledge gap, Aither has suggested that a state-wide stocktake of South Australian regional and remote communities water services is required to better understand:

- the extent and magnitude of challenges experienced;
- the root causes of the challenges;
- the amount of investment required to address the totality of the problem; and

⁴ <https://www.abc.net.au/news/2019-11-05/aboriginal-community-scotdesco-has-run-out-of-drinking-water/11670576>

⁵ <https://www.lindaburney.com.au/speeches/2019/10/28/the-water-emergency-in-scotdesco>

⁶ https://www.sacoss.org.au/sites/default/files/public/200630_SACOSS%20Scoping%20Study%20Remote%20Communities_FINAL_0.pdf

- to identify any systemic challenges (such as legislative or regulatory environments) that need to be addressed.

We agree with the Commission’s observation that “in all jurisdictions, there is usually little, if any, data published on communities that self-supply, or on remote Aboriginal and Torres Strait Islander communities.”⁷ While we would support improved national oversight of these issues (e.g. via the reintroduction of the ABS Community Housing and Infrastructure Needs Survey or aligning with Closing the Gap targets), we encourage state governments to take meaningful steps to address these information gaps by committing to understand the magnitude of issues. This should be done as a critical priority.

Basic level of service

SACOSS strongly supports the Commission’s Draft NWI renewal advice 11.6 (see box below) to include a commitment to ensure access to at least, a *basic* level of safe and reliable drinking water to all Australians. Despite being a signatory to the United Nations’ Sustainable Development Goals, including the goal to *ensure access to water and sanitation for all (SDG 6)*, the high-level national data can hide gaps and inequities across regional areas and different population groups.⁸ While the “1 per cent” currently being left behind could be easily dismissed when viewed from the other side (i.e. 99 per cent compliance), the *essentiality* of water for basic human survival demands that we reframe the focus on the 1 per cent. This is particularly the case as those living in rural and remote areas, who tend to have shorter lives, poorer health outcomes, and higher burden of disease and compared to those living in major cities.⁹ SACOSS views the basic level of service as a minimum bar which *picks up* those currently falling through the gaps of the current policy, legislative and regulatory framework. Designed well, the basic level of service provides a potential mechanism for state and territory governments to set clear, strategic direction to guide investment in water services for those living in regional and remote areas, rather than relying on short-term, ad-hoc and reactive responses.

⁷ <https://www.pc.gov.au/inquiries/current/water-reform-2020/draft/water-reform-2020-draft-assessment.pdf>, p. 173

⁸ https://www.sacoss.org.au/sites/default/files/public/200817_Equitable%20Access%20Water%20Sanitation%20Discussion%20Paper.pdf

⁹ <https://www.aihw.gov.au/reports/rural-remote-australians/rural-remote-health/contents/profile-of-rural-and-remote-australians>

DRAFT NWI RENEWAL ADVICE 11.6: ENSURING ACCESS TO A BASIC LEVEL OF SERVICE

A renewed National Water Initiative should include a commitment to ensure access to at least a basic level of safe and reliable drinking water to all Australians. State and Territory Governments could each develop a definition of, and commit to ensure access to, a basic level of service for each community in their jurisdiction.

Cost-reflective user charges should remain the default arrangement, but some regional and remote services in high-cost areas will require operational subsidies to maintain a basic level of service to all customers. Any subsidies to those areas should be provided as transparent community service obligation payments. Payments to local government-owned providers should be:

- designed to ensure access to a basic level of service in those communities where such service provision would otherwise be unviable
- adequate to ensure a basic level of service is considered affordable
- based on credible data on efficient service costs, subject to a degree of independent oversight, following State or Territory government involvement in system planning
- calculated in a predictable fashion to provide a reliable source of funding
- conditional on ongoing operational improvements, such as improvements to utility governance, better service outcomes (based on performance benchmarking), compliance with guidelines for system and contingency planning, or for pursuing collaboration.

Best practice water pricing and institutional arrangements

As outlined in the Draft Report, under the 2004 *National Water Initiative* (NWI), the South Australian Government committed to:

- implement best-practice pricing and institutional arrangements for urban water services
- pursue urban water reform, and
- undertake specific actions as part of these endeavours.

Subsequent to this commitment, COAG endorsed the *National Urban Water Planning Principles* in 2008 and the *NWI Pricing Principles* in 2010.¹⁰ In 2012, the South Australian Government enacted the *Water Industry Act 2012*, which together with the *Essential Services Commission Act 2002*, established an independent economic regulatory regime for the water industry in South Australia, including SA Water.

The Second reading speech for the *Water Industry Bill* highlighted the benefits of the introduction of economic regulation (our emphasis):¹¹

¹⁰ Productivity Commission 2021, [National Water Reform 2020](#), Draft Report, Canberra, p.135

¹¹ Hansard, *Water Industry Bill 2011*, Second Reading speech, Legislative Council, Thursday 10 November 2011, p.4421 <http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-10-8303>

The Bill lays an appropriate legislative foundation for an efficient, competitive and innovative water industry. A key element of this is the introduction of independent economic regulation for the industry, with the appointment of the Essential Services Commission of South Australia (or ESCOSA).

Independent economic regulation provides a transparent means of setting service standards and prices. Ultimately this is about protecting the long-term interests of customers and encouraging efficient investment in infrastructure.

SACOSS agrees with the Productivity Commission's observation that these reforms have resulted in benefits for consumers (our emphasis):¹²

'Institutional separation of policy making, service delivery and regulation has improved accountability and transparency. Corporatisation of utilities has encouraged commercial behaviour, promoting efficient investment and lower prices for the benefit of water users (PC2017a, p.10). Independent economic regulation has supported more rigorous scrutiny of utilities' operational and investment decisions and reduced the risk of political interference in price setting and infrastructure investment processes. And benchmarking and reporting of urban water pricing and service outcomes enable customers to compare their provider with others'— promoting questioning that can prompt improved outcomes. Assessment processes consistent with the NWI requirements that investments are economically viable and ecologically sustainable help to ensure that water service providers avoid uneconomic and potentially environmentally damaging decisions (chapter13).

However, SACOSS is concerned the government's commitment to the institutional separation of policy making, service delivery and regulation of SA Water, including the independence of the economic regulator in South Australia (ESCOSA) (and the regulatory process more broadly), is being increasingly compromised.

Currently, the Minister for Environment and Water can direct SA Water to undertake significant capital and operational expenditures, and the Treasurer can order those costs be recovered in full from SA Water's customers through their water bills, without being subject to the 'rigorous scrutiny' of independent economic regulation.

For example, on 28 May 2020 (a couple of weeks prior to the publication of ESCOSA's Final Determination for SA Water 2020-24 on 11 June 2020), the Minister for Environment and Water issued SA Water with a Ministerial Direction¹³ pursuant to section 6 of the *Public*

¹² Productivity Commission 2021, [National Water Reform2020](#), Draft Report, Canberra, p26-27

¹³ Direction to SA Water pursuant to section 6 of the Public Corporations Act 1993, <https://www.escosa.sa.gov.au/ArticleDocuments/21489/20200611-Water-DirectionsUnderSection6PublicCorporationsAct1993-GazetteNotice.pdf.aspx?Embed=Y>

Corporations Act 1993, to purchase or provide a number of specified services, facilities and contributions from 1 July 2020.¹⁴

The Ministerial Directions made by the Minister for Environment and Water were not directly incorporated by ESCOSA into the revenue determination for SA Water, rather the Treasurer's Pricing Orders required ESCOSA to include these expenditures in the revenue determination.¹⁵

Following these Orders, ESCOSA's Regulatory Determination for SA Water 2020-2024, included over \$461 million in unscrutinised SA Water expenditure directed by the Minister, which will be recovered from SA Water customers through their water bills in the next four years.¹⁶ The expenditure includes costs ESCOSA may otherwise have deemed not to be prudent and/or efficient, but this remains unknown, as those expenditures are not subject to the scrutiny or efficiency targets imposed on other expenditure in the Determination.

Importantly, the Second Reading speech for the *Water Industry Bill* in 2011 explains the purpose of the Treasurer's Pricing Order power as a 'transitional' measure in the move to independent economic regulation (our emphasis):

*Similarly, in undertaking its price regulation function, ESCOSA would be required to comply with the requirements of any pricing order issued by the Treasurer. **This is essential to manage the transition to independent economic regulation and to avoid any unexpected price shocks to consumers.** It also ensures that important State Government policies, such as state-wide pricing, can be continued. Such arrangements will complement the concessions scheme and hardship provisions under the Bill, and they will be critical for vulnerable consumers and small regional communities.*

However, since the introduction of the *Water Industry Act* in 2012, the Treasurer has issued seven Pricing Orders, or variations to those Pricing Orders.¹⁷ By virtue of the Treasurer's

¹⁴ This directions power is limited by Sections 6(2) and 6(3) of the *Public Corporations Act*, which respectively provide that a direction may not be given by the Minister contrary to the provisions of another Act, and SA Water may not be directed by its Minister to do anything that would be beyond SA Water's powers, as provided by the *South Australian Water Corporation Act 1995*, or any other Act.

¹⁵ Section 35 of the *Water Industry Act* provides that in addition to the requirements contained in section 25(4) of the *Essential Services Commission Act*, the Commission must comply with any requirements of the Pricing Order issued by the Treasurer.

¹⁶ Direction to SA Water pursuant to section 6 of the *Public Corporations Act 1993*, 28 May 2020. The Directions issued to SA Water by the Minister for Environment and Water on 28 May 2020 amount to \$173,097,000 in operating expenditure and \$287,992,000 in capital expenditure for the regulatory period 2020-2024. See link: <https://www.escosa.sa.gov.au/ArticleDocuments/21489/20200611-Water-DirectionsUnderSection6PublicCorporationsAct1993-GazetteNotice.pdf.aspx?Embed=Y>

¹⁷ See: <https://www.treasury.sa.gov.au/economy,-taxes-and-rebates/economic-regulation>

current Pricing Orders, the following NWI Pricing Principles **are excluded** from applying to ESCOSA's Regulatory Determinations:¹⁸

- NWI Pricing Principles for *Recovering the Costs of Water Planning and Management Activities*
- NWI Pricing Principles for the *Recovery of Capital Expenditure* where that expenditure is required to 'support activities that SA Water is required to provide in accordance with a Direction under Section 6 of the *Public Corporations Act 1993*'.
- Principle 1 of the NWI Pricing Principles for *Urban Water Tariffs* where the costs are attributable to 'activities that SA Water is required to provide in accordance with a Direction under Section 6 of the *Public Corporations Act 1993*' and are specified in the relevant direction.

Under the *NWI Pricing Principles*, Governments agreed that 'if a decision was made not to apply these principles in a particular case, the reasons for this would be tabled in parliament'.¹⁹ To our knowledge the various programs and projects which make up the \$461m in expenditure have not been tested for cost-effectiveness, and the reasons for this have not been tabled in parliament.

The Treasurer's Pricing Orders therefore operate to ensure capital expenditures on infrastructure projects SA Water is directed by the Minister to undertake under section 6 of the *Public Corporations Act 1993*, are not subject to the independent scrutiny or consumer input of other expenditure proposals in the regulatory process. The costs of complying with these Directions are simply mandatory, and have to be recovered in full from SA Water customers.

In 2018 the Marshall Liberal Government made a commitment to establish an independent inquiry into water pricing to improve the pricing of water in South Australia 'ensuring that consumers are not ripped off by a State Government'. Whilst the goal of the inquiry was to report on cost reflective pricing, the scope of the inquiry established by the Treasurer **specifically excluded** from consideration the costs of meeting Ministerial Directions issued by the Minister for Environment and Water.²⁰

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

¹⁸ See: [Pricing Order for the Regulatory Period 1 July 2020 – 30 June 2024](#) and [Second Pricing Order for the Regulatory Period 1 July 2020 – 30 June 2021](#)

¹⁹ [NWI Pricing Principles](#), Introduction, para. 10

²⁰ Owens, Lewis, *Inquiry into Water Pricing in SA - A Cautious Conclusion*, December 2018, p.3 https://www.treasury.sa.gov.au/data/assets/pdf_file/0010/93646/2018-12-A-Cautious-Conclusion-report.pdf

Treasurer's Pricing Orders was initially intended to be a transitional measure during the move to a new regulatory regime in 2013.²¹ Together with the Ministerial Directions, the Pricing Orders have become a tool for government to increase SA Water's revenue outside of the independent regulatory process.

Funding the costs of Ministerial Directions through Regulatory Determinations is not in the long-term interests of consumers - it results in costs that are not publicly scrutinised, hidden in customers' bills and sends distorted price signals to water users. ESCOSA has cautioned against this practice, previously stating 'the costs of meeting any Ministerial Directions should be transparently determined, and funded by direct, transparent community service obligation payments, and not by water consumers'.²²

The timing of the most recent Ministerial Directions and Pricing Order (two weeks before the final Determination) undermined the extensive consumer engagement and input which took place during the 18 months before the Commission's Final Determination, leading to uncertainty and distrust of the regulatory process.

SACOSS submits this practice does not align with the *2004 National Water Initiative* or the *National Water Initiative (NWI) Pricing Principles* agreed to by COAG in 2010.²³ Best practice regulation depends on certainty, transparency and community benefit. Consumers should pay no more for water than is allowed by ESCOSA exercising its independent, statutory decision-making powers.

SACOSS therefore strongly agrees with the Productivity Commission that:

*'A renewed NWI should **recommit to cost-reflective pricing and look to further improve pricing and institutional arrangements across all water service provision** by:-developing national principles to improve the quality of independent economic regulation, with formal regulation of large providers and light-touch economic oversight of small providers, based on a framework that guides the coverage of economic regulation-recommitting to (and improving) public monitoring, reporting and benchmarking of pricing and service quality outcomes, especially in remote communities.*

²¹ Essential Services Commission of South Australia, *SA Water's Water And Sewerage Revenues 2013/14 – 2015/16 Final Determination*, Statement of Reasons, May 2013, p.1
https://www.escosa.sa.gov.au/ArticleDocuments/488/130527-SAWater_Water_SewerageRevenu.pdf.aspx?Embed=Y

²² Essential Services Commission of South Australia, *SA Water's Water And Sewerage Revenues 2013/14 – 2015/16 Final Determination*, Statement of Reasons, May 2013, p.127-128
https://www.escosa.sa.gov.au/ArticleDocuments/488/130527-SAWater_Water_SewerageRevenu.pdf.aspx?Embed=Y

²³ National Water Initiative Pricing Principles, p.3
<https://www.agriculture.gov.au/sites/default/files/sitecollectiondocuments/water/national-water-initiative-pricing-principles.pdf>

A renewed NWI should include significantly enhanced treatment of urban water, including best-practice system planning, pricing and institutional arrangements. This could help the sector adjust and avoid imposing unnecessary costs on customers.'

Community Service Obligations

SACOSS notes that the Draft Assessment report refers to the South Australian Government providing SA Water with a CSO for high-cost regional services, and suggests that this is compliant with the NWI.²⁴ We would like to highlight that for minor and intermediate retailers (MIRs) operating in South Australia, the Minister for Environment and Water also has the power to direct MIRs to make a Community Service Obligations Scheme, which is then included within the Licence as a requirement under section 25(1)(o) of the Water Industry Act 2012:

The Commission [Essential Services Commission of South Australia] must make a licence subject to conditions determined by the Commission:

(o) requiring the water industry entity to comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by water industry entities

While it appears that the mechanism exists for the SA Government to direct Community Service Obligations Scheme to apply to for MIRs, we are not aware of the Minister using this provision to extend CSOs to apply to MIRs. SACOSS believes that this exacerbates inequities for those serviced by smaller providers, who cannot access to provisions to offset the costs of receiving basic water services due to their location and service provider.

SACOSS supports the Commission's view that CSOs need to be targeted and transparent and suggests that there is merit in conducting a public review to understand the impacts of broadening the application of CSOs more broadly in South Australia.

We thank you in advance for consideration of our comments. If you have any questions relating to this submission, please contact Rebecca Law

Yours sincerely,

Ross Womersley
Chief Executive Officer

²⁴ <https://www.pc.gov.au/inquiries/current/water-reform-2020/draft/water-reform-2020-draft-assessment.pdf>, p. 83