



SUBMISSION

TO | Essential Services Commission of South Australia (ESCOSA)

TOPIC | Feedback on ESCOSA's Draft Determination of SA Water's Regulatory Business Plan Proposal 2024-2028

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The participation in responses to this consultation by Uniting Communities is possible due to funding received from the Department for Environment and Water's (DEW) Consumer Advocacy and Research Fund (CARF). The views expressed through our engagement cannot be regarded as reflecting those of the SA Government as a provider of CARF funding.

About Uniting Communities

We are an inclusive not-for-profit organisation working alongside more than 80,000 South Australians each year and have been creating positive change for South Australian communities for more than 120 years. Uniting Communities works across South Australia through more than 100 community service programs, including: aged care, disability, youth services, financial inclusion, homelessness intervention, foster care, family and financial counselling. We advocate for systems change across diverse social justice issues to shape public and social policy that delivers better outcomes for marginalised communities. We strive to build strong and supportive communities, to help people realise their potential and live the best life they can.

We help those in need find the courage to move forward through enriching their lives and uniting the communities in which they live. By tackling the deep-seated challenges that affect people's lives, we are working to create systemic change and brighter futures for all South Australians. We have a bold and unceasing commitment to social justice, advocating for change and improvement in the lives of those who need it most.

We have a long-standing role as a provider of financial counselling services and have observed over recent years that utilities affordability is the number one presenting issue across our financial counselling services. Consequently, we have actively engaged in advocacy and engaged with energy and water businesses and regulators to seek to make these essential services more affordable.

Uniting Communities acknowledges and thanks Mark Henley (the previous Manager of Advocacy and Communications at Uniting Communities) who continues to willingly share his expertise and contributed to over a decade and a half of active engagement in utilities policy and regulation advocacy.

Executive Summary

Uniting Communities thanks the Essential Services Commission of South Australia (ESCOSA) for providing an opportunity for stakeholders to provide feedback on the Commission's Draft Determination of SA Water's Regulatory Business Plan 2024-2028.

ESCOAS's Draft Determination

ESCOSA's draft decision of the SA Water Regulatory Determination 2024 is a 282-page document that aims:

"To reproduce the incentives for efficient outcomes that benefit SA Water customers in the absence of a competitive market." and will "... protect South Australian consumers long-term interests with respect to the price, quality and reliability of SA Water's services, enhance protections for water users, and confirm the need for SA Water to provide regular, meaningful and transparent public information on its performance."

Above all else, access to water (and associated wastewater services) is as an “essential service” and it is critical that these services are provided in a way that is accessible, fair, reliable, high quality and affordable for all. It is noted that many Australians are currently experiencing a “cost of living” crisis and it is critical that this is carefully considered throughout this determination process.

Uniting Communities has enthusiastically engaged in a variety of stakeholder forums, including SA Water’s Peak Bodies Engagement Forum (PBEF) and ESCOSA’s Consumer Advisory Committee (CAC) to ensure that the voices of some of South Australia’s most financially disadvantaged communities are considered during the development of ESCOSA’s draft determination.

Tenants as SA Water Customers

We pay particular attention to individuals and families that are renting (tenants). The most recent 2021 census data highlighted that 28 percent of South Australians are now renters. They tend to experience the most significant barriers to accessing fair and transparent billing of their water supply and usage. They also tend to be some of the poorest people in our communities.

SA Water have suggested in their RBP that 78% of the 895,000 SA Water Accounts are residential accounts, equating to 698,100 residential accounts. At present there are over 225,000 renters in South Australia, and this is a significant proportion of households that cannot easily access the same level of hardship support as property owners.

Tenants are not considered **customers** (for SA Water billing purposes). While tenants are end-use **consumers**, they are not billed directly and therefore cannot form a relationship with SA Water. Hence, tenants cannot easily access SA Water’s hardship programs, the South Australian Energy and Water Industry Ombudsman (EWOSA) dispute resolution service and are not afforded the same level of consumer protections that are available to property owners.

This is due to the existing legislative framework, as highlight in ESCOSA’s draft determination;

“Section 18C of the *South Australian Water Corporation Act 1994* provides that an amount due to SA Water for provision of a water service under the WI Act is a first charge on the land in relation to which the service has been provided. As a result, SA Water bills property owners, rather than occupants, for its water and wastewater services.”

“SA Water advised that the legislative mechanism that directs where debt for water and sewerage retail services resides is the key controlling factor in the relationship it can have with tenants. It advised that where the contract for services and debt is the responsibility of the property owner, and debt remains as a first charge on the land, it is necessary for the landowner to approve any decisions that impact their legal accountability for debt. This

includes deferral of debt by a tenant where they are required to pay through their tenancy agreement.”

Uniting Communities acknowledges and thanks ESCOSA for their review of the Water Retail Code – Major Retailers (Code) to investigate ways to improve consumer protections for tenants. We appreciate that ESCOSA cannot act beyond the scope of the powers given to it under the Water Industry Act 2012 (WI Act), associated Water Industry Regulations and/or the *Residential Tenancies Act 1995* (RT Act). We also understand that our concerns cannot be fully addressed until additional legislative changes occur to enable tenants to be billed directly by SA Water.

Uniting Communities is therefore fully supportive of ESCOSA’s draft decision to extend the identified provisions in the Code (as detailed on page 52 and 53 of ESCOSA’s draft determination) which currently apply only to residential customers to all “consumers”, including tenants.

We fully support ESCOSA’s intention to write to the Minister for Climate, Environment and Water (Minister) to advise of our concerns about protections for tenants and the limitations on the Commission’s ability to resolve the issue and are thankful that ESCOSA will also engage with staff from DEW and Consumer and Business Services to support reviews of the WI Act and RT Act.

We are also supportive of ESCOSA engaging with EWOSA to ensure that SA Water’s obligations to consumers established by the Code are clear, and that consumers have support from EWOSA’s dispute resolution services in relation to those obligations.

Again, we thank ESCOSA for investigating possible ways to make changes to the Code that would extend further protections to tenants however remain concerned that different levels of protections will continue to apply to tenants as SA Water consumers.

We strongly recommend that ESCOSA works with the relevant South Australian government Ministers and Departments to continue to align the definitions of ‘customer’, ‘consumer’ and ‘residential customer’ so that tenants can be covered by the same consumer protections afforded to all customers.

We continue to encourage SA Water to better understand the situation of renters as bill paying customers and to seek to have closer relationships with them, including making hardship support more accessible for renters. Additional information about the experience of tenants is detailed below under the Context heading.

Provision of paper bills

Uniting Communities does **not** agree that the current prohibition on SA Water charging customers for provision of paper bills is removed from the Water Retail Code. Whilst we appreciate the “provision of bills in a digital format, may be a simpler, lower-cost and more

environmentally friendly option for SA Water” and that the proposed additional guidelines may support some consumers to transition to receiving an online bill, many consumers do not or cannot access digital billing and other online facilities.

ESCOSA accepts that this change could “adversely affect older people, pensioners, people on low incomes, people with disabilities, and other vulnerable members of the community.”

The South Australian Government also acknowledged this in late 2023 when they held a public consultation to inquire into “[Access and connectivity to the Internet](#)” via a yourSAy consultation. The background to the inquiry stated:

“While parts of Adelaide have excellent connectivity through programs such as GigCity, areas of regional South Australia have digital connectivity challenges, which limits expansion opportunities for business, flexible arrangements for workers, access to new service delivery models including remote learning, and social inclusion overall.”

The Australian Bureau of Statistics (ABS) also [released data in 2020](#) that stated:

- 1.1 million (28.5%) people with disability did not use the Internet
- Over 250,000 people with disability lacked confidence or knowledge to use the Internet
- 1.4 million (38.4%) older Australians did not use the Internet

It is clear that older people, people with disability and people living in regional, rural and remotes regions of South Australia will be unfairly impacted by this change. Although it is recommended that an exemption scheme is established it is evident that these groups of people may not know how to access or apply for this. As detailed in SACOSS’s 2021 [State of Concessions in South Australia report](#) there are “a series of problems with the logic and assumptions, or the eligibility and availability of concessions provided by the South Australian government.”

Uniting Communities recommends that the current prohibition on SA Water charging customers for the provision of paper bills remains and encourages SA Water to consider other ways to incentivise customers to transition to receiving a digital bill.

Early identification of residential customers experiencing payment difficulty

Uniting Communities 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 it to employ best endeavours to contact these customers to provide information about the available assistance.”

Although the draft determination states that this would apply to “residential customers” it is not clearly stated if or how this would apply to all consumers, including tenants. We believe this process would benefit many tenants experiencing financial hardship, however it would be imperative that SA Water communicate directly with the “consumer” to address their needs and to provide the necessary support.

Protections for people experiencing family violence

Uniting Communities wholeheartedly agrees that “essential service providers have a responsibility to assist consumers to access services” and that “family violence protections are aligned with that responsibility and are backed by community expectations.”

Uniting Communities has a long history of supporting women and children experiencing domestic and family violence through a variety of community services that we provide. In particular, we deliver the [Escaping Violence Payment \(EVP\)](#) program that offers financial assistance to victim-survivors that are trying to leave or have left intimate partner violence move forward and set up a home free of violence. We see the impact that domestic and family violence has on families and how perpetrators can use essential services to cause harm.

We note for the SAWRD20 that ESCOSA did not mandate that SA Water introduce new protections and instead encouraged them to adopt a family violence policy with similar features to those employed by regulated entities in other jurisdictions.

It is due to the above considerations that we support ESCOSA’s draft decision, outlined on page 69, to introduce new clauses in the Code that create conduct and policy requirements for SA Water in relation to:

- having and implementing a family violence policy for customers, with provisions for periodic review
- ensuring training is provided to relevant staff to help them detect and assist impacted customers
- adopting processes that avoid impacted customers from repeat disclosures of family violence or providing evidence
- ensuring confidential information of the impacted customer is securely handled and account security processes prioritise the safety of impacted customers
- specifying its approach to debt management and recovery, and
- providing information on external family violence services that can be accessed for support.

Whilst these new provisions will benefit landowners or “customers”, it remains unclear how these will be applied to tenants. It is highlighted in numerous [research](#) and [reports](#) that although domestic and family violence exists in all societies and socioeconomic classes, it appears that women in lower economic and social situations face more violence. We also know through [research](#) that people that rent are more likely to experience severe financial hardship than those that are property owners.

We therefore recommend that these provisions are extended to all tenants, although extra care is required to ensure the consumer’s privacy is maintained and details of their situation is not shared with the property owner.

Disclosure of domestic and family violence can also be accompanied with disclosures of child abuse, and it is recommended that SA Water carefully consider this when developing the family violence policy.

The experience of domestic and family can also vary for victim-survivors in regional and remote areas compared to those residing in metropolitan areas and it is also recommended that SA Water considers these differences this when developing and applying the family violence policy.

Context

Uniting Communities received funding from a DEW CARF grant in 2021 to undertake a project that aimed to identify issues faced by tenants in relation to water bills and access to customer protections for essential water services. As a result of this grant we published a [final recommendations report](#) in July 2022 titled "Tenants are water customers: Supporting low-income tenants and equitable water billing in SA".

This report outlined recurring themes from numerous engagement activities that included:

- 1. Lack of consensus on interpretation of 'customer' in the *Water Industry Act 2012 (WIA)*:** There is no consensus on whether tenants are customers as per the interpretation of 'customer' in 'prescribed circumstances'. This is important as only customers can access hardship assistance from the utility. The Department for Environment and Water agree that 'residential customers' includes tenants. However, SA Water points out that the Act does not indicate the 'prescribed circumstances' under which tenants are considered customers and hence, they are not required to provide hardship assistance to tenants. Given the different interpretations of the legislation, tenants need to be explicitly recognised as customers in the WIA to remove any doubt. Tenants need to be recognised as customers for the utility to deliver customer obligations, including hardship assistance.
- 2. Limited access to dispute resolution:** Tenants have little recourse to dispute water bills. Given the landlord is the customer, tenants cannot access EWOSA for dispute resolution. As water disputes fall under tenancy agreements, they are resolved at SACAT. The appropriate pathway should be EWOSA as tenants often report the SACAT process is time consuming, formal, expensive, and intimidating. In contrast, EWOSA's service is informal, low-cost, and timely. EWOSA has confirmed that they would be able to help tenants if tenants were recognised as customers.
- 3. Lack of billing transparency:** Several tenants reported not receiving an itemised invoice of their bill. As the law currently stands, the responsibility of requesting a bill lies with tenants and low-income tenants often do not request a copy of the bill as they fear a rent increase or non-renewal of lease. As a result, tenants do not have information and awareness about their water bill, whether they are being charged incorrectly, and their usage information.

4. **Little to no access to hardship provisions:** Vulnerable tenants cannot access SA Water’s hardship program without landlord approval. This is a significant issue as the power imbalance between landlords and tenants discourages tenants from informing landlords about their financial situation. Additionally, as bill paying consumers of an essential service, tenants should be able to access hardship programs by speaking directly with the utility as per the WIA. However, the author observes this is not the case in practice.
5. **Inequitable supply charge responsibility without caveats:** The supply charge is a statutory charge that is typically payable by the property owner. SA is one of the only states where tenants are made to pay the supply charge. In other states including New South Wales, Queensland, and Victoria, the supply charge can only be passed on to tenants if the property is individually metered and complies with minimum water efficiency requirements. Given the lack of such caveats and tenants not being able to access hardship programs and dispute resolution, SA’s water billing system is not equitable and fair to tenants and needs reform.
6. **Billing system impacts on tenants:** Data from multiple sources including SA Water, Uniting Communities, EWOSA, and Rentrigh SA shows that tenants are negatively impacted by the current water billing process. The data shows that tenants want a direct relationship with the water utility, direct billing process, improved access to hardship, and enhanced billing transparency and information.

In October 2022 Uniting Communities published a [Customer Priorities Report](#). This document outlined the priorities of organisations representing a diversity of consumer interests regarding water services and aimed to help ensure that SA Water’s RBP responded to and reflected concerns raised by consumers.

Numerous stakeholders identified their top 3 customer priorities for SA Water’s consideration. These priorities included:

- SA Water needs to make better efforts to identify rentals to target information and hardship assistance. This may require a legislative amendment to access information or to encourage details to be provided without any risk to tenants or landlords.
- SA Water is agile in responding to the increasing cost of living pressures experienced by older people, particularly those on a low and fixed income. We would like to see greater support for people wanting to lower and manage their bills and receive assistance if they are struggling to pay their SA Water bill.
- Supports mechanisms (i.e., hardship) for customers being extended to all end users (notably tenants), not just the proprietor of the property who can simply pass the cost on to the tenant.
- Considers equity and affordability as the most important priority, and needs to underpin all other areas, as opposed to being considered as a standalone priority.

- Given the increasing cost of living pressures, water charges need to be kept low, especially for low income earners.
- It would be good for tenants to be recognised as customers of SA Water. This includes tenants receiving a copy of the water bill directly, being placed on hardship programs (if required) and supported when there are possible pipe leaks increasing usage charges.

Conclusion

Uniting Communities is supportive of the position adopted by SA Water to prioritise affordability and thanks SA Water for openly acknowledging the pressures associated with current the cost-of-living crisis.

It is because of these pressures and that people with disability, older people and people living in regional, rural and remote areas would be unfairly impacted that we recommend that the current prohibition on SA Water charging customers for the provision of paper bills remains.

Again, we thank ESCOSA for investigating possible ways to make changes to the Code that would extend further protections to tenants however remain concerned that different levels of protections will continue to apply to tenants as SA Water consumers.

We strongly recommend that ESCOSA works with the relevant South Australian government Ministers and Departments to align the definitions of 'customer', 'consumer' and 'residential customer' so that tenants can be covered by the same consumer protections afforded to all customers.

Finally, we support ESCOSA's draft decision to introduce new clauses in the Code that create conduct and policy requirements for SA Water to provide improved protections for people experiencing domestic and family violence.

As already stated, above all else, access to water (and associated wastewater services) is as an "essential service" and it is critical that these services are provided in a way that is accessible, fair, reliable, high quality and affordable for all. Countless Australians are currently experiencing a "cost of living" crisis and it is critical that this is carefully considered throughout this determination process.