Review of the
Water Industry Act 2012

What next for regulation of the Water Industry?




Government of South Australia
Department for Environment and Water

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Report prepared by:
Department for Environment and Water
Water and River Murray Division
Water Security, Policy and Planning Branch

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Government of South Australia

Department for Environment and Water

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Summary

The *Water Industry Act 2012* is an Act to regulate the water and sewerage industry. It governs all water industry entities that provide retail services to South Australian customers. The Act became fully operational on 1 January 2013, and included a requirement for review after five years of operation. The Department for Environment and Water has undertaken this review on behalf of the Minister for Environment and Water.

The focus of the review was to understand:

- the success or otherwise of the first five years of implementation of the *Water Industry Act 2012*
- opportunities for legislative or policy improvement and reform that will further the achievement of the objects of the Act.

The review was conducted in two stages. The first stage included an administrative review, a call for input to review topics and meetings with key stakeholders (licenced water industry entities, regulators, local and state government and those with an interest in the water industry). This information was used to inform the development of a discussion paper which was consulted on more broadly as the second stage of the review. Nineteen written submissions were received on the discussion paper and 10 follow up meetings were held to discuss submissions with stakeholders.

The following recommendations have been developed based on the information gathered throughout the review process.

R1	Undertake an initial regulatory amendment process, in consultation with key stakeholders, to amend the Act to address issues highlighted by the review. It is likely that the legislative drafting process will also identify additional minor amendments that could improve the administration of the Act. Additional amendments should be included where they are supported by stakeholders.
R2	Develop appropriate supporting policy to improve the administration of the Act.
R3	Following on from the *SA Inquiry into Water Prices*, further investigate the influence of pricing and price setting processes in supporting an efficient and competitive water industry. This could consider best practice principles in other jurisdictions, the recommendations of the pricing Inquiry, the outcomes of the Commission's inquiry into regulatory arrangements for small-scale and off-grid water, gas and electricity services, the NWI pricing principles and any future updates to the NWI. The investigations should consider: • price setting methodology (e.g. setting maximum price vs setting revenue cap) across all water sources (e.g. retail, recycled/reuse, bulk) • whether or not the value of the regulated asset base should be more firmly fixed through parliamentary processes • the role price can play in incentivising the uptake of alternative water sources • consideration of the role of state-wide pricing on equity and competition, including the impacts of community service obligation payments • consideration of the applicability of community service obligation payments for water industry entities other than SA Water. Where relevant, the outcomes from these investigations should inform SA Water's next regulatory business proposal and the subsequent revenue and pricing determination processes.

R4	In addition to the consideration of pricing (recommendation R3), investigate the most appropriate pricing methodologies (one or more) for access pricing to maximise efficient uptake of access arrangements, taking into account the links to state-wide pricing and the potential impacts to the existing SA Water customer base. The review should also consider the broader benefits of increased access arrangements, particularly in providing water to support agricultural development in South Australia.
R5	Develop supporting policy to provide clarity to the circumstances under which additional infrastructure (including non SA Water infrastructure) can be declared (to be available for access arrangements) under section 86(B) of the Act.
R6	Investigate options for regulation of drainage services (stormwater management) within the Act, providing an avenue for water industry entities to take responsibility for part or all of the drainage system, and to cost recover drainage management, maintenance and asset replacement costs through beneficiary pays mechanisms, set through independent pricing regulation.
R7	Continue the use of a tiered licensing approach to manage the diversity of water retailers efficiently and ensure fit for purpose regulation. This should continue to operate at an administrative level managed by the Commission as the independent regulator, and be informed by the current inquiry into regulatory arrangements for small-scale and off-grid water, gas and electricity services being undertaken by the Commission.
R8	Work with stakeholders to develop criteria for a formalised exemption regime within the Water Industry Act Regulations and for other parts of the Act. A focus for exemption should be very small-scale, not for profit, non-potable suppliers.
R9	Continue to regulate irrigation services that are regulated through irrigation specific legislation under existing arrangements.
R10	Work with stakeholders to review the appropriateness of the existing exemption under section 5(2)(c) (designated irrigation services) of the Act to ensure greater consistency across water industry entities outside of irrigation legislation.
R11	Develop a framework for long term water security planning to support supply augmentation decisions in consideration of all potential water sources and new and emerging technologies. The framework should provide the basis for efficient and prudent investment decisions that support current and future demands and consider potable and non-potable supplies and centralised and de-centralised systems to augment supply, in line with the recommendations of the Productivity Commission.
R12	Develop supporting policy to provide clarity to the circumstances under which Section 115 and Regulation 38 will be used to allow any water industry entity to charge landholders adjoining their infrastructure through rating on abuttal.
R13	Amend the Act to bring land owners who are charged on a rating on abuttal basis within the definition of customer in the Act, therefore providing access to customer protection provisions of the legislation.
R14	The ability for a Minister to approve a scheme enabling a water industry entity to require any owner of land adjacent to an approved scheme to connect to it should be retained within the Act (section 48). In order to provide transparency and clarity to the matters that the Minister will take into account when determining whether or not to approve a scheme, supporting policy should be developed to provide guidance to the administration of the Act.
R15	Remove section 37 of the Act in relation to the Minister's hardship provision to avoid confusion between sections of the Act. The Government should establish the hardship policy intent for the Commission to operationalise through the retail codes and associated licence conditions. This could provide flexibility to make allowances for existing Local Government Act hardship provisions.
R16	Considering previous work and the impact to SA Water business systems, consider amending the definition of a retail customer to include consumers of water services as customers.

Background

The *Water Industry Act 2012* is an Act to regulate the water and sewerage industry. It governs all water industry entities that provide retail services to South Australian customers.

A key driver for the introduction of the Act was the opportunity for independent regulation of the industry to protect the needs of customers, public health and the environment and provide opportunities for new participants in the industry.

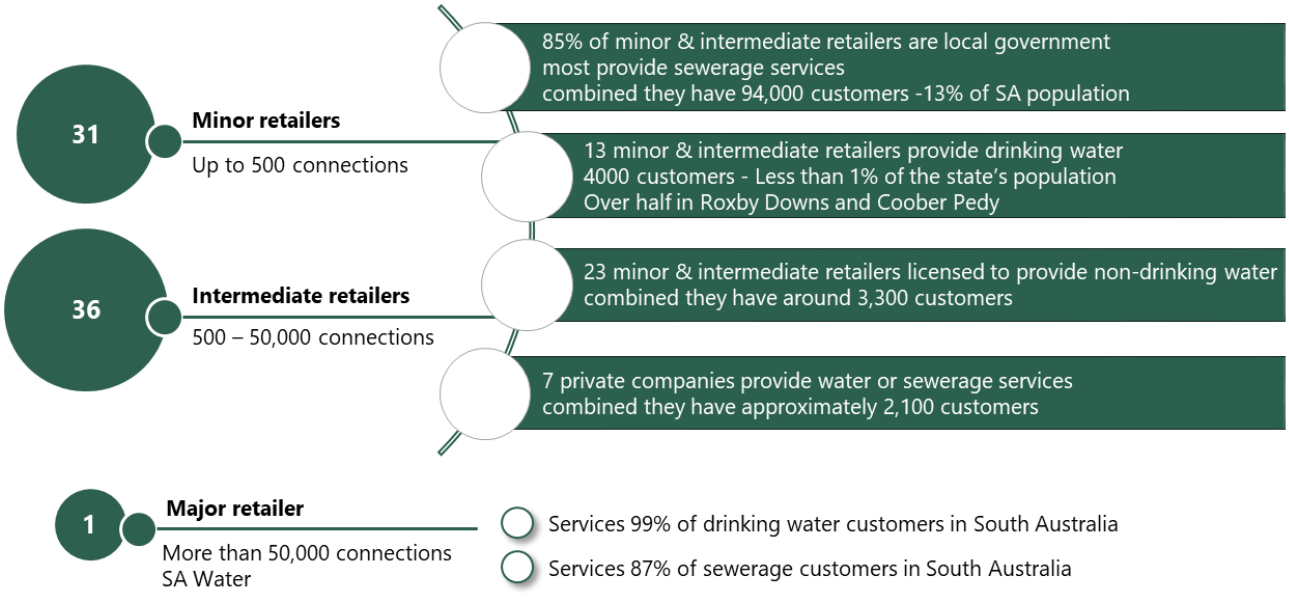
The need for new water industry legislation was driven by several factors, including:

- heightened community awareness about water security and the need to manage water resources carefully
- the prospect of an increasingly diverse range of water supplies, including through new and emerging technologies
- the prospect of new participants in the water industry
- the need to replace water legislation that was nearly 80 years old
- the potential impacts on water supply from climate change, population and economic growth
- national water reforms.

The water industry is made up of 68 licensed water industry entities. Collectively, the retailers licensed under the Act provide drinking water services to approximately 770,000 customers and sewerage services to approximately 693,000 customers across South Australia. The scale and scope of water and sewerage services offered varies considerably across retailers. SA Water is the largest (and only major) retailer, with a broad range of minor and intermediate retailers providing sewerage services, non-potable water supplies and potable water to their customers.

The objects of the Act can be summarised as:

- promoting planning for water security
- promoting efficiency, competition and innovation in the water industry
- providing for transparent water pricing
- ensuring appropriate technical standards apply to the water industry
- protecting the interests of consumers
- promoting the wise management of water
- promoting the economically efficient use and operation of infrastructure so as to promote competition in upstream and downstream markets



Review process

The *Water Industry Act 2012* become fully operational on 1 January 2013. Built into the Act is a requirement for review. The Department for Environment and Water has undertaken the review on behalf of the Minister.

The focus of the review was to understand:

- the success or otherwise of the first five years of implementation of the *Water Industry Act 2012*
- opportunities for legislative or policy improvement and reform that will further the achievement of the objects of the Act.

The review was conducted in two stages. The first stage included an administrative review, a call for input to review topics and meetings with key stakeholders, including government agencies, regulators and water industry entities. This information was used to inform the development of a discussion paper which was consulted on more broadly as the second stage of the review. Nineteen written submissions were received on the discussion paper and 10 follow up meetings were held to discuss submissions with stakeholders.

The information gathered throughout all stages of the review has informed the development of the Review report and the recommendations within it. The recommendations are based on the significant stakeholder input to the review. The extent to which recommendations are further progressed will be at the discretion of the Minister and government.

The outcomes of the review are summarised in the following sections. Recommendations are presented at the end of each section and are denoted by a recommendation number like this.

R1 Undertake an initial regulatory amendment process, in consultation with key stakeholders, to amend the Act to address issues highlighted by the review. It is likely that the legislative drafting process will also identify additional minor amendments that could improve the efficiency of the administration of the water industry. Additional amendments should be included where they are supported by stakeholders.

R2 Develop appropriate supporting policy to improve the administration of the Act.

Competition, regulation and pricing

One of the key drivers for the introduction of the *Water Industry Act 2012* was to increase competition in the water sector. This is supported by two of the objectives of the Act:

- to promote efficiency, competition and innovation in the water industry
- to provide mechanisms for the transparent setting of prices within the water industry and to facilitate pricing structures that reflect the true value of services provided by participants in that industry.

The purpose of introducing competition to a monopoly industry is to generate efficiency gains through service providers competing against each other. Efficiency can be considered broadly to encompass productive efficiency, allocative efficiency and dynamic efficiency (see sidebar). A focus on economic efficiency does not detract from customer values as allocative efficiency is based on ensuring services are provided that reflect customer preferences.

The review of the Act has raised a number of issues around regulation and pricing and how they have potentially influenced the ability for significant competition between the monopoly supplier and new entrants to the market, particularly in relation to the non-potable water supply sector.

Stakeholders consider non-potable supply offers the greatest opportunities for new market entrants and competition in the industry.

In a warming and drying climate, with increased demand for water for urban greening and cooling, coupled with a potential decease in water supply from traditional water sources, there will be a need for increased uptake of alternative water supplies and to diversify the supply mix. A competitive water market has the potential to support and encourage diverse water supplies to deliver fit for purpose water to meet a range of demands.

With this in mind there is a need to more fully understand the benefits, costs and risks of the existing regulatory and pricing arrangements, and to consider the best ways to use these tools to manage and encourage competition in the water industry while maintaining consumer and environmental protections.

Economic regulation is a key component of managing and maintaining a competitive market. One of the important features introduced with the Act was the role of the Essential Services Commission of South Australia (ESCOSA) (the Commission) as the independent regulator of the water industry. Section 35 of the Act provides that the Commission may make a determination under the *Essential Services Commission Act 2002* regulating prices, conditions relating to prices and price-fixing factors for retail services. In doing so the Commission must comply with any pricing orders issued by the Treasurer.

The Commission has two separate price determination processes, one that applies to SA Water (as the major retailer) and one that applies to minor and intermediate water retailers.

Productive efficiency: output is maximised for a given cost or cost is minimised for a given output.

For example, service providers will lower prices and/or increase level of service to attract and keep customers.

Allocative efficiency: production reflects consumer preferences, and resources are assigned to those that value them most highly.

For example, competition compels service providers to offer products that customers' value.

Dynamic efficiency: investment decisions balance short-term and long-term focus.

For example, competition can drive innovation, which may be dynamically efficient with innovation resulting in new types of services or existing services provided at a lower cost.

SA Water price determination

The SA Water price determination is a rigorous process that generally occurs once every four years, with the duration set through the Pricing Order. The third price determination has been recently completed. Particular focus and effort is put into the SA Water price determination because SA Water holds a monopoly provider position in the market. In the absence of significant competition, the potential exists for SA Water to take advantage of its monopoly position, either by reducing services or by earning excessive revenue. Economic regulation provides a mechanism to counterbalance that position, with the Commission able to set binding consumer protection obligations and make determinations on revenue and some pricing matters. The price determination process provides incentives for SA Water to deliver services at a

level valued by customers, recover no more than prudent and efficient revenues and seek out management and financial efficiencies to reduce its costs over time. The regulatory process does not determine the specific projects and programs which SA Water must undertake.

The SA Water regulatory process is guided by a pricing order issued by the Treasurer. The Treasurer's pricing order relating to the current regulatory determination process (2020-2024) (RD20) requires that the Commission:

- must only determine the total revenue which may be derived from drinking water retail services and sewerage retail services (separately)
- must not establish revenue control based on a customer class or location
- include a mechanism which allows for the adjustment of total revenue where ESCOSA determines there to be a relevant and material variation between forecast and actual rates of water consumption or sewerage connections (with associated conditions)
- must apply the National Water Initiative (NWI) Principles for recovery of capital expenditure and urban water tariffs
- must adopt the value of the regulated asset base (RAB).

The price determination sets revenue caps for drinking water retail services and sewerage retail services (separately) and specifies pricing principles for excluded retail services. Excluded services include the provision of both standard and non-standard connection services, trade waste services, recycled water services, hydrant and fire plug services and metering services.

SA Water and the South Australian Government are then responsible for setting specific prices, such as supply and use charges for residential and non-residential customers. While the prices must comply with the Commission's allowed revenues, the Commission does not directly set water prices in South Australia. In addition to setting the prices for water and sewerage, SA Water and the government also set the prices for all excluded services.

Stakeholders have suggested that more transparency around pricing could be provided by the Commission taking a more active role in the setting of prices.

This was particularly raised in relation to setting prices in the excluded services areas (e.g. recycled water). It was felt that this would provide reassurance to customers that price setting was truly independent of the water utility and also provide transparency to potential competitors to inform business decisions. This in turn could assist with incentivising the increased use of alternative water supplies provided by a range of smaller retailers.

Stakeholders viewed the New South Wales model for water pricing as a potential alternative approach in South Australia.

The Independent Pricing and Regulatory Tribunal (IPART) is the independent economic regulator for New South Wales water utilities. IPART reviews and determines the maximum prices that can be charged for bulk and retail water by most major water utilities across NSW, noting that there are a number of separate water industry entities, including Water NSW which is a bulk supplier. IPART also makes price recommendations about alternate water utilities (licenced under the NSW Water Industry Competition Act) and monitors the licence compliance of all utilities. IPART therefore takes a more direct role in price regulation across all of the water industry entities in NSW.

While the Act provides the framework for economic regulation of the Water Industry, it does not provide direction on the mechanisms that the Commission consider in setting those determinations, which is provided through the Treasurer's pricing order. An alternative mechanism of setting prices for water retailers would not therefore require an amendment to legislation, rather it is a decision of government on the role and purpose of economic regulation in supporting the water industry in South Australia.

SA inquiry into water prices

In August 2018, the Treasurer established an inquiry into water pricing in South Australia. The focus of the inquiry was specifically around the reasonableness of the opening value of SA Water's water services Regulated Asset Base (the accumulation of the value of investments that a service provider has made in its network – also known as the RAB) that was set in the Second Pricing Order issued on 17 May 2013. The RAB is a key component of the building block process used by the Commission to set the revenue cap for SA Water and has a significant influence on water prices. The Inquiry did not consider the wastewater business.

After an extensive consultation process and broad consideration of a range of approaches for a reasonable alternative value for the water RAB, the Inquiry concluded that the 2013 RAB value was not "reasonable", and made the following recommendations for consideration by the Treasurer:

- the value of the opening water RAB established in the Second Pricing Order in May 2013 is not reasonable, and should be changed
- there is a wide range of credible values, but it is difficult to support a June 2013 asset value higher than $7.25 billion (in December 2012 dollars)
- while it is possible to determine a water RAB value as low as $6.1 billion based on the interstate approach to legacy asset de-valuation under the NWI, the Inquiry believes a more balanced view would support a range between $6.9 billion and $7.1 billion if the Government wished to support South Australian businesses and consumers through lower water prices. If it is unable for budgetary or other reasons to adopt the lower number, the Inquiry would encourage consideration of a gradual move towards the higher number in this range.

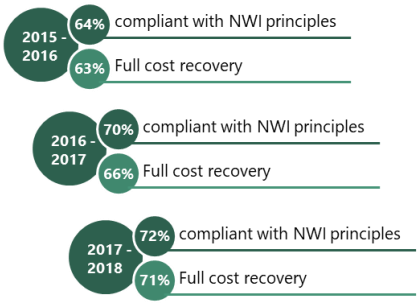
The Inquiry also made the following comments:

- once the Government decides whether to adjust the value of the water RAB, it should also determine if it wishes to set this value more firmly in place by legislation rather than leaving it open to the on-going decision of Treasurers at the commencement of every Price Determination. Parliament could fix a number as was done with electricity assets and remove this uncertainty from water pricing for the future
- the opportunity arising from the inquiry may be for the Government to work with stakeholders, SA Water and ESCOSA to determine how any reduction in the RAB values can be used to maximise the contributions of water to the future of South Australia
- together with the current work by SA Water and ESCOSA to determine the regulatory arrangements for SA Water over the period 2020-24, there may be an opportunity to address some of the long-standing concerns about pricing structures. This includes ensuring that the most disadvantaged have access to an affordable supply of clean water, and considering how our agricultural and other industries can access sustainable water supplies at a comparable price to interstate.

"The Inquiry believes there is good will and deep interest amongst stakeholders to contribute to a discussion on these complex matters as part of the Government's response to the findings of the Inquiry. It need not be just a decision about setting a new RAB: it could be a more comprehensive discussion about what SA wants from its water industry, and what we are prepared to pay to bring this about" (Lewis Owens, Final Report of the SA Inquiry into Water Prices).

Following this review, and as part of the recently completed RD20 process, the value of the water RAB has been adjusted from $7.77 to $7.25 billion as at 1 July 2013 (in December 2012 dollars). This downward adjustment to the RAB was reflected in the significant price cut for SA Water customers that applies from 1 July 2020.

Minor and intermediate retailers



The pricing determination for minor and intermediate retailers was issued in 2013 and updated in 2015. It requires minor and intermediate retailers to comply with the National Water Initiative (NWI) Pricing Principles (recovery of capital expenditure, urban water tariffs and recycled water and stormwater reuse) when charging for water and sewerage services and to report to the Commission on how they are complying with those principles.

The Commission prepares a Minor and Intermediate Retailers Regulatory Performance Report, with the last one completed in 2017-18. In this report 72% of small and intermediate retailers reported being fully compliant with the NWI pricing principles. Of those who reported that they were not yet fully compliant, the key reasons given were:

- difficulty in achieving full cost recovery due to a small customer base and/or customers' capacity to pay
- asset management plans that were yet to be finalised.

Seventy-one percent of retailers reported operating income which covered operating costs and depreciation in 2017-18. This measure is considered by the Commission to be a reasonable proxy for whether or not retailers are recovering the costs of service provision. For the remaining 29% of retailers that reported operating deficits, many are still transitioning to full cost recovery and are gradually adjusting prices to limit the potential for price shocks. Others are limited in their ability to recover the cost of service provision (for example, due to a small customer base and/or public benefit reasons such as supply to school grounds and community areas).

This review of the Act and the reporting undertaken by minor and intermediate retailers has highlighted that there are issues in achieving full cost recovery, and therefore compliance with the NWI pricing principles, for small water retailers with low customer bases.

State-wide pricing

The South Australian Government has a policy of state-wide pricing which means that most customers pay the same price per kilolitre of water, regardless of where they live or the actual cost of providing a service. State-wide pricing also applies to sewerage services. The state-wide price applies to the majority of SA Water customers serviced through the regulated water business (potable supply). While 99% of drinking water customers and 87% of sewerage customers are serviced by SA Water there remain a number of customers, serviced by other water retailers, who do not receive state-wide pricing, including some who pay more than the state-wide price.

SA Water receives community service obligation (CSO) payments from the state government for services that it provides at less than the cost of providing them. The majority of this payment was originally intended to support water services in country areas being provided at metropolitan water prices, despite the fact that the cost price to deliver these services is higher. The CSO payment only addresses the operating cost and not the cost of the capital in regional areas. For SA Water's drinking water retail services and sewerage retail services the CSO payments are $67,416,173 and $40,162,827 respectively in each of the four years of the current regulatory period (2016-2020). The CSO is fixed in nominal terms (i.e. does not increase by inflation) to reflect historical decisions so that future investments are made on a commercial basis.

Other water retailers do not have access to community service obligation payments to subsidise costs and keep prices equivalent to state-wide prices. This has resulted in several water retailers having prices that are either above state-wide prices or would be if they were fully cost recovering. This tends to particularly be the case in regional areas where costs can be higher and customer bases smaller, making full cost recovery difficult. This also overlaps with low socio-economic areas, which often lowers the ability for customers to pay.

The issue of state-wide pricing, and the financial support provided by the Government to SA Water to maintain state-wide prices is complex, particularly in a competitive water industry with multiple small water industry entities. This highlights the need for consideration of the importance of the state-wide price and the relative roles of the monopoly supplier and other retailers supplying water in accordance with that state-wide price. If current circumstances continue there remains potential for discrepancies in price across the state as a result of different retail service providers, which also potentially creates inequities for customers.

"It would be much better for customers and for the cause of rational decision making by Governments if SA Water calculated the cost of providing services on a region by region basis and the Government paid explicit subsidies to keep prices to levels which it judged to be appropriate. … the Government would decide both the extent to which it wished to subsidise customers overall and the particular customers who should benefit" (Mr John Hill, Independent Chair, Customer Negotiation Committee, SA Water RD20).

The report by the independent chair of the Customer Negotiation Committee for the SA Water RD20 process has also highlighted issues associated with state-wide pricing. In particular the Chair noted that because SA Water does not allocate its costs to regions (including the metropolitan area) the community service obligation payment effectively lowers the overall costs to all customers as opposed to subsidising rural areas to bring prices down to that in the metropolitan area.

R3

Following on from the *SA Inquiry into Water Prices*, further investigate the influence of pricing and price setting processes in supporting an efficient and competitive water industry. This could consider best practice principles in other jurisdictions, the recommendations of the pricing Inquiry, the outcomes of the Commission's inquiry into regulatory arrangements for small-scale and off-grid water, gas and electricity services, the NWI pricing principles and any future updates to the NWI.

The investigations should consider:

- price setting methodology (e.g. setting maximum price vs setting revenue cap) across all water sources (e.g. retail, recycled/reuse, bulk)
- whether or not the value of the regulated asset base should be more firmly fixed through parliamentary processes
- the role price can play in incentivising the uptake of alternative water sources
- consideration of the role of state-wide pricing on equity and competition, including the impacts of community service obligation payments
- consideration of the applicability of community service obligation payments for water industry entities other than SA Water.

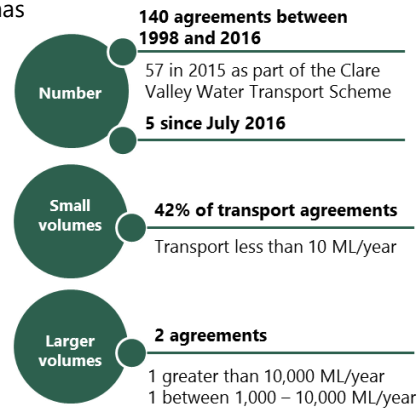
Where relevant, the outcomes from these investigations should inform SA Water's next regulatory business proposal and the subsequent revenue and pricing determination processes.

Third party access

Third party access policies require owners of natural monopoly infrastructure to grant access to that infrastructure to parties other than their own customers. These are usually competitors who could provide the same or similar services on commercial terms comparable to those that would apply in a competitive market. Third party access is designed to allow additional access to water infrastructure to open up a market to competition and to provide goods and services to customers in downstream or upstream markets. The purpose of increased competition is to promote innovation and investment, and ultimately increase economic activity within the state. Third party access policies play an important role in Australia's National Competition Policy. Access policies are generally applied to essential infrastructure which cannot be economically duplicated.

A natural monopoly arises when a single company supplies the entire market with a particular product or service without any competition because of large barriers to entry (for example costs of infrastructure).

SA Water has been negotiating water transport arrangements for nearly 20 years and has a number of long standing arrangements in place. Approximately 16 GL of water is transported annually. Current arrangements include large schemes such as Barossa Infrastructure Limited (BIL) and the Clare Valley Peak Water Transportation Scheme. The existing access arrangements predominantly supply additional water for irrigated agriculture purposes; it is likely that future demand for access negotiations are also likely to be for the supply of water for agricultural purposes, provided suitable access prices can be negotiated.



The third party access regime was introduced into the Act in 2016, adding the provision for a negotiate/arbitrate framework for businesses seeking access to infrastructure that has been declared under the Act for access (declared services). To date only some SA Water infrastructure has been declared (making it available to be part of the access regime), including water distribution networks, a number of water pipelines operated by SA Water and the bulk and local sewerage networks. The access regime within the Act does not, and cannot, apply to irrigation infrastructure subject to water charge rules under Part 4 Division 1 of the *Water Act 2007* of the Commonwealth. Therefore, schemes such as the Central Irrigation Trust and Renmark Irrigation Trust are not covered by the provision of the *Water Industry Act 2012*.

The majority of the current agreements are for small volumes of water that are part of larger schemes (for example Clare Valley Water Transport Scheme) that were commercially negotiated with SA Water outside of the formal access regime. New agreements have tended to reflect additional customers signing up to existing schemes, rather than new schemes.

During consultation on the Bill for the third party access regime in 2015 concerns were raised that an access regime had the potential to increase costs for existing SA Water customers. Based on state-wide pricing, the embedded cross subsidies would be removed and this would lead to inefficient competition with the low, cost-of-supply customers moving to competitors leaving the high, cost-of-supply services being shared by a smaller customer base. To address this, the Minister at the time committed to direct SA Water on the pricing methodology (Access Pricing Direction) that should be used in negotiating access prices; with the direction being that SA Water must use a "retail-minus methodology" based on the state-wide SA water retail price (see sidebar), unless directed otherwise by the Minister.

Third party access pricing Ministerial direction:

" … direct SA Water to determine prices for access to designated services on the basis of a charge per customer calculated using a retail-minus methodology unless otherwise approved by me – Where

Retail-minus methodology means SA Water's retail fees and charges per customer calculated in accordance with the state-wide price for retail services minus SA Water's avoidable costs for the designated services.

Avoidable costs means the costs that SA Water would otherwise incur in the provision of retail services to the customer(s) that SA Water could avoid in the long term if it completely ceased provision of retail services to the customer(s)."

The Commission has recently reviewed the Third Party Access Regime provisions in the Act in accordance with the requirements of section 86ZR. The Commission's review recommended that the access regime should continue to operate, as it provides some benefit as a backstop for private negotiations at a limited regulatory cost.

In addition to the recommendation to continue the access regime the Commission also noted that some stakeholders have suggested that the effectiveness of the regime may be weakened by the use of the Access Pricing Direction (in combination with the existing state-wide pricing policy) and a lack of a mechanism (and clear established criteria) for access seekers to apply to have infrastructure services declared.

The Commission indicated that these issues were potentially worthy of consideration for review by the Government, noting that any assessment should fully consider the costs and benefits of an alternative access pricing methodology, the issue of state-wide pricing and the policy objectives (including social objectives) that state-wide pricing is intended to deliver.

The findings of this review support the Commission's findings.

That is, stakeholders are supportive of maintaining an access regime but feel that the requirement for a retail-minus avoidable cost methodology (in combination with state-wide pricing) and the lack of clarity around the process to have additional infrastructure declared has potentially limited the uptake of access/transport arrangements.

The use of a retail-minus approach is a recognised basis for setting access prices, but is not the only method available; for example some methodologies are based on a cost-plus approach. Stakeholders have indicated that the high price of access has limited uptake of access arrangements; it is likely that the price is a reflection of both the retail-minus methodology and the link of that methodology to the state-wide price.

The use of the state-wide price as the basis for calculations means that, where local infrastructure costs are below the state-wide infrastructure cost, the efficient use of the local infrastructure (through access arrangements) may be less attractive because the state-wide price is higher than the price would be if set by infrastructure costs. There are also likely to be areas of the state where the local infrastructure costs may be higher than the state-wide infrastructure costs. Access prices should not facilitate new entry which is only profitable because the state-wide pricing regime creates cross-subsidies between water supply systems across the state.

SA Water has indicated that moving away from a retail-minus pricing methodology puts it at considerable risk of arbitrage given the readily available source water from the River Murray. It also potentially encourages cherry picking of low cost supply areas.

Arbitrage: the simultaneous buying and selling of securities, currency, or commodities in different markets or in derivative forms in order to take advantage of differing prices for the same asset.

The potential risk to the broader customer base is that if SA Water loses the revenue from areas that are provided with an alternative supply, it also loses the ability to cross subsidise areas that are more expensive to service. This potentially either increases prices for remaining customers or increases budget pressure on government through an additional CSO requirement. Where there is opportunity to provide a service at lower than 'retail minus' pricing, and due to the nature of the service this does not increase the costs for the wider customer base, SA Water has (with Ministerial approval) provided the access service at a lower cost.

This view has been countered by stakeholder views that access arrangements could be improved if different types of access were considered and priced differently. In particular two distinct types of access have been suggested:

- piggy-back model
- economic expansion model.

The piggy-back model can be described as one that provides a water retail service into an existing SA Water supplied area without owning any assets. This has been likened to similar services provided in the telecommunications industry, for example mobile phone companies such as Aldi or Amaysim who sell phone plans at a lower price that make use of existing Telstra or Optus infrastructure. Under this model a piggy-back utility could potentially buy a River Murray water entitlement and sell the water to retail customers in Adelaide at a lower price than SA Water. This type of access potentially leads to the arbitrage situation described by SA Water. Concern about the potential for this type of access arrangement ultimately driving up prices for existing SA Water customers was raised during the introduction of the third party access regime to the Water Industry Act. This was one of the key rationales for the then Minister to direct SA Water to use a "retail-minus" methodology in setting access prices.

The economic expansion model describes a situation where a farmer or business seeks access to create or expand water use to support new business. This could also be achieved through the purchase of a water entitlement from the River Murray (for example) which is then transported using SA Water infrastructure. It has been suggested that this type of access arrangement should be priced differently, based on an actual marginal cost of delivering the water plus a profit margin provided to the infrastructure owner.

It has been suggested that new access arrangements could be facilitated if the government changed its pricing mechanisms for the economic expansion model to a method based on actual marginal cost plus a profit margin for SA Water. To avoid concerns in relation to the piggy-back model this situation could be inhibited using other mechanisms, or through the continued use of a retail-minus methodology for this type of access.

In NSW, the Independent Pricing and Regulatory Tribunal (IPART) introduced wholesale pricing as a way of circumventing potential pricing arbitrage that was emerging in the industry. In setting the wholesale prices for the incumbent service providers (Sydney Water and Hunter Water) IPART adopted a retail-minus approach. In estimating the avoidable costs to be factored into the price, IPART determined that this should be based on what a "reasonably efficient competitor" would incur in providing services from the point of wholesale purchase to end-use customers. IPART's rationale for this approach is to provide greater scope for competition and therefore dynamic efficiency gains (compared to other approaches for calculating avoidable costs).

R4 As part of the consideration of pricing (recommendation R3) investigate the most appropriate pricing methodologies (one or more) for access pricing to maximise efficient uptake of access arrangements, taking into account the links to state-wide pricing and the potential impacts to the existing SA Water customer base. The review should also consider the broader benefits of increased access arrangements, particularly in providing water to support agricultural development in South Australia.

R5 Develop supporting policy to provide clarity to the circumstances under which additional infrastructure (including non SA Water infrastructure) can be declared (to be available for access arrangements) under section 86(B) of the Act.

Stormwater – the other urban water

Urban water management generally considers three elements: potable supply, wastewater and stormwater. Of these, two are currently managed through the Act, but the third, stormwater, is not.

Stormwater management in South Australia is complicated, with a wide range of organisations involved and a number of pieces of legislation providing the governance framework. Much of this legislation is outdated and not in keeping with modern concepts of stormwater management.

Whilst stormwater management is guided by legislation, planning and practice codes, the provision of stormwater services is not formally regulated on a consistent, state-wide basis. This has led to inconsistency in the level and cost of services provided to customers and inadequate investment in stormwater management. Ultimately this has contributed to the sub-optimal condition and capacity of stormwater management infrastructure, leaving the community and environment exposed to adverse consequences.

This review provides an opportunity to explore the potential for the Act to regulate all urban water, including stormwater.

Stormwater infrastructure is aging. Infrastructure is also facing increasing system demands as a result of urban development and increased runoff, and the potential for more frequent and intense short-duration storm events driven by climate change. Increasingly, stormwater is also being viewed as a useful supplementary water source that can contribute to a secure water supply, particularly in supplying water for urban greening, to improve the amenity value of a neighbourhood and contribute to a cooling effect in a warming climate.

There are a number of challenges for stormwater management including, but not limited to:

- the financial cost of meeting the operational, maintenance and renewal requirements of aging infrastructure to achieve minimum requirements and standards

- the capacity of existing stormwater infrastructure to manage increased runoff from urban development and growth, and increased storm intensity resulting from climate change now and into the future
- minimising the adverse impacts of stormwater on the built and natural environment, including reducing the significant costs of responding to and recovering from flood events, and the impact stormwater discharge has on the marine environment.

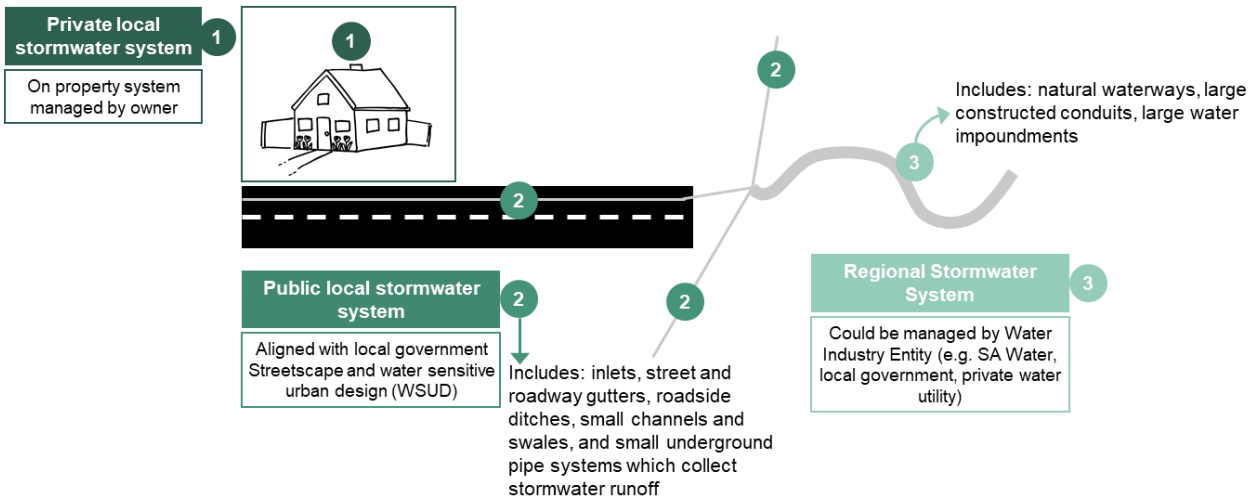
Given these challenges there is a need to re-examine the way we manage and use stormwater and to put in place modern legislative, governance and funding mechanisms to support effective stormwater management in the future.

Existing legislation and management arrangements provide a broad framework for the management of stormwater in South Australia. The same legislation and arrangements introduce complexity to stormwater management, which together with resource limitations challenges the effective and efficient provision of stormwater services. The generation and flow of stormwater runoff through and across multiple administrative boundaries coupled with different resourcing and service approaches further challenges the effectiveness of stormwater management outcomes.

It has been clearly identified by all stakeholders that there is a need to better define and clarify the roles and responsibilities for stormwater management and to find sustainable and equitable mechanisms to properly fund stormwater management and the associated infrastructure.

Broadly the stormwater system can be considered to be made up of three different elements (see diagram below):

- **private local stormwater system:** that part of the system that is within private property (e.g. a house block). As well as gutters and downpipes, private properties can contain ditches, small channels and swales as part of the stormwater conveyance system.
- **public local stormwater system:** designed to remove stormwater from areas such as streets and footpaths to provide pedestrian safety and convenience and vehicle access. This part of the system typically consists of inlets and roadway gutters, roadside ditches, small channels and swales and small underground pipe systems that transport water to the regional drainage system
- **regional stormwater system:** that part of the overall drainage system that controls larger flows from bigger, less frequent storms. Typically it includes large constructed conduits and natural waterways, but can also include some less obvious drainage ways such as over land relief swales and infrequent temporary ponding areas ("flood storage"). These systems can be located within private properties although they provide a stormwater management service for all upstream properties. Legislation currently requires that management of a waterway is the responsibility of the private or public landholder on whose land the waterway is located.



Considering the elements of the stormwater system separately provides an opportunity to clearly articulate where responsibility sits for each element of the system. Appropriate legislative frameworks, governance arrangements and funding mechanisms can then be developed for each element.

In a number of other jurisdictions, both interstate and overseas, elements of the regional stormwater system are managed by water utilities, for example Sydney and Hunter Water in NSW and Melbourne Water in Victoria. In both these states, the independent economic regulator also has a role in setting drainage charges, providing a transparent mechanism for cost recovery to meet infrastructure needs.

It is the view of some stakeholders that regulation of stormwater services would improve service provision, increase protection of natural and built environments, and support adequate investment in stormwater management.

There are potential benefits in managing the regional stormwater system at a larger scale than local government can provide, including:

- efficiency of operation – at a regional level economies of scale can be achieved in purchasing goods and providing services
- opportunity for a more strategic focus to the holistic management of stormwater at a regional scale with a single entity responsible for coordinating priorities and direction
- a more streamlined focus for commercialising stormwater – fewer bodies with responsibility for and ownership of all stormwater would be able to create commercial incentives for interested parties to pursue reuse schemes

"The SMA believes that there is scope for one or more water utilities to provide urban drainage services to state and local government- or to residents directly-in the same or a similar manner to the way in which they provide potable water and wastewater services. A single stormwater utility (for argument's sake) could provide: Efficiency of operation ..., a single focus for commercialising stormwater ..., a single focus for managing the environmental impacts ...

There is a reasonably large degree of commonality in the technical skills and 'tool of trade' required to operate and maintain potable water distribution, sewerage and stormwater drainage networks and existing water utilities would have the capacity and capability to operate stormwater drainage networks, or could mobilise quickly to do so." (Submission: Stormwater Management Authority)

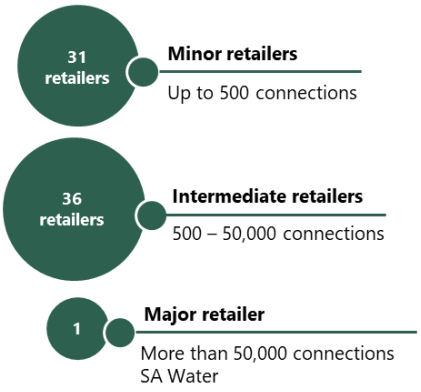
This review provides an opportunity to consider if the Act, and licenced water industry entities, could potentially play a role in stormwater management in the future. This could be achieved through an amendment to the Act to allow for water industry entities to have responsibility for regional stormwater (drainage) systems. It could also establish the framework for beneficiary pays mechanisms to provide a sustainable long-term funding source to maintain and replace infrastructure, with a transparent pricing mechanism administered through an independent regulator.

R6

Investigate options for regulation of drainage services (stormwater management) within the Act, providing an avenue for water industry entities to take responsibility for part or all of the drainage system, and to cost recover drainage management, maintenance and asset replacement costs through beneficiary pays mechanisms, set through independent pricing regulation.

Licensing and exemptions

Retail water services are provided in accordance with licences issued under the *Water Industry Act 2012*. The Act provides for one licensing system for all water retailers (single licensing regime), except for specific provisions that are in place for SA Water as the major retailer. The Commission as the independent economic regulator has recognised that there are differences in the scale and scope of retail operations and therefore three retail licence classes have been created for the purpose of the administration of the Act. The review has received general support for the continuation of a tiered licencing system administered by the Commission as the independent regulator.



Maintaining the tiered structure at the administrative level (as opposed to within legislation) is considered by stakeholders to provide flexibility and allow for a more responsive licensing regime to meet the changing needs of the water industry.

The Act provides a number of ways for a water supplier to be exempt from either the Act as a whole (irrigation services) or from the requirements for a licence as a water retailer through formal exemption processes.

Irrigation services

Section 5(2)(a) and 5(2)(b) of the Act exempt irrigation trusts from the Act as a whole, because they are governed by their own legislation, namely the *Irrigation Act 2009* or the *Renmark Irrigation Trust Act 2009* (e.g. Central Irrigation Trust and Renmark Irrigation Trust). This is the basis for the exemption of these water suppliers from the provisions of the Act.

Irrigation services that have been designated by the Minster (through a notice in the Gazette) under section 5(2)(c) are also exempt from the Act as a whole. To date five irrigation services have been exempted through this section: Barossa Infrastructure Limited, Langhorne Creek Water Company, The Creeks Pipeline Company, Water Reticulation Services Virginia and Willunga Basin Water Company. These irrigation services are not regulated by any other specific water industry related legislation, although general company regulation applies.

There are a number of licensed water industry entities that also primarily supply water for irrigation. These are generally local governments that supply water for the irrigation of parks and ovals, rather than for agricultural irrigation purposes.

> *"WUA* [Wate Utilities Australia] *is both a licenced Water Industry Entity and an exempt person pursuant to the Act. Whilst being currently exempt from the Act, WUA manages WBWC* [Willunga Basin Water Company] *as if it were regulated as a Water Industry Entity. We also believe that WBWC would benefit in some ways from being regulated by the Act, as provisions such as the right to lay pipes in public roads currently do not apply to WBWC"*
>
> *"… may be some unintended consequences of WBWC's exemption being rescinded that may be to the detriment of our customers. Therefore, a thorough understanding of the consequences of WBWC's exemption being rescinded must be undertaken prior to any action …"*
>
> *"… various systems of raw water and rewater for large irrigation (urban and agricultural) and non-human contact uses also need to be appropriately licensed, but one questions whether the same standards of regulatory scrutiny (including technical standards) and price setting need to apply. We submit that the same set of principles ought to apply to all water industry entities irrespective of scale and ownership." (Submission: Water Utilities Australia).*

This has led to discrepancies in the way irrigation (non-potable supplies) water retailers are, or are not, regulated under the Act; with some exempt from the Act but regulated through other irrigation legislation, some exempt from the Act and not regulated through irrigation legislation, and some licensed under the Act (where irrigation is of parks and ovals). In an open and competitive water market it is important to ensure a level playing field for all water suppliers and to ensure that appropriate customer protection policies are in place for all customers. One way to achieve this is through an equitable regulatory framework with fit-for-purpose licensing arrangements. This could require some form of regulation (including irrigation legislation) for all water retailers, although they may not all be administered in the same way. In considering the

potential options for regulation of all water retailers, the benefits provided by the Act, such as rights to access land, should also be considered.

Exemption from a licence

Section 108 of the Act gives the Commission, with the approval of the Minister, the power to exempt an entity from requiring a retail licence. This provision should generally only be used in exceptional circumstances. In granting these exemptions, the Commission may attach a range of conditions that relate to other parts of the Act, for example compliance with technical standards or customer requirements or complaints. In the past this type of exemption has generally only been granted to small community run (not for profit) schemes that provide non-potable supplies. This type of exemption removes the requirement for a retail licence, but still allows for the Commission to provide some oversight and ensure that customer rights are protected.

The fact that a number of exemptions have been issued gives an indication that a statutory exemption regime may be appropriate for a class of very small-scale water retailers that have been unintentionally captured by the Act. It is likely that the Act was never intended to regulate these types of very small scale water supply arrangements between neighbours and that there is no benefit to full regulation of this type of water retail service.

The review has shown that there is support from stakeholders for a more formalised and transparent approach to exemptions for very small scale water suppliers.

This could be achieved through the inclusion of specific exemptions within the Water Industry Act Regulations, as occurs in the *Electricity Act 1996*. Exemptions could be developed based on similar criteria as those that have been used by the Commission to exempt water suppliers to date, including non-potable supply, very small number of customers, and not for profit suppliers.

R7	Continue the use of a tiered licensing approach to manage the diversity of water retailers efficiently and ensure fit for purpose regulation. This should continue to operate at an administrative level managed by the Commission as the independent regulator, and be informed by the current inquiry into regulatory arrangements for small-scale and off-grid water, gas and electricity services being undertaken by the Commission.
R8	Work with stakeholders to develop criteria for a formalised exemption regime within the Water Industry Act Regulations and for other parts of the Act. A focus for exemption should be very small-scale, not for profit, non-potable suppliers.
R9	Continue to regulate irrigation services that are regulated through irrigation specific legislation under existing arrangements.
R10	Work with stakeholders to review the appropriateness of the existing exemption under section 5(2)(c) (designated irrigation services) of the Act to ensure greater consistency across water industry entities outside of irrigation legislation.

Planning for water security

The need for long term planning to ensure water supply meets future demands was recognised with the introduction of the *Water Industry Act 2012*, which has as a key object: to promote

planning associated with the availability of water within the state to respond to the demand within the community. This object is supported by the water planning requirements within the Act, which require the Minister to prepare and maintain a *State Water Demand and Supply Statement*. To date regional statements have been used to form a picture of the state's water demand and supply needs, which have been prepared under the Water for Good strategy, which was never formally adopted or reviewed for the purposes of the Act.

Current requirements of the Act are for the State Water Demand and Supply Statement to:

- assess the state of South Australia's water resources and the extent of water supplies available within the state; and
- assess current and future demand for water within the State; and
- outline polices, plans and strategies relevant to ensuring that the State's water supplies are secure and reliable and are able to sustain economic growth within the State.

"The current water industry approach encourages small scale supply areas for non-potable water. However, there appear to be economies of scale from larger schemes and integration of existing schemes. There is a need for a non-potable water supply strategy for Greater Adelaide that integrates stormwater harvesting, wastewater reuse and untreated water from surface storages". (Submission: Eastern Regional Alliance Water Board).

In addition to the high level planning undertaken by the state government, water industry entities undertake their own planning to ensure that their infrastructure adequately meets current and future needs. This is a part of long-term business planning and is important for setting water prices by ensuring that adequate funding is available to meet future asset needs.

In 2017 the Productivity Commission undertook an inquiry into progress with the reform of Australia's water resources sector, with a particular emphasis on the progress of governments in achieving the objectives of the National Water Initiative. In relation to the state's water security planning, the Productivity Commission noted that there was a lack of clear definition of roles and responsibilities in relation to supply augmentation, and particularly in relation to the role of the primary utility (SA Water).

Following on from this the Productivity Commission recommended (Recommendation 6.1) that state and territory governments need to ensure that roles and responsibilities for system and major supply augmentation planning are clearly allocated between governments and utilities, recognising that ultimate accountability rests with government. The Productivity Commission also recommended that decisions should consider all options fully and transparently, including both centralised and decentralised approaches (including indirect and direct potable reuse, and reuse of stormwater), and that decisions are adaptive in response to new information.

Ensuring that the state has adequate water to meet current and future needs is critical to the economic development of South Australia. It is therefore important for the state to undertake appropriate and transparent planning for future water security, accounting for changing demands and water availability, particularly in light of predicted warming and drying associated with climate change.

Stakeholder feedback has highlighted that there is a critical need for transparent long-term planning for water security, which includes both potable and non-potable supplies and provides opportunities to optimise use from all water sources.

Stakeholders generally consider that long-term water security planning is a government responsibility, rather than that of water utilities. In particular it was felt that there is a need for a transparent process that ensures that future augmentation of water supply considers all options fully, including a range of centralised and decentralised options, and alternative water supplies. This aligns with the recommendations of the Productivity Commission.

"South Australia's supply augmentation processes lack clear roles and responsibilities, as well as transparency. Legislation requires the Minister to publish demand and supply statements and outline policies and plans to ensure supplies are secure and reliable. However, it is not clear what the role of the primary utility, SA Water, is in these processes, nor how any policies and plans published by the Minister would interact with SA Water's investment planning." Productivity Commission Inquiry Report into National Water Reform, 2017

While stakeholders believe the overall responsibility for water security planning should rest with government, it was felt that the long term planning undertaken by water utilities could contribute useful information to a state process.

The need for water utilities to be more transparent about long term plans has been highlighted by the Consumer Expert Panel for the current SA Water pricing determination process. The Panel indicated that SA Water should provide more and earlier information about its operations and plans, particularly its longer-term plans.

In planning for water security it is important to avoid duplication of effort between water utilities and the state government, and to ensure a transparent and accountable process to plan for the state's long term water security, including augmentation investment that fully considers all water supply options.

South Australia is not unique in trying to balance the various roles of government and water utilities in long term water security planning. A recent review of the Sydney Water Corporation Operating Licence undertaken by the NSW regulator IPART highlighted the importance of transparent long term planning for water security. The review proposed placing additional obligations on Sydney Water to submit its long-term capital and operational plans and drought response plans to the portfolio Minister and to submit data under a data sharing agreement to the Department of Planning and Environment. The IPART review also highlighted the potential for an uneven playing field between Sydney Water and potential new entrants to the market because a significant proportion of planning information is currently held within Sydney Water and therefore unavailable to potential new entrants. IPART highlighted that requiring Sydney Water to make this information publically available would be a low-cost starting point to fill the current information gap in the market and allow potential new entrants to make informed, efficient decisions on future project development. This is potentially also a barrier to new market entrants in South Australia.

R11

Develop a framework for long term water security planning to support supply augmentation decisions in consideration of all potential water sources and new and emerging technologies. The framework should provide the basis for efficient and prudent investment decisions that support current and future demands and consider, potable and non-potable supplies and centralised and de-centralised systems to augment supply, in line with the recommendations of the Productivity Commission.

Rating on abuttal

Before the introduction of the *Water Industry Act 2012*, SA Water was able to impose charges in respect of land that was adjacent to, or abutted, its infrastructure, under a practice known as "rating on abuttal". This means that owners of land that abutted infrastructure were liable for charges despite not using the water or sewerage service that was provided by that infrastructure. This is also sometimes referred to as availability charging and is intended to cover the cost of service installation and maintenance in the event that the landowner connects to that service. The Act has provided for this practice to continue by issuing of a Gazette notice in accordance with Section 115 and Regulation 38 of the Act. To date only one Gazette notice has been issued that allows SA Water to continue the practice of rating on abuttal in areas where it had previously charged on that basis, and in areas where it has declared by public notice that water supply and/or sewerage services are available for connection to supply water and/or sewerage services.

Local government water industry entities have similar powers under the rating provisions of the *Local Government Act 1999*. Under that legislation, a council can impose a service rate, an annual service charge or a combination of the two on rateable land within its area, where it provides, or

makes available, a prescribed service – which includes the treatment or provision of water and the collection, treatment or disposal of waste.

As it currently stands, rating on abuttal is available for SA Water and local government, but is not available for private water industry entities. Rating on abuttal practices are often used by water industry entities to help fund upfront infrastructure costs; therefore the inability of private water industry entities to use this tool may put them at a competitive disadvantage. Some private entities have used encumbrances over land to fund upfront infrastructure costs, but this is a cumbersome mechanism to achieve a similar result.

While the Act provides the mechanism for a water industry entity to charge land owners adjacent to their infrastructure, the mechanisms by which it does this means that those land owners are not considered as customers of a retail service under the Act. The flow on from this is that a range of pricing and customer protection tools within the legislation do not apply to those charged under rating on abuttal arrangements.

Generally, stakeholders are supportive of maintaining rating on abuttal, and providing a level playing field by ensuring that all water industry entities are able to access this tool, regardless of the type of water industry entity.

Stakeholders are also supportive of bringing land owners who pay this charge within the definition of customer, to ensure that adequate customer protection principles are available to customers.

> *"Council's long standing practice has been to apply an annual service charge where access to the wastewater service is available. This stems from the following principles: The need to progressively recover the up-front cost to Council for the design and construction of the infrastructure including the funding implications (generally loan funded with the associated finance cost); having access to the service should enhance the market value of the subject land; and broader community benefit is achieved through improved public health standards via the incentive for the land owner to connect to and make use of the service." (Submission: local government)*

R12 Develop supporting policy to provide clarity to the circumstances under which Section 115 and Regulation 38 will be used to allow any water industry entity to charge landholders adjoining their infrastructure through rating on abuttal.

R13 Amend the Act to bring land owners who are charged on a rating on abuttal basis within the definition of customer in the Act, therefore providing access to customer protection provisions of the legislation.

Requirement to connect to infrastructure

Prior to the introduction of the Act, public authorities were able to require owners of land adjacent to sewerage infrastructure to connect to that infrastructure. These provisions were essentially designed to address public health and/or environmental concerns.

Local government is able to require adjacent landholders to connect to a community wastewater management scheme (CWMS) through the *South Australian Public Health (Wastewater) Regulations,* which only applies to local government.

Section 48 of the Act replaced section 33 of the *Sewerage Act 1929*, extending the power to require adjacent land owners to connect to infrastructure, previously available to SA Water, to all water industry entities. As the ability to compel a land owner to become a customer is a significant power, it is subject to Ministerial approval of a scheme that provides for the supply of sewerage services. Once a scheme is approved, the water industry entity may require owners of land adjacent to its infrastructure to connect to that infrastructure. The direction provided by the Act is broad and does not indicate the basis on which a decision to approve a scheme should be made, rather the decision can be made as the Minster thinks fit.

Water Industry Act section 48(5):

"The Minister may, after taking into account such matters as the Minister thinks fit, determine whether or not to approve a scheme under this section."

There is general support from stakeholders for water industry entities to be able to require adjoining landholders to connect to a sewerage scheme when it is established.

Reasons provided include:

- ensures the viability of a scheme that may require certainty about the number of connections required for optimal function and financial viability
- enables public health and environmental management that can best be delivered through a single integrated scheme as opposed to individual property level systems, noting particularly that from a public health perspective there are likely to be some properties that are not suitable for on-site disposal of wastewater.

While there was general support for allowing water industry entities to require connection to infrastructure, it was noted that where a connected sewer system is introduced to an existing residential area (as opposed to a new development) the period of time for an allotment to connect should be assessed on a location by location basis, as there may be specific circumstances for individual allotments that need to be considered.

R14

The ability for a Minister to approve a scheme enabling a water industry entity to require any owner of land adjacent to an approved scheme to connect to it should be retained within the Act (section 48). In order to provide transparency and clarity to the matters that the Minister will take into account when determining whether or not to approve a scheme, supporting policy should be developed to provide guidance to the administration of the Act.

Hardship provisions

Financial hardship usually refers to a situation where a person cannot keep up with debt payments and bills. The term is also used when determining when to offer someone relief from certain types of payment obligations.

There are two sections of the Act that deal with how water retailers should provide for customers who are in financial hardship, that being:

- the Water Retail Code(s) - which are industry codes made under the *Essential Services Commission Act 2002* (section 25(5))
- the Minister's hardship policy, which all water industry entities must adopt (section 37).

Section 25(5) of the Act requires that the Water Retail Code(s) developed by the Commission must include "provisions to assist customers who may be suffering specified types of hardship relevant to the supply of any service …". The term "specified hardship" is not defined in the Act, but the Commission has interpreted this to include financial hardship. The Act limits the application of any Code to the assistance of "customers" as defined by section 4(1) as a "person who owns land in relation to which a retail service is provided". This definition excludes tenants, as the customer is considered to be the owner of the land (or the landlord), except in circumstances where a consumer of retail services is brought into scope by regulation (discontinuation of service, dispute resolution and ombudsman scheme).

Section 37 of the Act also provides for customer hardship policies and requires the Minister to develop a policy to identify residential customers experiencing payment difficulties due to hardship and to outline a range of processes or programs that a water industry entity should use to assist these persons. Section 37 contains its own definition of a residential customer (which only applies to this section) as a "customer or consumer who is supplied with retail services for use at residential premises". This definition includes owner-occupiers and tenants. Under the Act all water industry entities are required to adopt a customer hardship policy published by the Minister. This power was delegated to the Minister for Human Services, who has developed a hardship policy which all licensed water retailers are required to adopt. The policy does not include provisions specifically relevant to tenants (despite the definition of customer in this section) and this is likely because tenants do not currently have a direct financial relationship with their water retailer.

The Act requires that compliance with the Code, including its hardship provisions, and compliance with the Minister's hardship policy, are both conditions of retail licences issued by the Commission. This provides potential for confusion for customers, and duplication or inconsistencies arising between the two instruments. There are no provisions within the Act to directly address this risk of inconsistency or duplication. In addition, local government water industry entities have indicated that they believe there is also potentially duplication and confusion between Act hardship requirements and Local Government Act requirements.

The requirement for the Minister to prepare a hardship policy (section 37) was not originally contained within the legislation (at the time of the second reading speech). A range of proposals to assist customers facing hardship were debated at this time, including requiring water industry entities to develop policies that were consistent with the Water Retail Code. The review of the Act provides the opportunity to streamline hardship provisions to minimise confusion and avoid inconsistency and duplication.

R15 Remove section 37 of the Act in relation to the Minister's hardship provision to avoid confusion between sections of the Act. The Government should establish the hardship policy intent for the Commission to operationalise through the retail codes and associated licence conditions. This could provide flexibility to make allowances for existing Local Government Act hardship provisions.

End users as customers

A number of stakeholders (particularly social services stakeholders) have indicated concern that end use consumers of water services are not always considered customers, as the definition of customer under the Act relates to land owners in most circumstances.

This limits the applicability of a number of elements of the Act, including hardship payments. This has become a particular concern since amendments to the Residential Tenancies Act made tenants responsible for the payment of water supply charges.

This is the case for all retailers, but has particularly been raised by stakeholders in relation to SA Water. Given tenants are not considered to be customers under the Act they are reliant on landlords accurately passing on water costs, and are required to pay for a proportion of those costs directly to the landlord. This also means that they do not have access to any formal payment plans or hardship provisions. This is inconsistent with other essential services, such as electricity and gas, where the tenant is the customer and deals directly with the retailer.

The Commission undertook an Inquiry into *Reform Options for SA Water's Drinking Water and Sewerage Prices* in 2015, which included investigating the costs and benefits of billing end users. The inquiry highlighted that amending the Act so that tenants are also considered as customers,

and therefore have a direct relationship with their water service provider, would potentially provide a range of benefits. Tenants would gain access to the full suite of SA Water's (or any other water retailer) consumer protection measures. For example, they would receive regular bills containing detailed consumption and payment information, have access to flexible payment plans and bill smoothing arrangements, receive early notification of concealed water leaks, and gain access to SA Water's financial hardship program. Tenants would also gain access to SA Water's dispute resolution process, reducing the costs they currently face in attending the Residential Tenancies Tribunal to have disputes heard. It would also provide them with greater price and cost transparency which could potentially be drivers for more efficient consumption by consumers. While this may result in tenants facing increasing direct costs, because of requirements to pay for sewerage (currently a landlord responsibility), in the long term this should be offset by a decrease in rent as landlords will no longer need to recover these costs.

The inquiry also indicated that SA Water could see reduced revenue, due to lower demand resulting from reduced consumption and on property leakage, and could also improve its knowledge of its consumer base by billing end users.

Overall the Commission's inquiry concluded that it is not economically efficient for the costs associated with the provision of a service to be recovered from a person who does not receive that service (i.e. the landlord).

SA Water has indicated that a requirement to bill tenants directly (as opposed to land owners) would increase costs as it would require changes to business systems, particularly its billing system and associated business processes.

This includes costs associated with changes to SA Water's standard contract, privacy policy, and fraud and debt policies. SA Water would also need to develop processes for managing customers moving between properties, and there would be additional costs associated with extra meter reading and billing that would be required for account finalisation for tenants. SA Water would also incur these costs when landowners sold and bought properties.

The review has highlighted a need to fully consider the advantages and disadvantages of changing the definition of a customer to include consumers (e.g. tenants) for the purposes of the Act.

R16 Considering previous work and the impact to SA Water business systems consider amending the definition of a retail customer to include consumers of water services as customers.

Further recommendations

In addition to the issues raised in the previous sections, the review of the Act has highlighted a number of areas where minor amendments to the legislation or the development of supporting policy could improve the efficiency of operations of the water industry as a whole. These issues are summarised in Table 1.

Table 1: Summary of minor amendments raised during the review

Section of the Act	Issue	Recommended amendment
Section 4 - definitions	Under section 18 of the Act (requirements for a licence), water industry entities cannot provide a "retail service" unless they hold a licence. Section 4 of the Act defines a retail service as: *retail service means a service constituted by-* *(a) The sale and supply of water to a person for use (and not for resale other than in prescribed circumstances (if any)) where the water is to be conveyed by a reticulated system; or* (b) … This definition relies on the words "reticulated system", which has not been specifically defined within the legislation. This can result in confusion in some circumstances as to whether or not a service is considered a retail service.	Amend the Act to clarify the definition of reticulated system and to ensure that the definition of a retail service applies to the sale and supply of water to 2 or more people.
Section 9 – functions of Technical Regulator	The current section does not include the technical regulator providing advice in relation to consistency and reliability of supply.	Amend section 9 to include reference to safety standards as well as technical standards, and to provide for the technical regulator to provide advice to members of the water and plumbing industries and to customers and consumers. In making this amendment clarity to the definition of safety and technical standards should be provided – e.g. to include specifications, procedures and guidelines which ensure the safety, consistency and reliability of products, materials, services and systems.
Section 25(1)(o) and 25(1)(p) – customer concessions	Under previous legislation land used exclusively for charitable purposes or public worship was exempt from the requirement to pay rates. Over time this requirement has translated into a customer service obligation for SA Water that allows it to exempt certain groups from water and sewerage rates. This exemption option is not available to other water industry entities.	Delegate section 25(1)(p) to the Minister for Human Services, to develop a scheme for exemptions that could be applicable to all water industry entities, and therefore available to all customers regardless of their supplier. This would then replace the customer service obligation for SA Water that currently exists.
S36 – standard terms and conditions for retail services	The Act requires water industry entities to prepare standard terms and conditions and to publish that information through the Government Gazette. This is not a meaningful way for customers to be notified of standard terms and conditions	Remove requirement for publication in the Government Gazette and replace with requirement for publication on a water industry entity website and through direct communication with customers when the next bill is sent.
S55 – discharge of unauthorised material into water infrastructure	While the current legislation prohibits unauthorised discharge and provides sanctions to be imposed on a person who has allowed the discharge, as well as assigning responsibilities, it does not empower a water industry entity to require or take the necessary immediate remedial action to ensure that the broader water supply is not contaminated.	Add ability for a water industry entity to take necessary immediate remedial action where there is a significant risk of contamination to the broader water supply.

Section of the Act	Issue	Recommended amendment
Section 56 – discharge of unauthorised material into sewerage infrastructure	This section makes it an offence for a person without authority to discharge material (trade waste) into the sewer that is likely to damage the infrastructure. While this reflects what was in the Sewerage Act, it is not supported by a range of other provisions and regulations, for example the former Act included a "likely to be detrimental" clause which gave more flexibility in assessing the impacts on infrastructure. A National Standard for Environmental Risk Management of Industrial Chemicals (National Standard) is in the process of being finalised and the EPA is determining the best way to implement this in South Australia. There is potential that this may involve regulation of sewerage discharge.	Amend to require any discharge into the sewerage infrastructure to be authorised by the infrastructure operator. This would support the existing provisions of retail sewerage services that are the subject of a standard contract between the entity and the customer. This could be accompanied by introduction of an appeal measure for applicants to formally escalate any issues within the water industry entity. Consider appropriateness of use of the provisions of Section 56 in the implementation of the National Standard for Environmental Risk Management of Industrial Chemicals.
Section 66 – standards	This section empowers the Technical Regulator to publish standards relating to infrastructure and equipment and plumbing. The Technical Regulator would like to adopt the Water Services Association of Australia (WSAA) codes as relevant standards for water and sewerage infrastructure. Section 66(6) requires standards to be tabled in parliament after it has been published; doing this for the WSAA code could potentially breach copyright requirements, which has limited the ability of the Technical Regulator in this regard.	To avoid doubt regarding copyright of third party documents by regulation pursuant to s66(10) remove the requirement of laying the WSAA codes before both Houses of Parliament.
Section 69 – customer responsibilities	The Technical Regulator has published the Plumbing Standard of Australia as a standard under the Act and SA Water Standard Customer Contract requires the customer to maintain all infrastructure on the customer's side of the connection point. Provision of an additional clause to require customers to take reasonable steps to prevent water returning from the customer's side of the connection point to water infrastructure will create a customer responsibility within the Act to control backflow prevention risks and enable water industry entities and the Technical Regulator to take proactive actions in relation to backflow risk rather than risk incidents.	Add a new clause to Section 69 to provide for customer responsibility in relation to back flow prevention.
Section 80 – enforcement notices	The Act provides for the issuing of enforcement notices to ensure compliance with the Act; this notice is disclosed to prospective purchasers of a property as a prescribed encumbrance. In some instances an enforcement notice is not required however an authorised officer may want to ensure that information regarding plumbing issues is disclosed to prospective purchasers; for example where a common sewerage drain crosses more than one property and action on one property may impact on a neighbour.	Introduce a new provision to the Act (e.g. 80A) that allows an authorised officer to issue an Advisory Notice which is also a prescribed encumbrance for the purposes of the *Land and Business (Sale and Conveyancing) Act 1994)*

Section of the Act	Issue	Recommended amendment
Section 98 – Fire Plugs	At the direction of the Minister a water industry entity must provide and maintain fire plugs (fire hydrant) in accordance with a scheme. The scheme has never been developed which means that under transitional arrangements the former requirements of the Waterworks Act apply. There is a need to clarify the responsibilities of water industry entities to provide and maintain fire plugs.	Develop a scheme under Section 98 or amend the Act and regulations to clarify water industry entities' responsibilities in relation to fire plugs.
Section 99 – report on installation of separate meters on properties	Single metered properties and the benefit of individual metering on SA Housing Trust was reviewed by the Commission who noted there was no significant benefit to the retrofit of individual meters.	This work has now been completed, therefore this section of the Act can be removed.
Regulations Part 6 – Water conservation – longer-term measures	SA Water administers the water conservation measures at the request of the Minister. The passing of the Millennium Drought and the improved water security position means that water conservation measures (administration and permit issue) have not been required in recent times.	Review and amend as required the long term water conservation provisions of the Act and the Regulations.
Regulation 39 – Vents	This section refers to vents without any further clarification, meaning that there are many vents which are captured by the regulation that shouldn't be, for example air extractor in a range hood.	Clarify that this is intended to relate only to vents that limit the pressure fluctuation with plumbing and equipment.
Regulation 34 – Pipes must not lie across a road	This definition is too narrow, and therefore has failed to capture all relevant matters (e.g. grease arrester) to ensure efficient and effective plumbing regulation. In addition there are several thousand properties in Adelaide that have common drains that traverse two or more properties that were installed in compliance with previous legislation.	Broaden the definition to ensure that common drains installed under previous legislation are not intended to be captured by this section, and broaden the scope beyond pipes to include other plumbing infrastructure.
Administration of the Act	In 2015, Water Utilities Australia (WUA) was granted access to the Property Interest Maintenance System (PIMS) and standard PIMS reports by the Department of Planning, Transport and Infrastructure (DPTI). In 2017 Land Services SA was appointed as the exclusive Service Provider to the South Australian Government for a range of transactional land services and property valuation services previously delivered through the Lands Titles Office and State Valuation Office. Since this time WUA has been required to pay for the ability to access the PIMS. Access to this information is crucial for all water industry entities that supply water retail services to residential properties. Under the current system government (e.g. SA Water and Local Government) do not have to pay an additional fee for this service, but private entities do, which creates inequities amongst water industry entities.	Review and amend the regulatory framework that applies to the access of PIMS to accommodate water industry entities accessing this critical South Australian Government owned information without additional cost.