



COTA Seniors Voice

Water Industry Bill 2010

Submission

2011

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COTA Seniors Voice

COTA Seniors Voice (CSV) is South Australia's peak seniors' organisation with an individual membership of around 20,000 and over 250 seniors' organisation members with a combined membership of more than 60,000. In addition, CSV has 80 associate members who are aged care providers, local government bodies, health units and other service and educational institutions. CSV membership networks and programs are state-wide.

CSV has a longstanding record of contribution to State Government policy for older people, their carers and families, and also delivers a range of programs and services for older Australians.

CSV is concerned that older people's access to affordable quantities of essential services such as water and energy is under threat and supports the view that everybody should have affordable access to sufficient quantities of essential services for health, wellbeing and social participation.

South Australia and its Older Population

The extent and rate of growth of the group of people considered to be aged has significant implications for State Government legislation such as the *Water Industry Bill*.

South Australia has an ageing population, greater than any other state or territory in Australia. At present, 1 in 7 South Australians are aged 65 years and over. By 2021 it will be 1 in 5 and by 2051 it will be 1 in 3. At the same time, people aged 85 years and over will quadruple from 1 in 57 South Australians being aged over 85 to 1 in 15 being aged over 85 by 2051.¹

Many older people in South Australia are also dependent on government benefits. In 2007-08 106,600 South Australian households had retirement pensions as their principal source of income.² More recent data shows that 188,000 older South Australians receive Age and Department for Veteran's Affairs benefits³, of whom approximately 120,000 receive the maximum rate.

These figures show that there are not only that there are more older South Australians, but that many of them are reliant on limited incomes to meet their basic needs.

¹ Australian Bureau of Statistics (2005) Populations Projections

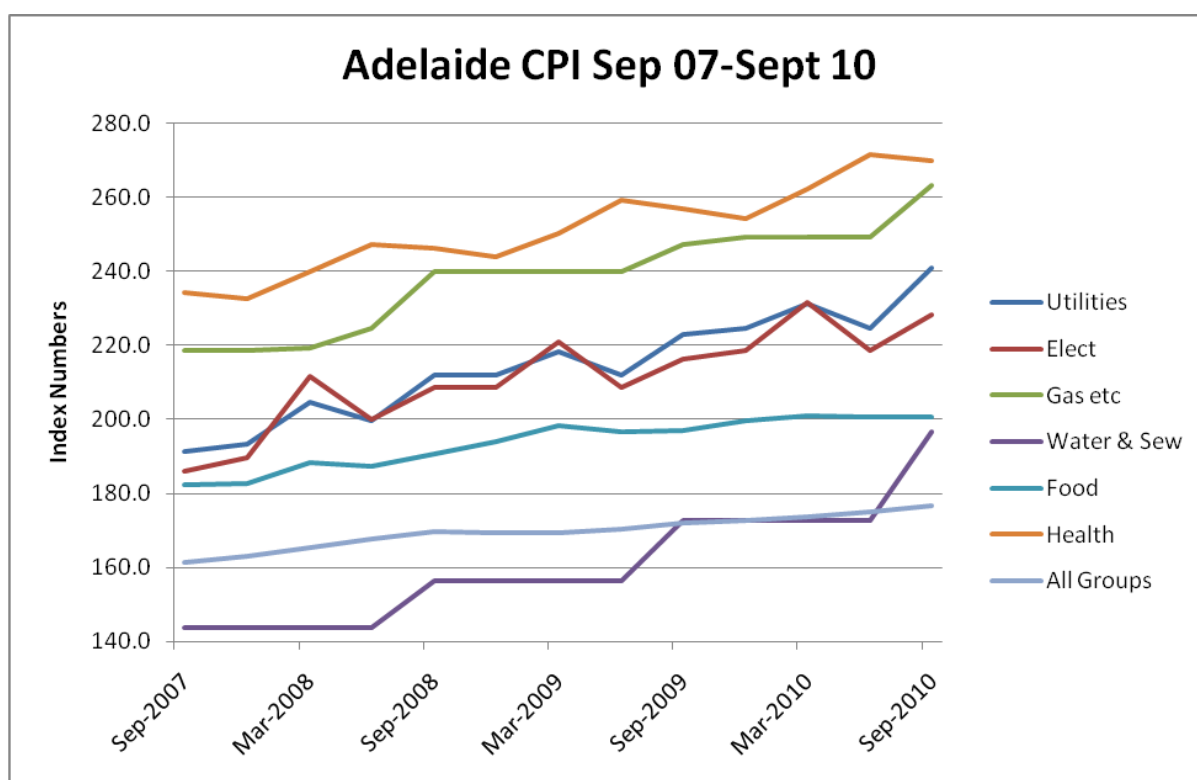
² Australian Bureau of Statistics (2009) Household Income and Income Distribution, Australia, 2007-08

³ FaHCSIA (2010) Income support customers: a statistical overview 2009

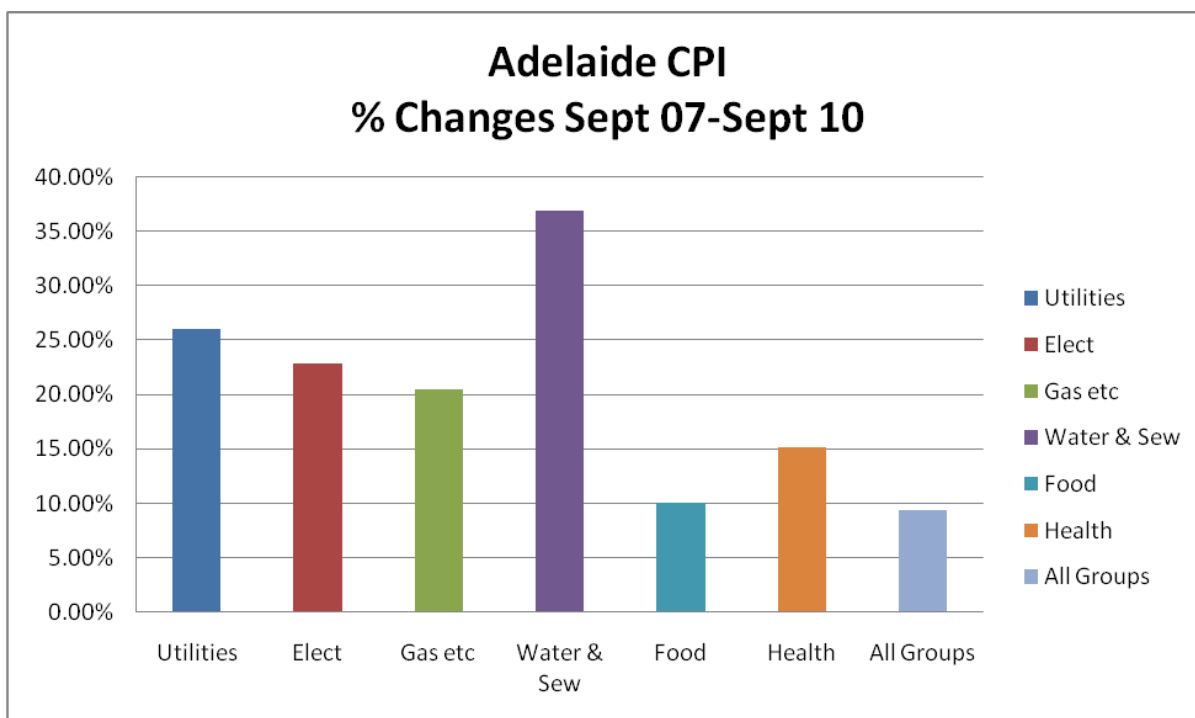
Older People and Essential Services

There is no doubt that the cost of essential services is affecting older people. Rising costs for electricity, gas and water all diminish the ability of households – particularly those on low and fixed incomes – to manage their weekly finances and to maintain health and wellbeing. This is of particular concern because after housing costs, utility bills are often ranked highest in order of importance and thus are paid before other costs such as food and medical costs.

The increasing burden of essential services can be seen in the CPI data. These show that electricity; gas and other household fuels; and water and sewerage costs have risen well above the general, or 'all groups' CPI (see below) over the last three years.



The cost of water and sewerage services in particular has risen faster than other essential services, and at over three times the rate of CPI (see below).



CSV continues to maintain that even small nominal increases in the price of utilities can have significant proportional and actual impacts on the lifestyle of older people. There is a proportion of the population that is now only just able to manage their existing financial commitments due to the disproportionate amount of income spent on essential services. This is because many people on low and fixed incomes, including many older people, spend more as a percentage of their income on essential services than those on higher incomes.

Given the recent increases in the prices of other essential goods and services such as food, fuel and water, any further increase in water prices is likely to place these households under financial duress. It is clear that strong price regulation, progressive tariff structures and realistic concessions are required to ensure affordable access.

The Water Industry Bill

CSV welcomes this opportunity to submit to the *Water Industry Bill 2010* (the 'Bill') consultation and notes that it will also provide comment to the Essential Services Commission's (ESCOSA) *Economic Regulation of the South Australian Water Industry Statement of Issues* ('Statement of Issues').

CSV has both general comments to make regarding both the Bill as a whole, and specific areas within the Bill. The comments can be found below.

General Comments

The entitlement to water

There is no doubt that water is essential to life and must therefore be treated as an entitlement rather than a commodity. CSV notes that the entitlement to water forms a part of SA Water's business and that water supply is not 'disconnected' due to failure to pay as in the case of energy.

However to ensure that the Bill takes the right direction as we head towards a third party access regime and increased competition, the entitlement to an essential amount of water needs to be explicitly recognised and enshrined in legislation, preferably through an additional section in Part 3. Only by doing this now can all South Australians feel some comfort as the reform agenda takes shape.

The consumer impact of reform

The privatisation and promotion of competition within the energy industry holds important lessons for the current move towards a more competitive water industry. While proponents of competition repeatedly point to the savings that can be made by actively participating in the market through market contracts, CSV holds the view that those on 'standing' or 'default' contracts will always require strong price protection.

As has been stated to ESCOSA and the Minister for Energy, there remain a substantial number of energy customers (nearly one-third) who choose to remain on the electricity standing contract. A recent report by Colmar Brunton identifies a number of significant features of this group, including older age and low income.⁴ It is likely that this will also be the case in a competitive water market.

In order to gain an adequate understanding of the impacts of the Bill and of the broader reform process, CSV strongly recommends that a consumer impact study is undertaken as soon as possible. While CSV has as its focus the needs of older people, the impact on all consumers needs to be known prior to important decisions being made.

The main elements of the consumer impact study should include:

- Independence – the study should be undertaken by a body independent of government and water industry interests, with methodology to be decided in consultation;

⁴ Colmar Brunton (2010), 'Monitoring the Development of Energy Retail Competition in South Australia and Consumer Preference for Market Contract Information'

- A focus on access and affordability for all water users, inclusive of owner-occupiers, tenants and residents of facilities where water costs are passed through;
- The different impacts on metropolitan, regional and remote consumers regardless of water supplier;
- A strong focus on consumer protections in its terms of reference;
- A cost-benefit analysis should be a key focus – the costs and benefits of proposed changes and of a ‘business as usual’ approach for low income and vulnerable groups;
- A thorough and careful consideration of the potential impacts of any third party access regime on consumers; and
- The relationship between proposed legislation and other legislation including the *Australian Consumer Law* (Cwlth), the *Residential Tenancies Act* (SA), the *Retirement Villages Act* (SA), the *Residential Parks Act* (SA) and the *Aged Care Act* (Cwlth).

It is particularly important that the relationships between the Bill as proposed and other state and Commonwealth legislation is recognised, explored and made explicit in the final legislation. Failure to do this will lead to further confusion among market participants (not least consumers) regarding rights, obligations and protections.

The need for comprehensive legislation

CSV is also concerned that the Bill does not go far enough in enshrining important elements of reform into legislation. This is in part because the Bill is based on the *Electricity Act 1996* and thus will rely on ESCOSA developing a complex suite of codes and regulations to deal with the detail.

CSV notes the introduction of the *National Energy Retail Law (South Australia) Bill 2010* to the House of Assembly in October 2010. This piece of legislation is much more comprehensive than the Bill and constantly refers to the *National Energy Retail Rules* (the Rules’) and the *National Energy Retail Regulations* (the ‘Regulations’).

The NERL itself (apart from any additional requirements under the Rules or Regulations) includes three important divisions which prescribe the obligations of essential services retailers in regard to customer hardship, payment plans and energy marketing.

Many of these requirements are important to older people, who often face a range of issues such as: lack of access to electronic payment arrangements; transport and mobility issues that hinder their ability to physically pay bills; vision impairment requiring bills and other information in large type; and English as a second language, requiring all information in a range of languages. All of these issues need to be addressed through the Bill to ensure that these needs are met by licence holders at no additional cost to consumers.

By developing the legislation, rules and regulations as a complete, complementary package (the National Energy Customer Framework or NECF) the Department of

Resources, Energy and Tourism (DRET) has allowed stakeholders to view and comment on the legislation and subordinate requirements prior to implementation.

CSV would like to see the Bill redrafted and greatly expanded to mirror the NERL to 'future proof' this important piece of legislation for South Australian consumers.

Hardship provisions

As per CSV's comments above relating to the need for the Bill to be more comprehensive, it is important that customer hardship provisions are clearly spelled out in the legislation. The NERL includes a number of requirements for essential services retailers, including:

- A statement on the purpose of customer hardship policies – to identify customers experiencing payment difficulties and to assist them in meeting their requirements;
- The requirement for retailers to develop a customer hardship policy that meets the regulator's guidelines;
- The minimum requirements for hardship policies; and
- The need for the regulator to approve any hardship policy prior to implementation.

CSV insists that section 26(4) of the Bill be strengthened to include these requirements.

Additionally, the NERL includes in section 47 a general principle on 'de-energisation' (disconnection) of hardship customers:

47 – General principle regarding de-energisation (or disconnection) of premises of hardship customers

A retailer must give effect to the general principle that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a last resort option.

Given that all people have an entitlement to water (see above), a strengthened section should be added to the Bill, which states that no customer can be disconnected for any other reason than a serious criminal breach, including under the relevant health and environmental health legislation. This theme is also dealt with below in the section on Part 6, Division 2 of the Bill.

Advocacy

As water industry reforms take shape, it will become increasingly important to ensure that consumers are provided with strong, well resourced advocates to ensure that their concerns are heard by government, water businesses and regulators. Changes to energy markets have highlighted this need, and consumer advocates have been acknowledged to provide otherwise overlooked points-of-view to various decision-

making bodies. Moreover, recognising the entitlement to water naturally leads to the conclusion that those who are entitled to water must also be entitled to resources for the purpose of advocacy.

CSV strongly recommends that a dedicated funding stream is allocated to consumer advocacy and that this funding is administered by either the Department for Water (DFW) or ESCOSA.

‘Consumer’ versus ‘customer’

One of the overriding concerns of CSV in relation to the Bill is the issue of ‘consumer’ versus ‘customer’. Without clarifying this issue at the outset, the government runs the risk of relegating tenants of public and private rental housing, residential parks and retirement villages to a lesser status under the law than property owners.

CSV recognises that even in energy legislation not all energy consumers are customers – not all members of a household are considered customers for billing or consumer protection purposes. Additionally, there still remains the important issue of inset networks and exempt sellers, currently being dealt with by the Australian Energy Regulator (AER).

There is however one important difference in that energy customers must arrange connection, disconnection and pay their bills as individual customers regardless of property ownership status. In effect the energy account(s) ‘follow’ the customer from residence to residence.

This has historically not been the case with water and sewerage services, both of which have been ‘rated’ against property rather than charged to actual consumers. While sewerage services can and should continue to be charged in this way as a fixed cost, there is a need to rethink the way water use and charges are assigned to consumers. Given water is charged in an inclining block tariff (IBT), it is an anachronism to levy costs on property owners who have little or no direct relationship with water consumption on their tenanted properties. This could lead to consumers (tenants) being disconnected due to non-payment by the customer (property owner).

In essence, thought needs to be given to the idea that water ‘consumers’ (in the energy sense) should become ‘customers’ through a direct contractual relationship mechanism built into the Bill. This would legislate for consumers in a range of settings to have guaranteed access to hardship provisions and the ombudsman scheme. It is important in this regard that older people and people on low incomes are not financially worse off under these changes, and that transitional arrangements are put in place to offset any financial disadvantage.

CSV believes that the current arrangements under the *Residential Tenancies Act 1995* and the *Residential Tenancies Regulations 2010* are insufficient in that they do not and cannot afford the protections required for water consumers, particularly

tenants. Given that many older people reside in residential parks, retirement villages and public and private rental accommodation, the lack of coverage threatens to disproportionately disadvantage these groups, particularly as older people who do not own their own home are one of the most vulnerable groups in society.

CSV recommends that DFW consult with ESCOSA and consumer groups on this important issue.

ESCOSA's approach to regulation

While ESCOSA has proven itself to be a generally effective, reasonable and consultative regulator over its lifetime, CSV is concerned that some recent decisions have been flawed. The recent Electricity Retail Price Path Determination is the prime example of this flawed approach, and CSV has formally questioned the absence of genuine concern for consumers from the final decision.

The evidence of a shift away from consumer concerns and towards purely economic reasoning is clear in its Statement of Issues, which references its role under the *Essential Services Commission Act (2002)*:

'That paramount statutory imperative [Section 6 of the ESC Act] is necessarily interpreted in an economic context of efficiency, particularly so in light of the fact that sections 6(b)(iv) and (v) expressly refer to efficiency considerations. Furthermore, the second reading speech for the ESC Act makes it clear that the terms used in section 6 are economic terms relating to efficiency and therefore that economic concepts should be used in analysing and applying the provision...'⁵

CSV notes that 6(v) refers to the benefits to consumers of competition and efficiency, and therefore should be read as being a social as well as an economic imperative. Additionally, the reference to the second reading speech of the ESC Act is erroneous as on this occasion the Minister noted the *consistency between* the long term interests of consumers and financial viability leading from greater efficiency, and not the strict *greater efficiency equals a purely economic approach* as read by ESCOSA.⁶

CSV thus considers it vital that the objects of the Bill be framed in such a way as to make the principles of price regulation clear and unambiguous for ESCOSA to follow.

With particular regard to water regulation, CSV notes that in *Water for Good* (p. 142) the government states that the government will (through the Bill) 'develop a regulatory framework to':

⁵ ESCOSA (2010) Economic Regulation of the South Australian Water Industry: Statement of Issues, p. 7

⁶ Hansard, House of Assembly, Wednesday 10 July 2002

- *Establish a clear separation between economic objectives, to be pursued by ESCOSA, and non-economic objectives (i.e. health, social and environmental objectives) to which ESCOSA must have regard, but for which the State Government will retain primary responsibility⁷*

CSV is concerned that this not only detracts from the functions of ESCOSA under the ESC Act, it also leaves social responsibility for water pricing impacts solely at the mercy of political considerations in the area of concessions. While the need for concessions to ensure affordability will remain a constant under current and proposed frameworks, the lack of formal relationship in legislation is concerning. CSV believes that this issue can and should be addressed through the Bill.

Specific Comments

Section 3: Objects

CSV generally supports the content and wording of the Objects of the Bill, with one important exception. Section 3 (e) refers to the protection of the ‘interests of consumers of water and sewerage services’ without reference to affordability and access. This is not in keeping with the National electricity objective in the *National Electricity (South Australia) Act 1996* (Section 7), The *Essential Services Commission Act 2002* (Section 6) or the National Energy Retail Objective in the *National Energy Retail Law (South Australia) Bill 2010* (Section 13).

CSV insists that in order to ensure consistency across essential services and correct interpretation and application of provisions in the Bill, strong reference must be made to retail pricing. Without such a reference, the Bill can easily be interpreted using Section 3(c) as allowing costs to be passed through with little or no regard for water or sewerage pricing for consumers.

Based on these concerns, the following change (emphasised) to 3(e) is suggested:

*(e) to protect the long term interests of consumers of water and sewerage services **with respect to access and affordability**;*

Alternatively, 3(b) can be reworded (addition emphasised) as such:

*(b) to promote efficiency, competition and innovation in the water industry **for the long term interests of consumers with respect to price, quality, safety and reliability of water and sewerage services**;*

In addition, an important guide for the work of ESCOSA is inherent in 6(b)(v) of the *Essential Services Commission Act 2002* (the ESC Act), which states:

(v) ensure consumers benefit from competition and efficiency

⁷ <http://www.waterforgood.sa.gov.au/water-planning/the-plan/>

The inclusion of this object is vital to ensure that the potential social good of competition is not lost sight of in light of economic ideology (refer comments above).

This is an important issue that extends beyond arguments over legal semantics, and CSV hopes that the next iteration of the Bill will better recognise and reinforce the need for social and economic goods to flow to consumers, as well as financial gain to water and sewerage service providers.

Section 4: Interpretation

As mentioned above in greater detail, CSV is concerned that false distinctions between 'consumer' and 'customer' may be made in relation to the provision of water and sewerage services.

Unlike energy, where customers are also consumers (except in the case of inset networks and excluding additional members of households), the provision of water and particularly sewerage services has historically been legally attached to property ownership. While financial responsibility for water costs are dealt with in the *Residential Tenancy Regulations 2010* (Section 12), this is limited and does not extend to providing the entitlement to consumer protections in a competitive market.

CSV believes that only by the separation of sewerage 'rates' (for property owners) from water 'tariffs' (for consumers of water for billing purposes) can the correct distinctions be made going forward. This will be particularly important as further work is done to prepare a third party access regime and a 'competitive market' is formed.

While these concerns represent a broader issue of responsibility and consumer protections, CSV believes that Section 4 (particularly 'consumer', 'customer' and 'retail service') will require revision and refinement based on these important decisions. CSV will be making more detailed comment on this issue to the ESCOSA Statement of Issues Paper consultation.

Section 14: Consumer advisory committees

CSV welcomes the requirement for ESCOSA to establish an advisory committee and its power under Section 14(2) to utilise its existing energy Consumer Advisory Committee (CAC) for this purpose. CSV notes that the expansion of the CAC would serve the purposes of ESCOSA under Section 14A of the *Electricity Act 1996* and would assist in bringing the regulation of water into line with that of other essential services.

Section 26: Licence conditions

CSV does not take issue with the wording of section 26 and notes its approval of 26(1)(g) and (h): the requirement for dispute resolution processes and for licensees to participate in an ombudsman scheme.

CSV has previously called for water to be included under an expanded Energy Industry Ombudsman (EIOSA) scheme. It is important that all water license-holders participate in the scheme to ensure equitable protections for all older consumers across the industry, regardless of location. While it is understood that the difference in size of licence holders may lead to cross-subsidisation by larger licence-holders, CSV believes that this is a small price to pay for industry participants for adequate protections.

However CSV is concerned that there is a serious omission in section 26 in regard to hardship provisions and the requirement for retailers to develop and implement hardship policies that meet certain standards. As mentioned above (see 'General comments'), hardship provisions are a core protective mechanism for consumers experiencing payment difficulties, many of whom will be on low or fixed incomes such as pensions. DFW should ensure that licensees and potential licensees are obliged through legislation to develop and apply these important policies.

Section 27: Third party access

While CSV has no specific comments to make regarding the content of Section 27, it harbours concerns regarding the potential impacts of third party access regimes as witnessed in other jurisdictions. The experience of other jurisdictions and the potential impacts on South Australian consumers needs to form a key component of the consumer impact statement (see above).

CSV plans to monitor the work of DFW in its preparation of the third party access regime and provide comment where appropriate.

Section 36: Price regulation

In general CSV supports the powers granted to ESCOSA for the purposes of price regulation. CSV continues to support strong price regulation in the energy industry and believes that as an essential service water should also be the focus of strong price regulation. Section 36(1) is therefore supported.

However CSV does not support 36(2) in that it attempts to subvert the powers of ESCOSA under Section 31(4) of the *Essential Services Commission Act 2002* (ESC Act). 31(4) states that ESCOSA may stay a determination or decision pending the outcome of an appeal or review:

(4) The Commission may stay the operation of the price determination or decision to which the application relates.

Section 36(2) of the Bill undermines this power (emphasis added):

*(2) Despite the provisions of the Essential Services Commission Act 2002, the operation of a determination of a kind referred to in subsection (1) is **not to be stayed** pending the determination of an application for review or appeal under Part 6 of that Act.*

CSV submits that ESCOSA should be permitted to exercise its powers under the ESC Act in the area of water regulation just as it does in the area of energy regulation, and that 36(2) be removed from the Bill.

In addition, CSV also cautiously welcomes 36(4) which allows for the Treasurer to dictate a pricing order to be complied with by ESCOSA. (While as mentioned above) CSV generally agrees with the principle that all essential services should be treated in a similar fashion in regard to regulation, the progressive distancing of the state government from energy pricing has led to unwelcome cost increases. This is likely to become more pronounced in water regulation given the distancing of economic from social, health and environmental regulation as proposed in *Water for Good* (see comments above).

However it is concerning to CSV that there is no legislative link between ESCOSA's 'economic' role and the 'social' role of government. Simply allowing for concessions and community service obligations (CSOs) will not provide sufficient price protection for older people – in recent times water concession rates have been entirely eroded by cost increases. CSV notes that the maximum concession rates for owner-occupiers and tenants alike are not claimed by a majority of water consumers and that more than double the average of 190kL per annum would need to be consumed to qualify for this maximum.

This historical lack of connection between costs and concessions is simply not good enough and Section 36(4) provides an opportunity for government to partly address its complete failure in the area of concessions. CSV holds the view that the need for this important connection is critical and that it is possible to enshrine this link – at least in the case of water services – through the Bill.

By maintaining a policy oversight over water pricing the government has the opportunity to prove that it can commit to socially progressive policy through the most essential of services. Below are some suggested core principles to guide the pricing order, and CSV would welcome the opportunity to further discuss these principles prior to the implementation of the pricing policy:

- All people are entitled to a basic amount of water that is affordable and accessible to meet health and wellbeing needs
- Pricing structures should be predicated on the acknowledgement that water is an essential service required for health and wellbeing;

- Additional water use above the level necessary for health and wellbeing should be charged in such a way that costs can be recovered;
- Prices should not be structured in such a way that consumers in rural, regional or remote areas are disadvantaged compared to those in metropolitan areas; and
- Pricing policies should be accompanied where necessary by financial assistance measures such as concessions that accurately reflect and address the lack of affordability to ensure affordable access.

Part 6, Division 2 – Protection and use of water supply

It is clear on an initial reading of the Bill that Division 2 of Part 6 is at least in part designed to protect service providers in the event of low water supply or other critical circumstances. This is duly noted. However, the powers given under sections 61 and 62 need to have additional clauses added to ensure protections from these measures.

CSV recommends that it be made clear in the Bill what these measures *cannot* be used for. For example, devices used to restrict the flow of water to a property can theoretically be used as a measure against those who have not paid their bills for any number of reasons. Without proscribed uses for these powers both within the hardship provisions (as recommended above) and in Part 6, CSV fears that flow restriction devices may at some stage be used for the purposes of restricting flow to customers in hardship.

Summary

In the context of the rising costs of essential services and the erosion of energy price protections for older people and other vulnerable consumers, it is vital that the *Water Industry Bill* provides the full range of protections through legislation. CSV believes that the lessons of energy industry reform should be reflected in a legislative instrument that serves South Australians with respect to the most vital of essential services.

In summary, COTA Seniors Voice calls for a revised Bill that:

- Enshrines the entitlement of all South Australians to a basic amount of water for a healthy life, regardless of income;
- Is based on a thorough consumer impact study which includes a cost/benefit analyses for a range of vulnerable metropolitan, regional and remote consumers;
- Is comprehensive, covering all areas of consumer interaction with industry and leaving the minimum to regulatory interpretation;

- Separates sewerage and water consumption charges, with the former charged against property under current arrangements and the latter to be charged to consumers;
- Provides for transitional arrangements for residential consumers who are disadvantaged by legislative changes; and
- Has a particular focus on price regulation, with clear linkages between the economic and social roles of the regulator and government.