

# ENFORCEABLE UNDERTAKING

## ESSENTIAL SERVICES COMMISSION ACT 2001

Undertaking to the Essential Services Commission under section 54ZD of the  
*Essential Services Commission Act 2001*

by

South East Water Corporation (ABN 89 066 902 547)

### 1. Person giving this Undertaking

1.1 This Undertaking is given by South East Water Corporation (ABN 89 066 902 547) (**South East Water**) to the Essential Services Commission (**Commission**), for the purposes of section 54ZD of the Essential Services Commission Act (ESC Act).

### 2. Background

2.1 South East Water is a water corporation established under the *Water Act 1989 (Vic)*.

2.2 South East Water supplies drinking water, sewerage, recycled water and trade waste services to over 1.7 million residents and approximately 60,000 businesses across Melbourne's south east. Its service area stretches over a 3,640 square kilometre area from Port Melbourne to Portsea in the south, and from Parkdale to some 30 kilometres east of Pakenham.

### 3. The Commission's concerns

3.1 The Commission considers that South East Water did not comply with clauses 4.4(a), 5.4, 14(c), 14(d) and 14(h) of the Customer Service Code — Urban Water Businesses (5 August 2020) (which has since been replaced by the Water Industry Standard – Customer Service (September 2022)), and consequently section 4F(6) of the *Water Industry Act 1994*.

3.2 Specifically, the Commission considers that:

(a) South East Water did not publish its customer support (hardship) policy on its website from 18 November 2020 to 15 September 2022;

(b) South East Water's Domestic & Family Violence Policy (**DFV Policy**):

(i) was unduly narrow insofar as it provides for the secure handling of information in relation to customers "identified" by South East Water as experiencing or being impacted by family violence, rather than in relation to all customers on the basis that any customer may be affected by family violence but may not wish to identify as such;

(ii) did not sufficiently specify the circumstances in which a family violence affected customer's debt will be waived.

(c) In two separate instances, South East Water failed to adequately protect the personal information of a customer affected by family violence by sending correspondence (in one case, an unpaid bill reminder) that included details of the customer's address to an address not specified by that customer;

(d) South East Water did not publish and keep up to date details of referrals

available to customers affected by family violence on its website.

#### 4. Admissions and resolution

4.1 In order to resolve the Commission's concerns, South East Water:

- (a) admits and acknowledges that:
  - (i) its customer support (hardship) policy and referrals information was not published on its website, in contravention of clause 5.4 and 14(h) of the Customer Service Code;
  - (ii) the DFV Policy did not specify that protections for the secure handling of customer information apply to all customers, including those who are affected by family violence but have not identified as experiencing family violence;
  - (iii) the DFV Policy did not specify the circumstances in which South East Water will waive the debt of a customer who is affected by family violence, in contravention of clause 14(d) of the Customer Service Code;
  - (iv) it failed to adequately protect the personal information of a customer affected by family violence on two occasions, in contravention of clause 4.4(a) and 5.4 of the Customer Service Code.
- (b) has undertaken the following actions:
  - (i) published the customer support (hardship) policy on its website as of 15 September 2022 to remediate the contraventions in clause 4.1(a)(i) above;
  - (ii) improved the DFV Policy to provide greater clarity that protections for the secure handling of customer information apply to all customers who are affected by family violence and to specify the circumstances in which South East Water will waive the debt of a customer who is affected by family violence, and will provide the DFV Policy to the Commission for approval;
  - (iii) remediated its procedures that caused the unintended disclosure of personal information;
  - (iv) engaged with the relevant customers directly to resolve their complaints.
- (c) and further undertakes to:
  - (i) further review and update its DFV policy, associated processes and training in accordance with the Compliance Improvement Action Plan (**Action Plan**) contained in Annexure A;
  - (ii) improve quality assurance and compliance monitoring, as set out in the Action Plan;
  - (iii) appoint an independent auditor to prepare a report on South East Water's implementation of the Action Plan, and provide a copy of the report to the Commission.
- (d) will, on and from the Commencement Date, and at its own expense:
  - (i) implement the Action Plan in accordance with the requirements set out in Annexure A
  - (ii) maintain the Action Plan for a period of 24 months from the Commencement Date;

- (iii) provide copies of any documents described in Annexure A when requested by the Commission.

## **5. Commencement and Term of Undertaking**

- 5.1 This Undertaking must be executed by South East Water.
- 5.2 This Undertaking comes into effect on the date when South East Water is given notice of the Commission's acceptance of the Undertaking (**Commencement Date**).
- 5.3 The Undertaking remains in effect for 24 months from the Commencement Date.

## **6. Compliance with Undertaking**

- 6.1 In the event that South East Water has reason to believe that it has not complied with a requirement of this Undertaking, it will report a non-compliance to the Commission within fifteen business days of becoming aware of the non-compliance.
- 6.2 South East Water will provide further information or particulars to the Commission concerning any possible non-compliance reported to the Commission within a reasonable time upon request by the Commission.

## **7. Maintaining Records and Monitoring of Undertaking**

- 7.1 South East Water commits to maintaining records confirming any actions, steps, or measures it takes pursuant to meeting the terms of this Undertaking and retaining those records for a period of at least seven years following the conclusion of this Undertaking.
- 7.2 South East Water will produce any records in relation to any actions, steps, or measures it is required to take under this Undertaking to the Commission if requested during the term of the undertaking or within seven years following the conclusion of this Undertaking.
- 7.3 For the purpose of monitoring, South East Water will:
  - (a) update its Executive Management Team on the implementation of the Action Plan quarterly;
  - (b) provide the South East Water Board a quarterly report on the implementation of the Action Plan;
- 7.4 South East Water will provide reports to the Commission on progress made toward implementing the terms of this Undertaking at six months, 12 months and 18 months after the Commencement Date.
- 7.5 Within one month prior to the conclusion of the term of this Undertaking, South East Water will provide a final report to the Commission on its implementation of, and/or compliance with, the terms of this Undertaking.


## **8. Acknowledgements and Publication of Undertaking**

- 8.1 South East Water acknowledges that:
  - (a) the Commission will make this Undertaking publicly available by publishing it on its website and in its online Register of Enforcement Action;
  - (b) the Commission may from time to time, make public reference to this Undertaking including in news media statements and in Commission publications;

- (c) this Undertaking in no way limits or affects any rights or remedies available to any other person arising from the conduct; and
  - (d) the Commission may publish a summary of the independent auditor's reports on South East Water's implementation of the Action Plan on its website and in its online Register of Enforcement Action.
- 8.2 South East Water commits to publishing a copy of this Undertaking on a website maintained by South East Water for the period of this Undertaking.
  - 8.3 South East Water commits to publishing a notice summarising the purpose and key terms of this Undertaking, to be approved by the Commission, prominently on a website maintained by South East Water for the term of the Undertaking or a period agreed by the Commission.
  - 8.4 South East Water acknowledges it must pay all its own costs in relation to this Undertaking including costs associated with remediation or compensation associated with this Undertaking, and costs related to implementation of the Action Plan.

**Executed as an Undertaking**

Executed for and on behalf of South East Water Corporation by its attorney, Lara Olsen, who holds the position of Managing Director under Power of Attorney dated 3 August 2018

 \_\_\_\_\_  
 Signature of Attorney Date 18.5.2023

Accepted by the Essential Services Commission pursuant to section 54ZD of the Essential Services Commission Act 2001 and signed on behalf of the Commission:

 \_\_\_\_\_  
 Kate Symons, Chairperson Date 15.06.2023

## **ANNEXURE A**

South East Water undertakes to implement the Compliance Improvement Action Plan (**Action Plan**) by undertaking the actions set out in this Annexure.

### **A1. Review of Domestic and Family Violence Policy and associated processes**

- A1.1 Within 10 months of the Commencement Date, South East Water will review its Domestic and Family Violence Policy (DFV Policy) and associated processes and protections relating to:
- (a) the review and updating of customer details, particularly contact information;
  - (b) the process for contacting customers after receiving returned mail to take account of the possibility that customers may be affected by family violence; and
  - (c) the process for keeping the customer support (hardship) policy and referrals information published and up to date on its website.
- A1.2 The reviews referred to above will be carried out by an independent person (or persons) with expertise in family violence and Victoria's water legislation, and they will be required to provide a report on their findings and recommendations to South East Water.
- A1.3 South East Water will provide the Commission a copy of its response to the findings and recommendations of the independent reviewer (or reviewers) referred to in clause A1.2 within 3 months of the review being completed. The response will articulate which recommendations, in whole or part, South East Water intend to implement and the associated timeframes.

### **A2. Training**

- A2.1 South East Water will review and improve its training program by ensuring that:
- (a) Customer facing teams (Customer Care, Billing & Revenue, Collections & Affordability, Customer Resolutions and Accounts Contact Centre) will undertake specialist domestic and family violence training to support identification of customers who may be affected by domestic or family violence, handling customer disclosures with empathy, protecting data, privacy and confidentiality, providing support and protection and effective handling of perpetrator interactions;
  - (b) Customer facing teams (Customer Care, Billing & Revenue, Collections & Affordability, Customer Resolutions and Accounts Contact Centre) will undertake technical procedural training related to processes that apply to customers who may be affected by domestic or family violence;
  - (c) The Executive Management Team and Senior Leaders of South East Water will undertake domestic and family violence awareness training to support an understanding of the types of domestic and family violence, assist with the identification of those who may be affected by family violence, the importance of data protection, privacy and confidentiality and how to handle disclosures.
- A2.2 South East Water will maintain a record of the training provided under clause A2.1 including number of attendees, the content of the training, and the dates the training was completed.

- A2.3 The training referred to in clause A2.1 will be developed and reviewed annually by an independent person (or persons) with expertise in family violence and Victoria's water legislation.
- A2.4 The training provided under clause A2.1((a) and A2.1((c) will commence within 3 months from the Commencement Date. Training provided under clause A2.1((b) will commence within 3 months of the associated customer process review (see clause A1.1 above) having been completed. At a minimum, the training provided under clause A2.1(a) and A2.1(b) will be required to be completed on an annual basis.

### **A3. Quality assurance and compliance monitoring**

- A3.1 South East Water will conduct quality assurance compliance checks of customer interactions across our accounts, customer care and credit functions to ensure the processes described in its DFV Policy have been applied, both to customers identified as experiencing or being impacted by family violence and those who have not. The checks will commence within three months of the Commencement Date, and be conducted quarterly using a sample of customer interactions that:
- (a) comprise 500 customer interactions each month; and
  - (b) comprise a mix of communication channels (i.e. calls, email) that takes into consideration the number of interactions and the extent of perceived risk presented by the channel.
- A3.2 The quality assurance compliance checks referred to in clause A3.1 will be undertaken by the Customer and Community team, overseen by the General Manager, Customer Experience.
- A3.3 To increase its ability to detect non-compliances, South East Water will:
- (a) review the control mechanisms it has in place to detect non compliance with the DFV Policy. This review will be completed within two months of the commencement of this undertaking;
  - (b) implement a compliance monitoring, detection and improvement program where, at least every six months South East Water will:
    - (i) review the DFV Policy to ensure that the customer support described in the DFV Policy is consistent with the Water Industry Standard, and the DFV policy is published and provided to customers in accordance with the Water Industry Standard; and
    - (ii) test the controls associated with the provision, implementation and review of the DFV Policy effectiveness.
- A3.4 South East Water will review the results of the quality assurance compliance checks referred to in clause A3.1 together with any breaches to determine whether any measures should be put in place to promptly detect and remedy non-compliance based on the root cause of an identified issue.
- A3.5 In the event that South East Water has reason to believe that it has not complied with a requirement of this Undertaking, or the DFV Policy, including where such non-compliance is identified through the monitoring of compliance referred to in clause A3.1 and A3.3 it will report the incident to the Commission within fifteen business days of becoming aware of the potential non-compliance.

A3.6 The Executive Management Team will oversee the compliance monitoring program and implementation of this Action Plan.

#### **A4. Review of compliance with Action Plan**

- A4.1 Within 12 months of the Commencement Date, South East Water will appoint a suitably qualified third party with relevant expertise (**Independent Auditor**) to complete a review of South East Water's implementation of the Action Plan (**Implementation Review**) and will notify the Commission of the nominated Independent Auditor. South East Water will instruct the Independent Auditor to complete the Implementation Review and prepare a report that identifies whether South East Water has implemented the Action Plan and the adequacy of that implementation.
- A4.2 South East Water will use best endeavours to ensure the Independent Auditor appointed for the Implementation Review:
- (a) completes the Implementation Review within 90 business days of their appointment, by provision of the report referred to above to South East Water; and
  - (b) has appropriate access to all staff, records, documentation and information necessary to conduct the Implementation Review.
- A4.3 Within five business days of receipt of the Implementation Review report, South East Water will provide a copy of the report to the Commission.
- A4.4 Within 20 business days of receipt of the Implementation Review report, South East Water will provide the Commission its response to any recommendations of the Independent Auditor including proposed steps or timings for implementation as relevant.