

# ESCOSA draft Charter of Consultation and Regulatory practice

**LGA Submission**

**July 2019**

## Summary of recommendations

The following key statement underpins local government's approach to consultation and collaboration with key stakeholders, including the Essential Services Commission of South Australia (ESCOSA);

*“Local government welcomes its role as a partner in government and shall continue to work closely with state and federal governments and other key stakeholders to seek solutions to issues that impact communities and effective local governance.<sup>1</sup>”*

In this context, and in upholding the LGA's function to “develop and maintain consultation and co-operation between local government and the State and Commonwealth governments and their agencies”<sup>2</sup>, the Local Government Association (LGA) makes the following recommendations for ESCOSA's draft Charter of consultation and regulatory practice (the Charter):

1. clearly identify specific requirements for consultation with local government;
2. recognise the opportunity for engagement with the LGA to utilise our broad membership connections and coordinate the effective and efficient engagement of local government across South Australia;
3. provide for appropriate and flexible consultation timeframes when consulting with local government to enable positions on matters to be fully developed and put to Council and other relevant bodies to formally endorse the position;
4. consider local government's financial constraints when making recommendations to ensure the desired outcomes of the consultation can be achieved; and
5. recognise that outcomes of consultation processes and future recommendations should not shift costs or place increased responsibility on local government without commensurate ongoing financial and other support.

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<sup>1</sup> Local Government Association of South Australia , *Policy Manual*, ECM 664873.

<sup>2</sup> Local Government Association of South Australia, *Constitution*, ECM 655609, part 5.6.

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## About the Local Government Association

The LGA is the voice of local government in South Australia, representing all 68 individual councils across the state and the Anangu Pitjantjatjara Yankunytjatjara.

The LGA is established through the South Australian *Local Government Act 1999* and is recognised in 29 other South Australian Acts of Parliament.

The mission of the LGA is to provide leadership to councils for the benefit of the South Australian community. We achieve this by providing representation, quality service and leadership relevant to the needs of member councils.

The LGA is a strong advocate for policies that achieve better outcomes for councils and the communities they represent. Councils are a partner in government and part of the solution. Local government and ESCOSA interact in numerous and varying capacities and share the similar objectives in providing the community with affordable, good quality, innovative and reliable services. As such the LGA welcomes this opportunity to respond to the draft charter of consultation and regulatory practice.<sup>3</sup>

To develop this submission the LGA consulted with members by providing them with an opportunity to respond to ESCOSA's draft charter of consultation and regulatory practice<sup>4</sup> through traditional communication methods such as LGA Circulars<sup>5</sup>.

## Background

ESCOSA is a statutory authority established as an independent economic regulator and advisory body under the *Essential Services Commission Act 2002* (SA). ESCOSA has economic regulatory responsibility in the water, sewerage, electricity, gas, rail and maritime services, and a general advisory function on regulatory and economic matters.

The Commission's objective is the:

*"...protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services."*<sup>6</sup>

ESCOSA performs a range of functions across the differing industries it regulates<sup>7</sup> including pricing, licencing, performance monitoring and reporting, compliance and scheme administration. In addition to this regulatory role ESCOSA has two broad advisory functions to;

1. Provide independent advice on economic and regulatory matters on request to the South Australian Treasurer<sup>8</sup>; and
2. Conduct public enquiries as initiated by ESCOSA or an industry Minister into any matter concerning a regulated industry or if initiated by the South Australian Treasurer any matter.<sup>9</sup>

Local government and ESCOSA interact across a myriad of different areas and the LGA appreciates and agrees with ESCOSA that *"stakeholder engagement and genuine consultation as critical in their role to achieve good regulatory practice and outcomes."*<sup>10</sup>

<sup>3</sup> ESCOSA, Draft Charter of Consultation and Regulatory Practice (May 2019).

<sup>4</sup> Ibid.

<sup>5</sup> Local Government Association of South Australia, Circulars, *ESCOSA charter of consultation and regulatory practice review*, Circular 22.3 (2019) <<https://www.lga.sa.gov.au/page.aspx?u=6733&c=85240>>.

<sup>6</sup> *Essential Services Commission Act 2002* (SA) s 6(a).

<sup>7</sup> *Water Industry Act 2012* (SA); *Electricity Act 1996* (SA) *Gas Act 1997* (SA); *AustralAsia Railway (Third Party Access) Act 1999* (SA); *Railway (Operations and Access) Act 1997* (SA); *Maritime Services (Access) Act 2000* (SA).

<sup>8</sup> *Essential Services Commission Act 2002* (SA) s 5(f).

<sup>9</sup> Ibid Part 7.

<sup>10</sup> Above n 3 pg 2.

As the closest sphere of government to the community local government provides numerous services to the community that interact with ESCOSA. This position enables local government to more easily coordinate with the community in regards to specific community consultation.

## Analysis of ESCOSA’s draft Charter of consultation and regulatory practice

ESCOSA is reviewing its Charter of consultation and regulatory practice (Charter) to ensure that it reflects ESCOSA’s current approach to regulation and consultation. ESCOSA claims the review has simplified the Charter while ensuring it reflects the current approach of:

- Promoting better regulation principles in their regulatory practice;
- Taking a principles-based approach to stakeholder engagement; and
- Promoting fit-for-purpose engagement.

This review impacts local government as engagement and cost implications of ESCOSA actions impact the community and the local government sector as a whole.<sup>11</sup>

### *Engagement and consultation with councils*

The LGA notes not all issues ESCOSA consults on will be of relevance or consequence to local government however, we anticipate that a vast majority of issues may impact local government either at an individual council level or more broadly. As local government is such a large stakeholder across a range of ESCOSA activities the LGA recommends that the Charter provides clear requirements specifically for consultation with local government.

An example where local government is specifically provided for in a consultation charter is the State Planning Commission, *Community Engagement Charter*<sup>12</sup> which provides mandatory consultation requirements for local government and other stakeholders.<sup>13</sup> Here (as seen in the table below<sup>14</sup>) local government is specifically provided for under two categories and a mandatory requirement for consultation is also provided;

Consultation Category	Mandatory requirement
Proposals that are specifically relevant to a particular Council or Councils (where Council did not initiate the proposal).	That Council or Councils must be directly notified of the proposal and consulted.
Proposals that are generally relevant to Councils.	The Local Government Association must be notified in writing and consulted.

Providing for mandatory consultation requirements ensures that local government and other relevant stakeholder’s opinions are sought during consultation. The development of mandatory consultation requirements for major stakeholders for which ESCOSA deals with will facilitate better outcomes for

<sup>11</sup> ESCOSA Advice to the Treasurer of South Australia, *South Australian Local Government Rate Oversight Scheme* (November 2018) <  
<https://www.escosa.sa.gov.au/ArticleDocuments/11254/20181201-Inquiry-LocalGovernmentRateCapping-AdviceToTreasurer.pdf.aspx?Embed=Y>>

<sup>12</sup> Government of South Australia, Department of Planning, Transport and Infrastructure April 2018.

<sup>13</sup> Ibid page 6.

<sup>14</sup> Excerpt of table is from Above n 10 at page 6.

consultation as it requires the key principles for engagement and consultation, for example accessibility to stakeholders,<sup>15</sup> are adhered to.

Additionally, mandatory consultation requirements (with notification requirements) enables stakeholders to better prepare their own resources to participate effectively in the relevant ESCOSA consultation.

The LGA recommends the Charter to provide for LGA engagement for future consultation processes so ESCOSA can utilise the LGA's broad membership and coordinate the effective and efficient engagement of local government across South Australia.

There are 68 councils in South Australia that are impacted by ESCOSA and their decisions. It is difficult for an outside body to independently and effectively engage with all of local government without utilising the LGA's resources. As seen in the previous table, The State Planning Commission recognised this consultation difficulty and provided for the LGA within its Community Engagement Charter.<sup>16</sup> The LGA notes where local government coordination and consultation is involved, contacting the LGA to help facilitate a coordinated local government response is a time effective way to engage with the sector.

When considering accessing the widest range of available relevant information<sup>17</sup> from a local government perspective on an issue, the LGA encourages thorough engagement with regional councils. Due to personnel and other regional limitations, the LGA recommends flexible and targeted engagements, with sufficient timeframes to ensure meaningful consultation with these parties.

Utilising the LGA's membership connections would enable ESCOSA to achieve their key consultation principles of seeking a diversity of views,<sup>18</sup> being accessible to ensure stakeholders have the opportunity to provide information<sup>19</sup> and it would also give ESCOSA an opportunity to be responsive and to listen to stakeholders<sup>20</sup> to achieve better engagement and consultation outcomes.

The LGA has facilitated numerous successful joint consultation activities with a broad range of stakeholders, including state and federal departments, and statutory bodies. Details of the LGA's related organisations, entities, committees, and the many professional networks established within the local government sector are outlined on the LGA website<sup>21</sup>. These groups assist the sector to better coordinate and ensure their interests and positions are successfully communicated.

### ***Timeframe for consultation***

While the LGA understands why ESCOSA does not adopt a prescriptive approach for all consultation processes, and the LGA notes ESCOSA's endeavour of undertaking a flexible approach in setting consultation timeframes,<sup>22</sup> the LGA recommends the formal regulatory decision-making processes of six weeks<sup>23</sup> be extended for local government to formally consider formal regulatory decision-making processes and for matters that have a large impact, financial or otherwise on councils.

On average, Council's and relevant decision making bodies within the local government sector have a meeting schedule of every six weeks, with all relevant reports and papers to be considered at the meeting needing to be provided for two weeks prior. For issues that ESCOSA are consulting on to undergo formal council or other relevant decision making consideration processes, time needs to be

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<sup>15</sup> Above n 3 page 5 at 4.3.

<sup>16</sup> Above note 10 page 6.

<sup>17</sup> Above n 3, page 5, 4.1.

<sup>18</sup> Above n 3, page 5 at 4.1.

<sup>19</sup> Ibid at 4.3.

<sup>20</sup> Ibid at 4.4.

<sup>21</sup> Local Government Association of South Australia, *Professional Bodies* < <https://www.lga.sa.gov.au/page.aspx?u=6573> >.

<sup>22</sup> Above note 20 at page 6 at 5.2.

<sup>23</sup> Ibid.

given for these parties to consider the issue, conduct their own consultation process on the issue (which may involve organising/holding sessions on these, develop submissions/position papers on this, ask for opinions on this matter etc.), develop their response to the submission, produce an appropriate meeting report, put the submission to the relevant body for consideration, make any changes recommended by the relevant body and then submit the final response to ESCOSA.

A six week consultation period may be restrictive depending on the timing of relevant council/body meeting and as such the LGA recommends ESCOSA to be flexible with consultation timeframes to enable for councils and relevant local government bodies to consider matters and provide formal endorsement on issues for consultation.

Additionally, as mentioned previously, regional councils with limited personnel and geographical barriers may require additional time to consider issues for consultation so to fit into any workload and appropriate travel schedules.

Local government has encountered difficulties, for the reasons explained above, with meeting limiting consultation timeframes set by ESCOSA and other bodies. For ESCOSA to achieve the key principles<sup>24</sup> they have outlined for their consultation process namely;

- Diversity of views;
- Transparency and openness;
- Accessibility;
- To be responsive to and to listen to stakeholders; and to
- Evaluate and learn from stakeholders views;

ESCOSA will need to provide local government and other stakeholders with an appropriate and flexible timeframe to consider issues for consultation.

### ***Cost implications of regulatory functions***

As local government is the closest sphere of government to the community, historically councils have often borne-the-brunt of cost implications when state government policies and regulation are implemented. In its future recommendations it is important for ESCOSA to note councils' constrained budgets and to consider any potential financial implications and impacts on councils and their ratepayers.

The LGA understands that ESCOSA is an independent economic regulator and advisory body and as such ESCOSA's considerations and recommendations hold substantial weight when the government considers outcomes for issues. The LGA recommends ESCOSA place more emphasis in considering the financial practicalities and limitations for local government when formulating any recommendation from a consultation. Ultimately, the successful outcome of many recommendations hinges on the financial capacity to implement them; therefore increased responsibility should not be placed on local government without commensurate ongoing financial and other support.

## **Conclusion**

The LGA supports the five key principles ESCOSA has identified and adopted for engagement and consultation within their Charter, however, to ensure that ESCOSA can engage meaningfully with stakeholders the LGA encourages ESCOSA to provide mandatory consultation requirements for specific stakeholders, to engage with the LGA more often when seeking consultation with local

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<sup>24</sup> Above n 3, page 5.

government, to consider specific stakeholder time limitations and to add further considerations to financial practical realities when formulating any recommendation from a consultation.





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