



Corporate

Charter of consultation and regulatory practice review

Final decision

September 2019

Enquiries concerning this Final Decision should be addressed to:

Essential Services Commission
GPO Box 2605
ADELAIDE SA 5001

Telephone: (08) 8463 4444
Freecall: 1800 633 592 (SA and mobiles only)
E-mail: escosa@escosa.sa.gov.au
Web: www.escosa.sa.gov.au

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Glossary of terms

AGIG	Australian Gas Infrastructure Group
AGL	AGL Energy Ltd
Charter	The Commission's Charter of Consultation and Regulatory Practice
Commission	Essential Services Commission, established under the Essential Services Commission Act 2002
ESC Act	Essential Services Commission Act 2002
LGA	Local Government Association of South Australia
Mondo	Mondo Power Pty Ltd
Treasurer	Treasurer for the South Australian Government

1 Executive summary

The Essential Services Commission (**Commission**) is a statutory authority established as an independent economic regulator and advisory body under the Essential Services Commission Act 2002 (**ESC Act**).

The Commission, pursuant to section 9 of the ESC Act, is required to develop and publish a Charter of Consultation and Regulatory Practice (**Charter**), in consultation with the Treasurer of South Australia.

The Charter outlines the Commission's role and approach as an economic regulator and advisor to the South Australian Government on regulatory and economic matters. Importantly, it also sets out how the Commission will consult and engage with stakeholders in meeting its primary objective of the:

'... protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services'.

The Charter outlines the principles the Commission is committed to, and will apply, in:

- ▶ undertaking its regulatory and advisory roles, and
- ▶ stakeholder consultation and engagement through its work program, including how the Commission will be informed by, and involve, its stakeholders in its inquiries, advice and decisions.

In 2019, the Commission undertook a review of its Charter to ensure that it reflected the Commission's current approach to regulation and consultation. The review aimed to simplify the Charter, while ensuring it reflected the current approach of:

- ▶ promoting better regulation principles in our regulatory practice
- ▶ taking a principles-based approach to stakeholder engagement, and
- ▶ promoting fit-for-purpose engagement.

A draft Charter was released for consultation, with stakeholders invited to provide written submissions on the draft Charter by 5 July 2019. Seven submissions were received.

The submissions received supported the Commission's principles-based approach to stakeholder engagement, and supported flexibility in engagement approaches that are fit-for-purpose (that is, meeting the needs of different stakeholders), to facilitate better regulatory practice.

The submissions suggested the Charter was consistent with industry practice for regulated entities and the increased focus on ensuring stakeholders and customers are involved in and understand the reasons for decisions that impact the price and services of essential services. They also proposed some improvements to the Charter, including a statement outlining the Commission's commitment to considering financial, competition and economic efficiency factors, as required by the ESC Act, and the inclusion of a review clause. The proposals raised in those submissions have been adopted in this Final Decision and revised Charter.

There was also a suggested change that the Charter should include specific requirements for consultation with local government, based on the governance and process requirements faced by local government when responding to consultation. The Commission has accepted the underlying principle of that submission – that stakeholders' own governance needs are a relevant consideration in setting consultation timeframes and requirements – and has incorporated that general principle in the Charter (rather than applying it only to local government bodies).

The Commission thanks stakeholders for their time and valued input which has assisted the Commission in finalising the Charter.

2 Introduction

The Essential Services Commission (**Commission**) is a statutory authority established as an independent economic regulator and advisory body under the Essential Services Commission Act 2002 (**ESC Act**).

The Commission has economic regulatory responsibility in the water, sewerage, electricity, gas, rail and maritime services industries, and a general advisory function on regulatory and economic matters. The ESC Act and various industry Acts together provide the Commission with those regulatory and advisory powers and functions.

Section 9 of the ESC Act requires the Commission to develop and publish a Charter of Consultation and Regulatory Practice (**Charter**), in consultation with the Treasurer of South Australia.

9 - Commission must publish Charter

- (1) *The Commission must, in consultation with the Minister, develop and publish a Charter of Consultation and Regulatory Practice including guidelines relating to processes for making price determinations or codes or rules and conducting inquiries.*
- (2) *The Charter of Consultation and Regulatory Practice—*
 - (a) *must include such matters as are prescribed by regulation; and*
 - (b) *may include any other matters that the Commission considers appropriate.*

The Charter outlines the Commission's role and approach as an economic regulator and advisor to the South Australian Government. Importantly, it also sets out how the Commission will consult and engage with stakeholders in meeting its primary objective of the '... protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services'.

The Charter outlines the principles the Commission is committed to, and will apply, in:

- ▶ undertaking its regulatory and advisory roles, and
- ▶ stakeholder consultation and engagement through its work program, including how the Commission will be informed by, and involve, its stakeholders in its inquiries, advice and decisions.

The Commission has had a Charter in operation since 2004, with the Charter last updated in September 2014.

3 The review

3.1 Purpose of the review

The 2019 review of the Charter has aimed to ensure that the Charter reflects the Commission's current approach to regulation and consultation, including:

- ▶ promoting Better Regulation principles in our regulatory practice
- ▶ taking a principles-based approach to stakeholder engagement, and
- ▶ promoting fit-for-purpose engagement.

The review of the Charter was undertaken with a view to embedding a less formulaic or prescriptive consultation framework, instead promoting a more flexible approach which seeks to maximise the value, and minimise the costs, to stakeholders in providing input and advice to the Commission.

A draft Charter was released for consultation in May 2019, with stakeholders invited to provide written submissions by July 2019. The key changes in the draft Charter were:

- ▶ Defining engagement and consultation, along with the Commission's approach to inclusive consultation and the value of a diversity of views in decision-making.
- ▶ Including a description of the Commission's Better Regulation approach in the Charter.
- ▶ Outlining a principles-based approach to stakeholder engagement, with five principles explained:
 - We will gain a diversity of views
 - We will be transparent and open
 - We will be accessible
 - We will be responsive and listen
 - We will evaluate and learn
- ▶ A more flexible and fit-for-purpose approach to engagement methods that meets the needs of stakeholders and required timeframes, providing guidance but not prescriptive methods.

3.2 Stakeholder feedback on draft Charter

The Commission received seven submissions on the draft Charter. These were from:

- ▶ SA Water
- ▶ AGL Energy Limited
- ▶ Mondo Power Pty Ltd
- ▶ Red Energy and Lumo Energy
- ▶ Australian Gas Infrastructure Group
- ▶ Local Government Association of South Australia, and
- ▶ Ms E Attwood.

3.2.1 Summary of stakeholder feedback and Commission responses

3.2.1.1 Overview

In broad terms, all submissions supported the Commission's commitment to engagement and consultation, the principles-based approach to stakeholder engagement, and support for flexibility in engagement approaches that are fit-for-purpose and that meets stakeholder needs.

The submissions suggested the Charter was consistent with industry practice of regulated entities and the increased focus on ensuring stakeholders and customers are involved in and understand the reasons for decisions that impact the price and services of essential services.

The submissions also proposed some improvements to the Charter, including a statement outlining the Commission's commitment to considering financial, competition and economic efficiency factors, as required by the ESC Act, and the inclusion of a review clause. There was also a suggested change to include specific requirements for consultation with local government.

3.2.1.2 SA Water

SA Water's submission affirmed its commitment to engage with the Commission and stated that there is opportunity for the Commission to gain insights from regulated entities' own stakeholder and consumer engagement.

The Commission supports this view, as engagement by regulated entities with their customers is a critical component in informing their business and the services offered to consumers, and further, the Commission has found value in customers' experiences and views shared by regulated entities. As such, the Commission will continue to look to regulated entities' own consumer engagement to inform its decision-making.

3.2.1.3 AGL Energy Limited

AGL Energy Limited (AGL) commended the Commission on its better regulation approach. AGL suggested that the Charter, in a more simplified manner, supported and reflected the overall objectives to ensure better regulation practice and tailored stakeholder engagement. AGL noted that the Commission has maintained positive and proactive engagement with stakeholders and AGL valued the way feedback is captured and responded to in decision documents, making decisions more accessible and transparent.

AGL also suggested including the commitments to financial, competition and economic efficiency considerations, which are factors that the Commission must have regard to under the ESC Act. These factors have now been included in the Charter for completeness, noting that the Commission must (and does) have regard to them whether or not of they are incorporated within the Charter.

3.2.1.4 Mondo Power Pty Ltd

Mondo Power Pty Ltd (Mondo) supported the Commission's decision to take a principles-based approach to stakeholder engagement. Mondo stated this approach will provide greater flexibility to the Commission and help ensure all engagement is fit-for-purpose, which will ultimately result in better regulatory practice.

Mondo suggested indicative timeframes be specified for both formal, regulatory decision-making processes and inquiries or other advisory work in section 5.2 of the Charter (Timeframes for consultation). Mondo suggested this would provide stakeholders with an understanding of the indicative timeframes associated with each of the different types of consultation approaches.

While the Commission acknowledges this suggestion, the intent of the principle-based approach is to provide flexibility in timeframes that reflect complexity in decision-making and the consultation requirements of stakeholders. In practice this means that some formal decision may require four-week consultation or 12-week consultation periods. As such, this suggestion has not been incorporated in the Charter.

3.2.1.5 Red Energy and Lumo Energy

Red Energy and Lumo Energy (a joint submission) welcomed the release of the draft Charter and stated that it is both an effective and appropriate approach from the Commission. The joint submission suggested that the Charter provides a well-balanced approach to both regulation and engagement that will see effective and efficient response from the industry while still ensuring the best outcomes for consumers.

Further, they suggested that the principles-based approach to stakeholder engagement and fit-for-purpose engagement should be accompanied by a briefing of industry representatives (one on one, or as a whole), to allow fulsome discussion on how these approaches will operate in practice and ensure the industry understands the potential implications and appropriate responses.

The Commission welcomes this suggestion and will engage with interested industry stakeholders to provide a briefing.

3.2.1.6 Australian Gas Infrastructure Group

Australian Gas Infrastructure Group's (AGIG) submission stated that the draft changes to the Charter are a welcome reflection on how best to engage with stakeholders and to consult on specific issues. AGIG put the view that this "is consistent with increased industry focus to ensure that our customers are involved in and understand the reasons for decisions that impact the price and services we deliver".

AGIG supported the Commission's focus on promoting better regulation, a principles based approach to stakeholder engagement and ensuring fit-for-purpose engagement.

3.2.1.7 Local Government Association of South Australia

Local Government Association of South Australia (LGA) supported the five key principles, and recommended flexible and targeted consultations, which is supported by the Commission and a key element to the revised Charter's principles.

LGA noted that, as local government is a large stakeholder across a range of Commission activities, the Charter should have clear requirements specifically for consultation with local government. The Commission agrees that local government is a key stakeholder for the Commission and the Commission remains fully committed in its engagement with both the LGA and directly with local government regulated entities on a wide range of matters. The assistance of the LGA in facilitating a coordinated local government response has been, and will continue to be, of value to the Commission. However, as a matter of regulatory practice, the Commission does not propose to single out one stakeholder over others in the Charter.

The LGA also commented on the importance of regional consultation for local government. The Commission again accepts this point, and is committed to and has more recently increased its focus on rural and regional engagement to ensure a diversity of views across sectors on regulatory matters.

Finally, the LGA supported a flexible, rather than prescriptive, approach to timeframes for consultation, and recommended that the "formal regulatory decision-making process of six weeks be extended for local government to formally consider regulatory decision-making processes and for matters that have a large impact, financial or otherwise on councils".

The Commission acknowledges local government timeframes for formal council decision making, with the Charter allowing for flexible consultation times – including greater than six weeks – for those regulatory decisions that have significant or important impact on stakeholders. Further, the Commission’s multi-stage approach to consultation on key matters, through position papers and draft decisions, prior to a final decision, further allows flexible timeframes and multiple opportunities for gathering stakeholder input.

On that basis, while the Commission again notes that it will not set specific rules for an individual stakeholder in the Charter, it does accept the underlying principle of the submission – that stakeholders’ own governance needs are a relevant consideration in setting consultation timeframes and requirements. It has therefore incorporated that general principle in the Charter (rather than applying it only to local government bodies).

3.2.1.8 Mrs E Attwood

An individual submission was received by Ms E Attwood. Ms Attwood supported the changes to the Charter and said she had found the Commission to be respectful and transparent with its stakeholders and genuine in its attempts to be inclusive.

The Commission sincerely thanks stakeholders for their time and valued input through submissions which has assisted the Commission in finalising the Charter.

4 Conclusion

The Commission again thanks stakeholders for their valued input into the Charter review in 2019.

The Commission will publish its Charter of Consultation and Regulatory Practice and this Final Decision, and proposes to review it again in November 2022 (or earlier as the need may arise).

Further, the Commission will invite interested industry stakeholders for a briefing on the Charter.



The Essential Services Commission
Level 1, 151 Pirie Street Adelaide SA 5000
GPO Box 2605 Adelaide SA 5001
T 08 8463 4444

E escosa@escosa.sa.gov.au | W www.escosa.sa.gov.au