



Corporate

Charter of consultation and regulatory practice

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1 Our charter of consultation and regulatory practice

1.1 Introduction

The Commission's Charter of Consultation and Regulatory Practice (**Charter**) explains our roles and approach as an economic regulator and advisor in relation to essential services. And, importantly, how we consult and engage with stakeholders in meeting our 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** we are committed to, and will apply, in:

- ▶ undertaking our regulatory and advisory roles, and
- ▶ our stakeholder consultation and engagement through our work program, including how we are informed by, and how we involve, our stakeholders in the decisions we make and inquiries we undertake.

Our stakeholders are many and varied and we aim to engage genuinely with all of them. They include but are not limited to:

- ▶ customers and the interest groups that represent customers more broadly
- ▶ regulated businesses
- ▶ industry and industry bodies
- ▶ other regulators, state and national, and
- ▶ Government, Ministers, Members of Parliament and policy makers.

The Commission considers **engagement** broadly, to include working with our stakeholders in all that we do.

We consider **consultation** an important part of engagement, which includes formal and informal opportunity for input and influence in shaping options and decision-making. It assists us to explain our work, its context and intent, the evidence which we use and the methodologies which we apply.

At the same time, consultation provides stakeholders an opportunity to give us evidence, information, commentary, advice and context, as well as input on potential impacts or suggestions of alternatives and improvements.

The Commission's approach to consultation and engagement with stakeholders, includes:

- ▶ promoting better regulatory practice
- ▶ taking a principles-based approach to stakeholder engagement, and
- ▶ ensuring fit-for-purpose engagement

Stakeholder engagement and genuine consultation is critical in our role.

Engagement is fundamental to good regulatory practice and outcomes.

2 Our role

The 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 responsibilities in the water, sewerage, electricity, gas, rail and port services sectors, and a general regulatory and economic advisory function.

Under the ESC Act, the Commission has the 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 ESC Act sets out seven further factors that the Commission has regard to in performing its functions:

- ▶ promoting competitive and fair market conduct
- ▶ preventing misuse of monopoly or market power
- ▶ facilitating entry into relevant markets
- ▶ promoting economic efficiency
- ▶ ensuring consumers benefit from competition and efficiency
- ▶ facilitating maintenance of the financial viability of regulated industries and the incentive for long-term investment, and
- ▶ promoting consistency in regulation with other jurisdictions.

The ESC Act and various industry Acts together provide the Commission with those regulatory and advisory powers and functions.

The Commission acts independently, transparently and objectively in performing its functions and exercising its powers. It promotes a culture in which Commissioners and staff are consultative, professional and accountable. This is reflected in the Commission's corporate values, which support, uphold and promote the values of the South Australian Public Sector.

2.1 Regulatory

The Commission performs a range of functions across the different industries it regulates, including pricing, licensing, performance monitoring and reporting, compliance and scheme administration. For each industry, the relevant industry regulation Act specifies the scope of the Commission's role, as summarised in Table 1 below.

Table 1: Commission's regulatory functions by industry

| Legislation | Regulatory functions |
|---|---|
| Water Industry Act 2012 | <p>Water and sewerage retail service providers:</p> <ul style="list-style-type: none"> ▶ Licensing ▶ Retail price regulation ▶ Consumer protection ▶ Service/reliability standard setting ▶ Performance monitoring and reporting <p>Third Party Access Regime regulator</p> |
| Electricity Act 1996 | <p>Electricity retail operations:</p> <ul style="list-style-type: none"> ▶ Monitoring and, if necessary, determination of the retailer Solar Photovoltaic Feed-in Tariff ▶ Preparation and publication of Ministerial Energy Retail Pricing reports ▶ Retailer Energy Efficiency Scheme administration <p>Electricity generation, transmission, distribution and off-grid retailers:</p> <ul style="list-style-type: none"> ▶ Licensing ▶ Network service/reliability standard setting ▶ Performance monitoring and reporting |
| Gas Act 1997 | <p>Gas retail operations:</p> <ul style="list-style-type: none"> ▶ Preparation and publication of Ministerial Energy Retail Pricing reports ▶ Retailer Energy Efficiency Scheme administration <p>Licensing of retail and distribution LPG gas operations</p> <p>Licensing of natural gas operations, standard setting, performance monitoring and reporting</p> |
| AustralAsia Railway (Third Party Access) Act 1999; Railway (Operations and Access) Act 1997 | <p>Tarcoola–Darwin railway regulator under the AustralAsia (Third Party Access) Code</p> <p>Intrastate rail lines access regulator</p> |
| Maritime Services (Access) Act 2000 | <p>Ports services pricing and access regulator</p> |

2.2 Advisory

The Commission has two broad advisory functions. The first is to provide advice to the South Australian Treasurer, on request, in relation to any matter (section 5(f) of the ESC Act). In that capacity the Commission acts as a consultant to the South Australian Government, providing independent advice on economic and regulatory matters.

The second is to conduct public inquiries (Part 7 of the ESC Act). Such inquiries can be initiated by the Commission (into any matters within our regulatory scope), by the South Australian Treasurer (into any matter) or by an industry Minister (into any matter concerning a regulated industry).

3 Promoting better regulation

The Commission administers a principles-based regulatory and advisory framework. That framework focuses on outcomes and delivers a risk-based approach to regulation, using best practice regulatory principles and techniques.

As a statutory authority, with responsibilities in the essential services sector, and role to provide advice to the South Australian Government, the Commission acts independently and objectively.

In exercising our powers we are informed by, and consult with, our stakeholders in shaping options and considering alternatives. We believe that a diversity of views is fundamental to robust decision-making.

Our Better Regulation approach encompasses:

Defining the issue: Using first-principles thinking to clearly understand and define the source, nature and scale of the issue to be addressed (including consideration of the legal and policy context).

Analysing possible actions: Applying economic and cost-benefit analysis in assessing the merits of any proposed action to address a defined issue based on a diverse range of evidence from stakeholders.

Evaluation: Evaluating whether there should be a regulatory response. The outcome of evaluation may be that there is no regulatory action or decision to be made.

Addressing the issue: Selecting the appropriate form and approach to regulation where some form of regulation is warranted. Actions will be proportionate and targeted at those risks that have most significant consequences.

Continuous improvement through monitoring and reviewing: Continually monitoring and reviewing the performance of the regulatory framework and the Commission's performance, including gaining market intelligence, reviewing performance outcomes and monitoring interstate and overseas developments.

Engagement and consultation: Involving, communicating and consulting genuinely with internal and external stakeholders during all aspects of regulation, and in considering proposals to regulate.

Better regulation is an attitude, a culture and a principles-based method of working to ensure we always look to better meet the community's needs in a cost effective manner. This includes an acceptance that the best outcome for consumers may not require a direct regulatory solution.

4 A principles-based approach to stakeholder engagement

The Commission is committed to the following **key principles** for engagement and consultation. We will be guided by these principles in all engagement and consultation with stakeholders.

4.1 We value a diversity of views

We will consult with stakeholders in reaching regulatory decisions to ensure that we have the best access to the widest range of available relevant facts and evidence for decision-making.

4.2 We will be transparent and open

We work in as open a manner as possible and provide considered and targeted information in our reports and on our website. We will be transparent and open, while ensuring we do not publish confidential material, or base our decisions on unreliable or untested information.

4.3 We will be accessible

We will be accessible and make sure that stakeholders have the opportunity to provide information, to raise concerns and to present research and analysis to inform our decision-making. We will present information in a range of accessible forms, from technical to plain language, to cater for the diversity of our stakeholders.

4.4 We will be responsive and listen

We will involve stakeholders in our regulatory and advisory work, and be responsive to requests for information and consultation. We will be flexible and timely in our all our engagement.

4.5 We will evaluate and learn

We will genuinely and actively listen to our stakeholders' views. We will evaluate and monitor our engagement regulatory effectiveness and learn from our stakeholders so that we can continuously improve our work and our approach to it for best practice regulation.

5 Fit-for-purpose engagement

5.1 Engagement approaches and methods

We recognise that different levels of stakeholder engagement are appropriate depending on the objective, outcomes, timeframes, resources and levels of concern or interest in a particular decision of the Commission.

Fit-for-purpose engagement means that there is no one-size fits all formula. We will take into account the competing demands and our stakeholders' resource and time constraints (as necessary).

We therefore consider it appropriate that we use a **variety** of consultation approaches with different stakeholders at different times to ensure fit-for-purpose engagement. We will ensure we are flexible and open in our approach to engagement.

We will use various modes of communication, including but not limited to, written material (for example, formal reports, fact sheets, letters, emails), meetings and presentations (including bi-lateral discussions, and public or targeted forums), our website and subscriber communication, and social and mainstream media (as appropriate).

Types of consultation approaches, which will be used on a fit-for-purpose basis, which may include some but not all approaches, is outlined in Table 2.

5.2 Timeframes for consultation

We recognise that, to maximise its effectiveness, our approach to engagement and consultation must include a flexible approach in setting consultation timeframes. For example, for meaningful consultation adequate time is required for more complex reviews and decisions such as regulatory determinations. Further, consultation with stakeholders must consider decision-making processes and allow for consultation periods that reflect both the Commission's and stakeholder decision-making processing and timeframes. Therefore, we will have a clear purpose in our engagement that considers the relevant stages of a project or program, and will tailor consultation timeframes to best meet the project or program's outcomes along with the stakeholders' consultation requirements.

While we will not adopt a prescriptive approach, for our formal regulatory decision-making processes we will generally provide a six-week consultation process, particularly when formal written documents are issued. This may not be possible in all cases, however, and, where there is a need for shortened consultation periods, we will advise accordingly and also look to offer alternative engagement and consultation avenues. Likewise, consultation may be extended beyond six-weeks as needed to meet stakeholder's consultation requirements.

For inquiries and other advisory work, we will tailor our consultation timeframes to optimise stakeholder engagement in the context of the terms of reference issued. We will generally provide a four to six-week consultation process, when formal written documents are issued, but this may be subject to change depending on the requirements of specific terms of reference or other, related, considerations.

5.3 Other opportunities for engagement

We welcome opportunity to engage in a variety of ways, both formally and informally, both in the metropolitan area and regional or rural centres. This may include bi-lateral, group or individual meetings on a topic, attending planned meetings of industry bodies and other stakeholder groups as a presenter or discussion participant, or other opportunities for involvement.

We are open to and welcome stakeholder views on other opportunities for engagement.

Table 2: Commission's types of consultation approaches

| | Description | Consultation approach |
|--|---|---|
| Notifications of new projects or programs | This is notification of an upcoming program or project commencement, to ensure transparency of the work that we do, within our legislative remit. | Notification may be through the annual Performance Plan, Commission website updates, media release or social media. We will invite our stakeholders to subscribe on our website to project updates for notification of project initiation and consultation events. |
| Engagement for early input | This may be informal or formal early engagement, through a range of ways, to seek early input and views and identify relevant issues. | Our consultation may include public forums, industry briefing sessions, surveys, stakeholder meetings or social media. |
| Discussion or Guidance Papers | These are preliminary papers which put forward our early views or methodology on particular matters. They are designed to stimulate debate and general discussion prior to identification of particular issues. | We may invite submissions, noting that the papers may not lead to a formal decision. Our consultation may include public forums, industry briefing sessions and stakeholder meetings. |
| Issue Papers | These papers raise and provide context for particular issues we have identified at the outset of a review. | We will invite submissions on the specific issues we have raised or any other matters relevant to the inquiry or review. Our consultation may include public forums, industry briefing sessions and stakeholder meetings. |
| Draft Decisions/ Determinations | These are formal papers that indicate our proposed views on a matter, and the reasons for those positions, taking into account the submissions from stakeholders and further research we have undertaken. | We will invite additional information on why we should reconsider any of our Draft Decisions. Our consultation may include public forums, industry briefing sessions and stakeholder meetings. |
| Final Decisions/ Determinations | These are formal decision papers which set out the decision the Commission has made under an Act. Final Decisions or Determinations set out the reasons for the decision and the terms of the decision itself, such as when a particular decision will come into effect. | We will inform our stakeholders and the community of the outcomes. We may also publish fact sheets or summary documents that summarise the key elements of our decision. Our consultation may include informing of the final decision at industry briefing sessions or stakeholder meetings. |

6 Consumer Advisory Committee

To assist in engagement and consultation, the Commission convenes a Consumer Advisory Committee (constituted formally under the ESC Act, and as required under the Electricity Act 1996, the Gas Act 1997 and the Water Industry Act 2012).

The Consumer Advisory Committee comprises representatives from a broad range of consumer groups, including those representing general consumers, specific consumer groups, business interests, primary production, local government, and the environment.

The Consumer Advisory Committee is an essential part of the overall regulatory framework. It allows community involvement in regulatory decisions and processes, and affords the Commission (and other bodies such as other Government regulatory agencies, government departments and regulated businesses), direct access to consumer and community views.

The insights gained from Consumer Advisory Committee members, representative bodies and the broader networks accessed through those bodies is therefore of the utmost importance.

Members consult with their constituencies outside the Consumer Advisory Committee meetings and members provide comment on:

- ▶ issues and market developments affecting consumers that fall within the scope of the Commission's functions under the Water Industry Act, Electricity Act and Gas Act
- ▶ information dissemination strategies and appropriate external networks available to enhance communication with community and consumer groups and consumers, and
- ▶ issues as requested by the Commission.

More information on the Consumer Advisory Committee can be found on the Commission's website at <https://www.escosa.sa.gov.au/consultation/consumer-advisory-committee>.



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