



Corporate

Charter of consultation and regulatory practice - DRAFT

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1 Our charter of consultation and regulatory practice

3 1.1 Introduction

4 The Commission's Charter of Consultation and Regulatory Practice (**Charter**) explains how we engage
5 with stakeholders, people, communities and organisations in performing our work as an economic
6 regulator and advisor in relation to essential services.

7 The Commission's primary objective is the

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

10 This Charter outlines the **principles** and **methods** we are committed to, and will apply, in:

- 11 ► engaging and consulting with people, communities and organisations in undertaking our regulatory
12 and advisory roles.
- 13 ► how we are informed by, and how we involve, people in the decisions we make and inquiries we
14 undertake.

15 We are committed to engaging genuinely with stakeholders, people, communities and organisations.

16 Stakeholders include, but are not limited to:

- 17 ► consumers and the interest groups that represent customers more broadly
- 18 ► communities
- 19 ► regulated businesses
- 20 ► industry and industry bodies
- 21 ► other regulators, state and national
- 22 ► Government, Ministers, Members of Parliament and policy makers, and
- 23 ► the media.

24 The Commission considers **engagement** broadly, to include working with our stakeholders in our work.

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

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

31 The Commission's approach to consultation and engagement includes:

- 32 ► promoting better regulatory practice
- 33 ► taking a principles-based approach to engagement and consultation, and
- 34 ► ensuring fit-for-purpose engagement

36 2 Our role

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

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

41 In addition to the Commission's primary objective, the ESC Act sets out seven further factors that the
42 Commission must have regard to in performing its functions:

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

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

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

57 2.1 Regulatory

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

Table 1: Commission's regulatory functions by industry

Legislation	Regulatory functions
Water Industry Act 2012	Water and sewerage retail service providers: <ul style="list-style-type: none"> ▶ Licensing ▶ Retail price regulation ▶ Consumer protection ▶ Service/reliability standard setting ▶ Performance monitoring and reporting Third Party Access Regime regulator
Electricity Act 1996	Electricity retail operations: <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 Electricity generation, transmission, distribution and off-grid retailers: <ul style="list-style-type: none"> ▶ Licensing ▶ Network service/reliability standard setting ▶ Performance monitoring and reporting
Gas Act 1997	Gas retail operations: <ul style="list-style-type: none"> ▶ Preparation and publication of Ministerial Energy Retail Pricing reports ▶ Retailer Energy Efficiency Scheme administration Licensing of retail and distribution LPG gas operations Licensing of natural gas operations, standard setting, performance monitoring and reporting
AustralAsia Railway (Third Party Access) Act 1999; Railway (Operations and Access) Act 1997	Tarcoola–Darwin railway regulator under the AustralAsia (Third Party Access) Code Intrastate rail lines access regulator
Maritime Services (Access) Act 2000	Ports services pricing and access regulator
Local Government Act 1999	The Commission has functions relating to the provision of advice to local councils on the appropriateness of amendments to, and revenue sources for, their long-term financial and infrastructure and asset management plans.
Planning, Development and Infrastructure Act 2016	Determine funding arrangements for any infrastructure delivery schemes established by the South Australian Government (not yet commenced, as the enabling regulations are not in place).

63 2.2 Advisory

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

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

71 The third is to provide advice to Local Government under the Local Government Advice Scheme
72 established through the Local Government Act 1999. The Commission works across a four-year cycle,
73 commencing in 2022/23 to provide advice to 68 South Australian councils.

74 The advice relates to the appropriateness of council's long-term financial plans, infrastructure and
75 asset management plans and revenue sources as outlined in the council's funding plan. It is an
76 advisory scheme, identifying both risks and areas of good practice for councils to consider in their
77 planning processes, with decision making remaining the hands of the councils.

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79 3 Promoting better regulation

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

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

85
86 In exercising our powers we are informed by, and consult with, our
87 stakeholders in shaping options and considering alternatives. We believe that
88 a diversity of views is fundamental to robust decision-making.
89

90 Our Better Regulation approach encompasses:

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

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

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

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

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

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

105
106 Better regulation is an attitude, a culture and a principles-based method of
107 working to ensure we always look to better meet the community's needs in
108 a cost-effective manner. This includes an acceptance that the best outcome
109 for consumers may not require a direct regulatory solution.
110

111

112 4 A principles-based approach to stakeholder 113 engagement

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

116 4.1 We value a diversity of views

117 We value diverse views and consult widely in order to make informed regulatory decisions. Our goal is
118 to access a wide range of relevant facts and evidence by connecting meaningfully with our
119 stakeholders, and we work hard to engage with hard-to-reach groups and individuals.

120 We foster connections with stakeholders and organisations through our Consumer Advisory
121 Committee and the work we do in the community.

122 4.2 We know the history

123 We are mindful of what we have already been told and know, and research background information
124 before reaching out. We value people's time and resources in engaging with us..

125 4.3 We will be responsive, transparent, and genuinely listen

126 We will listen and be honest with stakeholders about how their views, information and evidence will be
127 used, and what role they can play in regulatory processes. We will close the feedback loop regarding
128 their input. We recognise that we cannot engage stakeholders on every issue but will genuinely listen
129 when we do.

130 4.4 We will continually improve

131 We will evaluate and monitor our engagement and learn from our stakeholders so that we can
132 continuously improve our work and our approach.

133 4.5 We are flexible

134 We will engage with people, communities and organisations in ways that suit them, with the aim of our
135 engagement being relevant, accessible, timely and inclusive.

136

137 5 Fit-for-purpose engagement

138 5.1 Engagement approaches and methods

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

142 Fit-for-purpose engagement means recognising that there is no one-size-fits-all formula and adapting
143 our methods to suit those with whom we engage. We will consider the competing demands, resources,
144 knowledge base and time constraints of stakeholders.

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

148 We will use various modes of communication, including but not limited to, digital engagement – using
149 platforms like YourSAY, our website and subscriber communication, and social and mainstream media.
150 We will use face-to-face or digital meetings where we can hear from people, communities and
151 organisations. We will release material for comment, for example, formal reports, fact sheets, letters,
152 emails, in addition to meetings and presentations.

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

155 5.2 Timeframes for consultation

156 Our approach to engagement and consultation will be flexible when setting timeframes. Meaningful
157 consultation requires adequate time and this will be built into our work to enable stakeholders to
158 contribute fully. We will communicate timeframes and methods to contribute clearly and in advance
159 and ensure our projects have consultation periods that best meet the project or program's outcomes.

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

166 For inquiries and other advisory work, we will tailor our consultation timeframes to optimise
167 stakeholder engagement in the context of the terms of reference issued. We will generally provide a
168 four to six-week consultation process, when formal written documents are issued, but this may be
169 subject to change depending on the requirements of specific terms of reference or other, related,
170 considerations. In instances where a shorter engagement timeframe is necessary, we will ensure
171 greater assistance, planning and background work is provided to support stakeholders in the process.

172 5.3 Other opportunities for engagement

173 We understand the importance of consulting with a wide range of people, communities and
174 organisations and will ensure that our methods of consultation are accessible regardless of where
175 people live in South Australia. We will strive to ensure our consultation methods are as accessible as
176 possible so people can contribute regardless of their personal circumstances.

177 We are open to and welcome views from stakeholders on other opportunities for engagement.

178

Table 2: The Commission’s 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.

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184 6 Consumer Advisory Committee

185 To assist in engagement and consultation, the Commission convenes a Consumer Advisory Committee
186 (constituted formally under the ESC Act, and as required under the Electricity Act 1996, the Gas Act
187 1997 and the Water Industry Act 2012).

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

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

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

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

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

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



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