

# Strategic Directions Consultation Paper

## August 2015

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

Each year, the Commission prepares a Strategic Plan, with a three year rolling timeframe. For 2016, the Strategic Plan will cover the planning period from July 2016 to June 2019 (the planning period) and is scheduled to be finalised by March 2016. A summary of the Commission's current Strategic Plan may be found on the back of this document.

This consultation paper seeks public comment on the Commission's regulatory approach and key focus areas for the planning period, to inform the development of its 2016 - 2019 Strategic Plan.

## CONSULTATION

The Commission welcomes comment on:

- ▲ Its regulatory approach
- ▲ Its existing work program as outlined in this paper
- ▲ Any matters relating to specific projects
- ▲ How it could better engage the community
- ▲ Any other issues or areas of work not outlined in this paper that the Commission should consider in setting its priorities over the planning period.

The Commission will hold public forums across the State to assist stakeholders in providing comments. Registration is required for attendance. Please see the Commission's website ([www.escosa.sa.gov.au](http://www.escosa.sa.gov.au)) or contact the Commission for further information.

Written submissions should be provided by 2 October 2015 and preferably be sent electronically to: [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au) (see the final page of this document for more contact details).

## FUNCTIONS OF THE COMMISSION

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

In performing its functions, the Commission has the objective of protecting the long term interests of consumers with respect to the price, quality and reliability of essential services.

### Regulatory functions

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 the table on page five.

### Advisory functions

The Commission has two broad advisory functions.

The first is to provide advice to the Treasurer, on request, in relation to any matter (section 5(f) of the Essential Services Commission Act). In that capacity the Commission acts as a consultant to the Government, providing independent advice on economic and regulatory matters.

The second is to conduct public Inquiries (Part 7 of the Essential Services Commission Act). Such Inquiries can be initiated by the Commission itself (into any matters within its regulatory scope), by the Treasurer (into any matter) or by an industry Minister (into any matter concerning a regulated industry).

## BROADER CONTEXT

The Commission recognises that it operates in an environment of multiple regulatory agencies and broad policy considerations. The Commission is a regulatory and advisory body within that context, with defined roles and functions, and does not have a policy remit.

For example, in the water industry:

- ▲ The Minister for Water and the River Murray has overall responsibility for policy and legislative development and implementation.
- ▲ The Department of Environment, Water and Natural Resources regulates state water resources, and other natural resource management matters.
- ▲ SA Health regulates public health requirements for providing drinking water supplies.
- ▲ The Environmental Protection Authority regulates the environmental impact of water businesses.
- ▲ Consumer and Business Services regulates the relationship between landlords and tenants in relation to the payment of rates and charges for water and sewerage services.
- ▲ The Minister for Communities and Social Inclusion sets hardship and concession policy requirements.
- ▲ The Technical Regulator is responsible for safety and technical matters.
- ▲ The Energy and Water Ombudsman SA handles complaints of customers of various water licensees.

It is therefore important that the Commission works with other agencies to ensure a consistent and complementary regulatory approach, focussed on securing the long term wellbeing of all South Australians.

## REGULATORY APPROACH

The Commission actively works towards being a high performing and responsive agency that administers a principles-based regulatory and advisory framework which focuses on outcomes, not inputs.

As a statutory authority with responsibilities in the essential services sector and for providing advice to the Government, the Commission acts independently and objectively in performing its functions and exercising its powers.

The Commission adds benefit to the South Australian community by ensuring that consumers of regulated services are adequately protected and that entities are accountable for their services, while not imposing unnecessary regulatory costs and burdens. Its robust, independent advice to Government informs, and provides an evidence base for, policy making and public consideration of economic and regulatory issues.

Its approach seeks to provide consumers, regulated businesses and the broader community with regulatory stability and certainty over time. The Commission therefore brings a long term view to its work and establishes stable, transparent and predictable processes. While it takes account of shorter term issues, those are considered in a long term context in decision making.

At the same time, where they intersect with its work, the Commission promotes the achievement of the goals of the South Australian Strategic Plan and 10 Economic Priorities for the State.

The Commission promotes a culture in which Commissioners and staff are impartial, accountable, professional, transparent, respectful and ethical. This is reflected in its corporate values, which are supportive of, uphold and promote the values and conduct requirements of the South Australian Public Sector.

It is important that the Commission works within the overall policy and legislative framework established by the Parliament for the performance of the Commission's roles and responsibilities, and does not act in isolation from that framework. That is particularly so in relation to the inquiry and advisory functions, where the Commission is not a decision maker but instead provides expert, balanced and impartial advice to Government on any matter.

## ENGAGEMENT

The Commission operates in an independent and transparent manner, to ensure that all stakeholders understand the issues under consideration and the reasons for decisions.

Stakeholder engagement in the Commission's regulatory and advisory processes is critical. The information and advice that the Commission gains through genuine and effective engagement serve to enhance the quality of its regulatory decisions and advice: the Commission is committed to acting on the best available data and information. Genuine and effective engagement also enhances community understanding of the sectors the Commission regulates and of the regulatory issues which are of importance to this State.

The Commission therefore engages with all stakeholders in the performance of its functions, to ensure that the implications of its actions are fully understood and community views are taken into account in decision making.

The Commission's commitment to engagement is detailed in its Charter of Consultation and Regulatory Practice (available at <http://www.escosa.sa.gov.au/consultation/charter-of-consultation-and-regulatory-practice.aspx>).

The Consumer Advisory Committee assists the Commission and advises on matters relevant to the Commission's roles and functions. The Committee comprises representatives from across the consumer interest sector, meeting regularly to discuss current and future regulatory issues. The Committee provides a means by which the Commission can access a broader range of community views, thereby enhancing the reach, scope and effectiveness of the Commission's decisions and advice.

## OPERATING EFFICIENTLY AND EFFECTIVELY

As a small office, with limited resources, the Commission aims to operate in a manner which is both efficient and effective. It is structured on a functional, rather than industry-specific, basis and works collaboratively to ensure that it brings the right mix of skills and expertise to bear in each regulatory or advisory role.

The Commission ensures that its staff have a safe and supportive work environment and the resources necessary to perform their work and grow professionally.

The Commission aims to maintain and, where it is appropriate to do so, enhance its internal capacities and resources, in order to build regulatory and economic knowledge within the South Australian public sector. The functions it performs are technical yet critical to the economic wellbeing of the State. Having and maintaining the right skills and experience is an important strategy for the Commission, enabling it to contribute more broadly to South Australia's future.

## KEY FOCUS AREAS AND ISSUES

### *Better Regulation*

The Commission looks to provide leadership in regulatory matters, developing innovative regulatory and advisory responses which meet the needs of consumers, regulated businesses and other stakeholders. At the same time, it recognises the necessity to balance the need for regulatory stability with the need for reform.

The Commission is therefore currently working on the formalisation of an overall framework setting out principles for the establishment, maintenance and application of regulatory requirements and regimes.

This will involve clearly justifying the need for, or basis of, any new regulatory requirements and considering least cost options for achieving the intent of any regulatory requirement. It will also establish performance measures and mechanisms to enable the Commission's regulatory performance to be assessed.

While the Commission already has processes in place which provide transparency and the opportunity for all stakeholders to contribute to its decision making and other regulatory actions, it will explore innovative ways to further enhance participation and engagement.

Part of that work will include a focus on the means by which it provides regulatory information to the public. This will include the presentation and form of decisions and other regulatory documents, as well as the publication of regulatory performance information to demonstrate the extent to which regulated businesses are complying with their regulatory obligations.

That latter element is a critical part of the Commission's commitment to ensuring that regulated businesses are held accountable for their levels of service delivery.

As the needs of consumers and regulated businesses are a critical part of this project, the Commission will seek comment from stakeholders at various stages in the ongoing development of the framework and welcomes any initial feedback as part of the response to this consultation paper.

## Water

It has been three years since the commencement of the Water Industry Act, which has the objectives of promoting greater economic efficiency, competition and innovation in the water industry. That Act established the Commission as the economic regulator of retail water and wastewater services, with responsibilities in industry licensing, consumer protection and retail pricing.

The introduction of the Water Industry Act and of independent economic regulation of the retail water industry has been a significant reform. Retail water operations are now licensed by the Commission, with licensees required to comply with the provisions of the consumer protection regime it has established.

The Commission applies three licence classes, based on the scale and scope of operations for water retailer operators: major (over 50,001 customers - SA Water), intermediate (between 501 and 50,000 customers) and minor (500 or fewer customers). These different classes recognise that smaller scale operations require a different regulatory approach.

The Commission has issued 64 water industry licences to date, as detailed in the table below.

**Water retail licences issued as at 30 June 2015**

MAJOR	INTERMED.	MINOR
1	37	26

For all retailers, the regulatory regime sets requirements for matters such as information provision, billing and payment arrangements, service standards, dispute resolution and hardship (through the use of binding industry codes). The manner in which those requirements are imposed does, however, vary between the different licence classes. In each, the requirements are embodied in a formal Retail Code.

When setting its prices for retail services, SA Water must comply with determinations made by the Commission as to the maximum amount of revenue which SA Water can earn from the provision of those services. Other water retailers, when setting prices, must comply with pricing principles set by the Commission.

The Commission monitors and publicly reports on retailers' performance to ensure they are meeting their obligations under the regulatory framework and that customers are receiving the benefit of regulatory protections and service standards.

The Commission notes that the Water Industry (Third Party Access) Amendment Bill 2015 was introduced to Parliament in February 2015. Under the Bill, the Commission would be the regulator of the Third Party Access Scheme, monitoring and enforcing compliance with the Scheme. While the Bill has not yet passed through Parliament, if enacted it will provide a new and important function for the Commission, requiring preparatory work to be undertaken early in the planning period.

### SA Water

SA Water provides water and sewerage services to over 1.5 million South Australians – about 95 per cent of the State's population.

Providing incentives to SA Water to meet its customers' needs at the lowest sustainable prices is a key objective for the Commission. Those incentives can be direct – through regulatory actions of the Commission – or indirect – through the threat of regulation.

The Commission made the first independent regulatory determination for SA Water in May 2013. That determination set maximum allowed revenues for drinking water and sewerage retail services for the three-year period from 1 July 2013 to 30 June 2016.

A further regulatory determination will be made in May 2016, to apply for the period from 1 July 2016 to 30 June 2020. That regulatory determination will set consumer protection and service requirements for SA Water and regulate the revenues which it can recover from consumers.

In terms of services, the Commission will specify binding service standards and consumer protections for SA Water, including any revised Retail Code requirements. In return for meeting those requirements (and taking into account SA Water's other legal obligations), the Commission will fix a maximum overall revenue amount which SA Water will be permitted to earn during the period.

While those processes will have been completed before the 2016-2019 Strategic Plan comes into effect, the focus for the Commission from 1 July 2016 will be monitoring and enforcement of the new regulatory arrangements.

Associated with that work, the Commission will also continue to assist the Bureau of Meteorology to compile the annual National Performance Report for Water, which provides comparative data on the performance of water utilities in Australia, including SA Water.

In the planning period the Commission's focus will be on:

- ▲ Monitoring the performance of SA Water across all reliability and customer service standards as established by the Commission for 2016-2020.
- ▲ Administering the 2016-2020 SA Water Regulatory Determination.
- ▲ Preparing for the 2020-2024 SA Water Regulatory Determination.

### Minor and Intermediate Retailers

A more light-handed approach to regulation has been applied to minor and intermediate water retailers for the period 1 July 2013 to 30 June 2017. The Commission will make a new regulatory determination for minor and intermediate retailers in June 2017, with the consultation and engagement process for that determination to occur during 2016 and early 2017.

The new regulatory determination will involve reviewing the current Retail Code, considering the appropriateness of introducing any mandatory service standards for minor and intermediate water retailers and determining the most appropriate approach to price regulation.

Community views on how best to balance the need for consumer protections along with the need for the lowest possible regulatory cost will be an important input to that determination process.

The Commission's priorities for minor and intermediate water retailers during the planning period include:

- ▲ Developing effective regulatory frameworks for minor and intermediate water retailers that provide appropriate consumer protections at the lowest possible regulatory cost.
- ▲ A price determination for minor and intermediate water retailers for the period 2017-2021.

## Energy

The Commission's role in the regulated electricity and gas industries has changed significantly over time. Whereas the Commission previously had direct regulatory responsibilities for distribution and retail operations in those industries, those functions have transferred to the Australian Energy Regulator.

Nevertheless the Commission retains certain functions, including:

- ▲ Licensing of electricity generation, transmission, distribution and retail (off-grid only) operations
- ▲ Licensing of natural gas and LPG distribution operations and LPG retail operations
- ▲ Network reliability standard-setting for SA Power Networks, Electranet and Australian Gas Networks
- ▲ Solar photovoltaic feed-in price regulation (retailer payments only)
- ▲ Preparation and publication of Ministerial reports on energy retail prices, and
- ▲ Retailer Energy Efficiency Scheme administration and performance monitoring.

### Alternative supply arrangements and emerging technologies

One of the issues arising from the remaining functions of the Commission as outlined above is the potential for growth in off-grid electricity operations. With environmental changes, such as technology advances and alternative operating arrangements, it may be that some operations currently occurring "on-grid" may become "off-grid". For example, new developments which might be electrically separated from the National Electricity Market (by use of smaller scale generation for example) may not fall within the Australian Energy Regulator's regulatory remit.

In such cases, the Commission may have a role in setting and enforcing consumer protection or pricing arrangements. The need for, or nature and scope of, any such arrangements is a matter which the Commission will be considering during the planning period. Community views on those important issues – including community expectations of regulation in a new environment – will be key inputs in that consideration. As a part of such considerations, it may also be necessary to consider whether or not current legislative provisions remain relevant and effective; the Commission can play a role in identification of such issues for the Government.

### Network service standards

The network service standards set by the Commission are important for consumers. They form an input into costs which are recovered under the revenue determinations made by the Australian Energy Regulator for SA Power Networks, ElectraNet and Australian Gas Networks.

The Commission's focus during the planning period will largely be on monitoring and reporting on performance against standards which have already been set for the current regulatory periods for each network business.

For SA Power Networks, however, the Commission will commence a review of the standards in 2018.

### Solar photovoltaic (PV) feed-in price regulation

In December 2014, the Commission made a price determination setting the minimum electricity feed-in tariff payable by electricity retailers to customers with solar photovoltaic generators. That determination set a minimum value of 5.3 cents per kWh.

The Commission also decided to continue a formal price monitoring regime until 31 December 2016. The price monitoring regime monitors the extent of competition for solar PV customers and the incidence of feed-in tariff payments above the mandatory minimum value.

Evidence provided through the price monitoring process will inform the Commission's decision as to whether or not it will continue to set a minimum Retailer Feed-in Tariff from 1 January 2017.

### Retailer Energy Efficiency Scheme

Regulations under the Electricity Act and Gas Act give effect to the Retailer Energy Efficiency Scheme. In 2015, the Scheme was extended by the South Australian Government to include small business premises. The objective of the scheme is to reduce household and business energy use, with a focus on low income households, providing associated energy cost and greenhouse gas emission benefits.

The Minister for Mineral Resources and Energy has overall policy responsibility for the Scheme and sets annual targets for residential sector energy audits and energy efficiency targets to be met by retailers. The Minister also establishes the classes of activities and training requirements for service providers under the Scheme.

As Scheme administrator, the Commission assesses retailers' performance against the specified targets and monitors and reports on retailer progress in achieving Scheme targets.

The focus of the Commission's regulatory role in the energy industry will include:

- ▲ Consideration of the regulatory requirements, if any, needed to meet customers' expectations in an environment of changing technologies and supply arrangements.
- ▲ Monitoring and public reporting of the network and customer service performance SA Power Networks, ElectraNet and Australian Gas Networks.
- ▲ Commencing the review of jurisdictional service standards to apply to SA Power Networks 2020-2025.
- ▲ Reviewing solar PV retailer feed-in tariff arrangements.
- ▲ Monitoring and reporting on retailer performance under the Retailer Energy Efficiency Scheme.

## Transport

The transport sector is important to the South Australia economy to facilitate the efficient and effective transportation of goods both within and into and out of the State. For example, grain, minerals and consumer goods all add value to the South Australian economy and their transport at the lowest sustainable cost adds to the economic well-being of the State.

The Commission has regulatory roles in two transport areas; ports and rail.

In the ports sector, the Commission is the pricing and third party access regulator for specified types of ports services at proclaimed ports in South Australia.

In the rail sector, the Commission is the access regulator for the Tarcoola-Darwin railway and for specified intrastate rail lines.

The regulatory regimes in the ports and rail sectors are of a light-handed nature. The access regimes establish a negotiate/arbitrate framework, with the provision for conciliation and arbitration in the event of a dispute.

The ports pricing regime administered by the Commission is a price monitoring scheme.

## Ports

The Commission's next review of the ports pricing and access regimes will be required to be conducted in 2016-17, with effect from 31 October 2017. The access review will consider whether or not the access regime should continue for a further five years.

The pricing review will involve the making of a pricing determination for the relevant maritime services. One possible outcome of this review is the continuation of the current price monitoring regime. Under that regime, a port operator may adjust the relevant charges, subject to the requirement that the operator publish a price list and inform the Commission of any price changes. The Commission monitors and reports publicly on movements in these ports charges.

The key ports regulatory priority for the Commission is the effective administration of the access and pricing regimes that will expire on 31 October 2017, including ports price monitoring and administration of access disputes.

During 2016-17, the Commission will conduct a review as to whether or not the ports access regime should continue beyond October 2017 and whether or not continued price regulation beyond that date is warranted.

## Tarcoola-Darwin rail

In 2015, the Commission will complete its review into the revenues earned for below-rail services on the Tarcoola-Darwin railway during the first 10 years of operation. The review is limited to services that are not subject to a sustainable competitive price.

If the Commission finds, as a result of its review, that excessive revenues have been earned, it must put in place more targeted regulatory measures which will ensure that excessive revenues are not earned in future. If required, that work would occur during 2016.

At the conclusion of that review process, during 2016-17 the Commission will review and, if necessary, amend the various guidelines that it has issued under the AustralAsia Railway (Third-Party Access) Code, to ensure that the guidelines remain current and effective.

## South Australian intrastate rail

In 2015, the Commission will finalise a review into the South Australian rail access regime. The review will recommend either that the access regime should continue in operation for a further prescribed period; or that the access regime should expire at the end of the existing prescribed period (31 October 2015).

The review may also recommend changes to the access regime to improve its effectiveness.

Dependent on the results of the review, the Commission may commence further work during 2016-17 on its intrastate rail access Information Kit. That work would focus on ensuring that the information being provided by access providers is sufficiently detailed and transparent so as to give adequate guidance to access seekers.

The key rail regulatory priority for the Commission during the planning period is the effective administration of the two access regimes (intrastate and Tarcoola-Darwin railways).

## Other areas

While the Commission has identified key work and focus areas for the planning period, it would welcome any additional views on other areas or matters to be considered. The Commission also notes that there may be further public inquiries or advisory matters referred to it during the period. In considering these issues, stakeholders may wish to consider the Commission's current workprogram and Strategic Plan, both of which are available on the Commission's website (refer <http://www.escosa.sa.gov.au/about-us/strategic-plans.aspx>).

## FURTHER INFORMATION

Any queries relating to this strategic directions paper should be directed to:

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### Summary of Commission functions by industry legislation

LEGISLATION	REGULATORY FUNCTIONS
Water Industry Act 2012	Water and sewerage retail service providers: <ul style="list-style-type: none"> <li>▲ Licensing</li> <li>▲ Retail price regulation</li> <li>▲ Consumer protection</li> <li>▲ Service/reliability standard setting</li> <li>▲ Performance monitoring and reporting</li> </ul>
Electricity Act 1996	Electricity generation, transmission, distribution and off-grid suppliers: <ul style="list-style-type: none"> <li>▲ Licensing</li> <li>▲ Network service/reliability standard setting</li> <li>▲ Performance monitoring and reporting</li> </ul> Electricity retail operations: <ul style="list-style-type: none"> <li>▲ Determination of the retailer solar photovoltaic Feed-in Tariff</li> <li>▲ Preparation and publication of Ministerial Energy Retail Pricing reports</li> <li>▲ Retailer Energy Efficiency Scheme administration</li> </ul>
Gas Act 1997	Gas retail operations: <ul style="list-style-type: none"> <li>▲ Preparation and publication of Ministerial Energy Retail Pricing reports</li> <li>▲ Retailer Energy Efficiency Scheme administration</li> </ul> Licensing of retail and distribution LPG gas operations Licensing of natural gas operations Network service/reliability standard setting, performance monitoring and reporting
AustralAsia Railway (Third Party Access) Act 1999 Railway (Operations and Access) Act 1997	Regulation under the AustralAsia (Third Party Access) Code for the Tarcoola–Darwin railway Access regulator for specified intra-state rail lines.
Maritime Services (Access) Act 2000	Pricing and access regulator for specified port services.

# COMMISSION STRATEGY – A SUMMARY

Our primary **OBJECTIVE** under the Essential Services Commission Act is the protection of the long term interests of consumers with respect to the price, quality and reliability of essential services.

The Essential Services Commission Act also requires us to have regard to the need to:

- ▲ promote competitive and fair market conduct
- ▲ prevent misuse of monopoly or market power
- ▲ facilitate entry into relevant markets
- ▲ promote economic efficiency
- ▲ ensure consumers benefit from competition and efficiency
- ▲ facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment; and
- ▲ promote consistency in regulation with other jurisdictions.

Our **GOALS** guide us in meeting our objective to protect consumers:

1. We will establish consumer protection frameworks to promote the delivery of both service levels valued by consumers and efficient prices  
*Measure: Consumers are protected and pay the lowest sustainable prices for the required level of service*
2. We will keep regulated businesses accountable by monitoring and reporting on service standards and licence requirements  
*Measure: Consumers receive essential services at a level of reliability and quality consistent with determined standards*
3. We will consult genuinely and promote community understanding and engagement  
*Measure: Stakeholders trust us*
4. We will contribute to a strong, sustainable economy in South Australia  
*Measure: Our regulatory reviews are robust and our regulatory advice is respected*

Our **VALUES** describe how we, as an organisation and as individuals, will always behave:

- ▲ **Independent** - We act impartially and in accordance with our legislative framework
- ▲ **Consultative** - We engage and consult with all members of the community and we consider their views on issues relevant to our decisions
- ▲ **Ethical** - We act honestly, fairly and with integrity
- ▲ **Professional** - We make our decisions with discipline and rigour, based on logic and evidence
- ▲ **Accountable** - We take responsibility for our actions
- ▲ **Transparent** - We use open and public consultation processes and make our decisions clear, understandable and publicly available. We explain the reasons for our decisions

Our **PEOPLE, CULTURE AND SYSTEMS** underpin our goals and our values. We will ensure our people have the resources, training and support to undertake their jobs in a culture that is supportive, professional and committed to debate and intellectual rigour. We ensure our systems are efficient and effective.

The **DELIVERY** of our objective and goals is through our Strategic Plan and annual priorities, which we set out in our Performance Plan each year. The Performance Plan is translated into workgroup plans which in turn influence the objectives of all Commission staff.



We **REVIEW** how well we have done in delivering our Performance Plan and achieving our objectives and goals internally and externally. We survey our stakeholders to gain their views on our performance and publicly release the survey report. We also report on our performance in our annual report and on the efficiency and effectiveness of our organisation in our annual finance statements. Both documents are laid before Parliament.



The Essential Services Commission of South Australia is an independent statutory authority which has regulatory functions in a range of essential services including water, sewerage, electricity, gas, rail and maritime services, and also has a general advisory function on economic matters. For more information, please visit [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au).

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