

ESSENTIAL SERVICES COMMISSION

Charter of Consultation and Regulatory Practice – Consultation Draft

May 2014



REQUEST FOR SUBMISSIONS

The Essential Services Commission of SA (**the Commission**) invites written submissions from all members of the community on this paper. Written comments should be provided by **Friday, 18 July 2014**. It is highly desirable for an electronic copy of the submission to accompany any written submission.

It is Commission's policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to publish any submission based on length or content (for example containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to:

Charter of Consultation and Regulatory Practice – Consultation Draft

Essential Services Commission of South Australia

GPO Box 2605

Adelaide SA 5001

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Freecall: 1800 633 592 (SA and mobiles only)

E-mail: escosa@escosa.sa.gov.au

Website: www.escosa.sa.gov.au

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The Essential Services Commission of South Australia is the independent economic regulator of the electricity, gas, ports, rail and water industries in South Australia. The Commission's primary objective is the *protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services*. For more information, please visit www.escosa.sa.gov.au.

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INTRODUCTION

The Commission is the independent economic regulator of a number of industries which provide essential services to South Australians. We are a statutory authority, established under the *Essential Services Commission Act 2002 (ESC Act)*. The ESC Act is committed to the Treasurer.

Our primary objective is the:

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

We ensure that our decisions are – and are seen to be – consistent with our primary objective and not unduly influenced by any party. As such, we conduct our work in as open and transparent a manner as possible.

We recognise that the services we regulate have an impact on the quality of life of the community of South Australia and the State economy.

Consulting with and seeking input from our stakeholders is therefore important to us.

Our main stakeholders are:

- ▲ customers and the interest groups that represent customers more broadly;
- ▲ regulated businesses; and
- ▲ Government, Ministers, Members of Parliament and policy makers.

We are committed to engaging with our stakeholders using a variety of methods suited to the work we undertake.

Consultation assists us to understand the implications of potential decisions and allows all stakeholders to provide input on potential impacts or to suggest alternatives and improvements.

We recognise that our decision-making processes must be sound, rigorous and in accordance with the legal obligations placed on us by the Parliament. A systematic approach to consultation helps ensure that all relevant issues are addressed and that administrative processes are legally compliant

(including notification, consultation and publication procedures set out in the ESC Act and industry-specific legislation).

We must also comply with the principles of administrative law, meaning we must act:

- ▲ in accordance with the requirements of procedural fairness, giving a fair and unbiased hearing to all those persons likely to be affected by our decisions, and exercise our discretion in a genuine and unfettered manner;
- ▲ strictly within the limits of our powers, ignoring irrelevant considerations and allowing for relevant considerations when making decisions.

Subject to compliance with such legislative and administrative law requirements, we have discretion to decide many of the actions and methods to be employed in the course of fulfilling our functions and discharging our responsibilities.

This Charter outlines our general approach to consultation and regulatory practice within the constraints of these formal requirements. While this Charter describes our general approach to undertaking our work, in certain circumstances we may need to adapt the processes described in this Charter.

REVIEW OF THIS CHARTER

We are committed to ensuring that this Charter and the processes outlined in it remain effective and that the consultation methods we use are those best suited to the work we undertake.

While we intend to formally review this Charter at least every three years, we will consider views on this Charter at any time and encourage comments and suggestions on new and innovative ways we can involve the South Australian community in our work.

WHAT WE DO

Regulated industry regulation

The ESC Act and various industry Acts together provide us with regulatory powers and functions in the electricity, gas, ports, rail and water industries. Each industry Act defines the specific scope of our regulatory powers and functions. These powers and functions vary significantly between industries, as summarised in Table 1.

In addition, we also undertake inquiries in the industries we regulate and advise the Treasurer, as the responsible Minister, on any matters referred to us.

Table 1: Commission Regulatory Functions by Industry

INDUSTRY	LEGISLATION	REGULATORY FUNCTIONS
Electricity	Electricity Act 1996	Licensing of specified electricity operations (generation, transmission, distribution [on-grid] and generation, transmission, distribution and retail [off-grid]), network reliability standard-setting, solar photovoltaic feed-in price regulation (retailer payments only), preparation and publication of Ministerial reports on energy retail prices, Residential Energy Efficiency Scheme administration, performance monitoring.
Gas	Gas Act 1997	Licensing of specified gas operations (distribution [natural and LPG] and retail [LPG only]), preparation and publication of Ministerial reports on energy retail prices, Residential Energy Efficiency Scheme administration, performance monitoring.
Ports	Maritime Services (Access) Act 2002	Pricing and access regulation for specified port services.
Rail	AustralAsia Railway (Third Party Access) Act 1999; Railway (Operations and Access) Act 1997	Access regulation for the Tarcoola–Darwin railway and specified intra-state rail lines.
Water	Water Industry Act 2012	Licensing of water and wastewater retail operations, consumer protection, retail price regulation, performance monitoring.

Strategic Plan, Work Program and Performance Plan

Our Strategic Plan is produced annually and provides a high-level overview of our major goals and how we will achieve them over a three year planning period.

Our Strategic Plan is supported by a more detailed Performance Plan, approved by the Treasurer, which identifies key projects and ongoing activities for the first twelve months of each planning period.

Copies of our planning documents are available on our website at www.escosa.sa.gov.au/about-us/strategic-plans.aspx.

Our values

Our six values describe our behaviours in undertaking our regulatory roles:

- ▲ **Independent** - We are not unduly influenced by anyone.
- ▲ **Consultative** –We proactively seek and consider the views of all members of the community.
- ▲ **Ethical** – We act honestly, fairly and with integrity.
- ▲ **Professional** – We make our decisions with discipline and rigor, using logic and evidence.
- ▲ **Accountable** - We take responsibility for our actions.
- ▲ **Transparent** – We use open and public processes and make our decisions clear, understandable and publicly available. We explain the reasons for our decisions.

Further details on how we display our values to members of the South Australian community and to each other are available on our website at <http://www.escosa.sa.gov.au/library/140227-Values-PolicyStatement.pdf>.

Our goals

The following four goals serve to guide us in striving to meet our primary objective of protecting the long-term interests of consumers with respect to the price, quality and reliability of essential services.

Consumers receive essential services of appropriate reliability and quality

Service standards should reflect the trade-offs that necessarily exist between the benefits that consumers receive from higher service quality and/or reliability and the costs of their provision. Consumers should receive service levels in practice that at least meet the service standards set.

Consumers pay the lowest sustainable prices

Prices should encourage both efficient use of essential services and efficient investment in their provision. Prices should reflect the prudent and efficient costs of providing essential services of appropriate quality and reliability.

Stakeholders trust us

Members of the community are most likely to trust us to make sound decisions if they recognise that we will consider all relevant information and make all decisions independently, transparently and with integrity. An environment of trust will ensure that relevant entities provide timely, high quality information. We will endeavour to create an environment of trust by ensuring that members of the community are consulted, their views are considered seriously, their information is used wisely and their confidentiality is respected.

Our people, culture and processes enable us to best serve our primary objective

The functions we perform are complex, require strong interaction with external parties, can generate significant impacts for the community, and are funded by industry and government (and ultimately by consumers and taxpayers). Therefore, we require highly skilled staff, a collaborative but independent approach and governance processes that generate trust while protecting our independence and integrity, and efficient and effective operating processes.

HOW WE DO IT

Our review process

Our review process allows members of the South Australian community to provide submissions on our proposed decisions prior to us reaching our final decision.

We work in as open a manner as possible and provide considerable information in our reports and on our website. We place Public Notices in major metropolitan and regional newspapers—including online versions where appropriate—to inform the South Australian community about major projects or reviews we are undertaking.

We aim to 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 processes.

Stages in our general review process



In addition to the evidence provided by our stakeholders, we often commission independent research and make the final reports publicly available to our stakeholders.

Our assessment of this evidence is thoroughly detailed in our publicly available reports.

Our determinations and recommendations are a result of weighing this evidence and making the necessary trade-offs to ensure the long-

term interests of South Australian consumers of essential services are protected.

While we make our final decisions and determinations available to the public immediately, our advice to the Government is sometimes of a confidential nature and, in these instances, will only be published at the Government's discretion.

Engagement tools and methods

Our stakeholders are those people, organisations and businesses that have a particular interest in our regulatory work, our processes and our decisions. Our key stakeholders are:

- ▲ customers of regulated businesses and the interest groups that represent consumers more broadly (including but not limited to those represented on our Consumer Advisory Committee);
- ▲ members of the broader South Australian community;
- ▲ regulated businesses; and
- ▲ Government, Ministers, Members of Parliament and policy makers.

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 review or project.

We consider it appropriate for us to use different forms of engagement with different stakeholders at different times.

The level of engagement we use will be determined by our role and responsibilities, the issue being considered, and what we are trying to achieve.

For some issues, we may determine that engagement simply means ensuring stakeholders are well informed about our processes and outcomes. For other issues, we may seek more direct stakeholder input in the formulation of our decisions.

We have included examples of various engagement methods and tools as an indication of the kinds of techniques we may use, depending on the issues and our objectives.

Call for Submissions – This is when we ask members of the South Australian community to provide feedback, information, advice or evidence on the particular issues we have identified as being relevant to our review. It is an opportunity for other issues that may be relevant to the review to be identified. Submissions can take many forms (e.g. formal written documents, discussions at public forums or bi-lateral meetings between the Commission and the relevant party).

Fact Sheets – These documents are used to summarise the key elements of a decision, explain existing regulatory arrangements and/or consumer protections provided under our regulatory instruments or provide an overview of the performance of regulated entities.

Licences – This is the legal authority granted by the Commission to a business operating in a regulated industry, where an Act of Parliament requires parties to be licenced to operate. We publicly release and invite comment on all licence applications received. Once a licence has been issued, we consult on proposed amendments to (non-mandatory) licence conditions.

Industry Codes and Rules – Industry Codes or Rules prescribe detailed rules of conduct and procedure that must be followed by regulated entities. Industry Codes or Rules can cover any number of areas within a regulated industry, from consumer protection to technical matters. We consult when initially developing an Industry Code or Rule and when amendments are proposed. Consultation Draft Codes or Rules are accompanied by a Draft Decision explaining the policy positions for including specific provisions in the Code or Rule.

Guidelines – These documents are used to collect financial and operational performance data from regulated entities through the use of reporting templates or proformas. We consult when initially developing a Guideline and when amendments are proposed. Consultation Draft Guidelines are accompanied by a Draft Decision explaining

the policy positions for monitoring and collecting the data on particular areas of the businesses we regulate.

Explanatory Memoranda – These papers provide a plain English description of the aims and operation of the provisions of Industry Codes, Rules or Guidelines.

Discussion Papers – These are preliminary papers which put forward our early views on a particular issue (or issues). They are designed to stimulate debate and general discussion prior to identification of particular issues. We will usually invite members of the South Australian community to provide submissions. Discussion Papers may not lead to a formal decision.

Issues Papers - These papers raise and provide context for particular issues we have identified at the outset of a review. Issues Papers invite members of the South Australian community to provide submissions on the specific issues we have raised and allow interested parties to raise issues that they think are relevant to the inquiry or review that we have not identified.

Draft Decisions/Determinations – These are formal papers that indicate our proposed final views on a matter, and the reasons for those positions, taking into account the submissions from stakeholders and further independent research we have undertaken. At this stage in the process, members of the South Australian community are given the opportunity to provide additional information on why we should reconsider any of our Draft Decisions.

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. Sometimes the nature of the decision we have to make will mean that large amounts of complicated and detailed information must be included (or excluded) from our decision documents.

Consumer Advisory Committee

We have established a Consumer Advisory Committee,¹ which is chaired by the Chairperson of the Commission.

We aim to achieve a balance and variety of interests and perspectives among the membership of the Consumer Advisory Committee. Membership is drawn through public advertisement seeking the involvement of those with a wide range of interests including disadvantaged consumers, rural and remote consumers, Local Government, environmental interest groups and industry and business generally.

Through the Consumer Advisory Committee, we gain the views of the members' communities of interest and keep members informed about issues and decisions relating to or having an impact on consumers. Committee members represent the views of their communities of interest (as opposed to their individual views) either through the committee process or directly to the Commission.

Consumer Advisory Committee meetings are generally held four times a year (March, June, September and December), with additional meetings held where projects of significance to the Commission require further discussion and consideration.

Members are required to consult with their constituency outside the Consumer Advisory Committee meetings and members are expected to provide comment on:

- ▲ issues and market developments affecting consumers that fall within the scope of the Commission's functions under the Electricity Act, Gas Act and Water Industry 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.

¹ Pursuant to section 14A of the *Electricity Act 1996*, section 15 of the *Gas Act 1997* and section 14 of the *Water Industry Act 2012*.

Members are not required to reach consensus on issues or make binding group decisions or submissions.

The Consumer Advisory Committee is an advisory committee and final decision making rests with the Commission.

Appointments to the Consumer Advisory Committee are made for a period of two years.

Small Grants Program

We have a Small Grants Program for members of the Consumer Advisory Committee to access to undertake innovative research, programs and activities that will assist us in protecting the long-term interests of South Australian consumers of essential services.

Any material produced with funds obtained from the Small Grant Program must be made available to us, which we may then choose to make publicly available.

Disclosure of information and/or documents to external parties prior to public release

We must ensure that our decisions are – and are seen to be – consistent with our primary objective and not unduly influenced by any party.

As such, we will not disclose information or documents to any party prior to public release unless we are legally required to do so or the specific circumstances meet clearly-defined criteria that indicate that such disclosure would be in the long-term interests of consumers.

In some instances, we may be legally required to disclose information or a document prior to public. For example, in referring an Inquiry to the Commission, the Treasurer may require us to provide him/her a copy of the report prior to its public release. However, such cases are not common.

We will use four criteria to determine whether disclosure of information and/or a document to a party or parties prior to public release *may* be in the long-term interests of consumers. These criteria are:

- ▲ Would the disclosure help to ensure that the information/document does not disclose commercial-in-confidence information when it is publicly released?
- ▲ Would the disclosure help to ensure that, if questions are likely to be directed to a party immediately after public release, that party is sufficiently well-informed?
- ▲ Would the disclosure help ensure that media commentary is more accurate upon public release? and/or
- ▲ Would the disclosure help to resolve or reduce uncertainty about an important factor(s), such as government policy settings, that may affect our approach and/or decisions regarding a relevant matter?

Unless at least one of these criteria is met, no disclosure will be made. If at least one of these criteria is met, disclosure will be made if, in our judgement, it is in the long-term interests of consumers to do so.

Where a criterion is met, early disclosure will be made no more than 24 hours prior to the intended time of public release.

Where early disclosure is made to ensure that media commentary is more accurate upon public release, all interested media representatives will receive the information and/or document simultaneously.

All early disclosures will be made subject to the condition that the information and/or document is embargoed until its public release by the Commission.

Briefings for Members of Parliament

We believe that achievement of our primary objective is promoted if Members of Parliament are well-informed on Commission-related matters. We will brief relevant Ministers from time to time in the normal course of our work. We also provide briefings to all other Members of Parliament on Commission-related matters, upon request.

We work in as open a manner as possible and provide considerable information in our reports and on our website. However, we recognise that at any point in time we will have access to confidential information, including:

- ▲ information on policy or other actions that the Government may have taken, be considering or planning to take;
- ▲ considerations of the Commission on reviews or inquiries that are in-progress; and
- ▲ information provided to the Commission by parties on a confidential basis.

Therefore, in briefing Members of Parliament, we will answer any questions on Commission-related matters as well as possible, while ensuring that we do not disclose confidential information.

After we have provided a briefing to a Member of Parliament, we will inform the Treasurer, as the responsible Minister for the ESC Act, that we have done so, but we will not disclose the matters discussed.

GETTING INVOLVED

The ability to be involved in our work will vary depending on the goals, time frames, resources and impact of the decision to be made. The majority of our reviews allow members of the South Australian community to provide input on the likely impact of our decisions and to suggest alternatives and improvements at various stages of our review.

Details of current consultations and upcoming projects and reviews are available at <http://www.escosa.sa.gov.au/consultation.aspx>.

Make a submission

We invite submissions on our reviews from members of the community as this feedback is critical in our achievement of fair and balanced outcomes. Submissions we receive are made publicly available on our website throughout the course of the review.

We may exercise our discretion not to publish any submission based on its content (e.g. submissions containing material that is defamatory, offensive, confidential or in breach of any law).

How to make a submission

We request that electronic copies of submissions be provided to escosa@escosa.sa.gov.au, although we also accept written submissions where this is not possible.

Hard copy submissions can be mailed to:

[Name of Paper]
Essential Services Commission of SA
GPO Box 2605
Adelaide SA 5001

Submissions should be submitted no later than the published submissions deadline. We will consider submissions received after the published deadline at our discretion.

While there is no standard format for submissions should:

- ▲ clearly indicate which review they relate to;
- ▲ clearly identify who the submission is being made by, whether an organisation or a

private individual (anonymous submissions will not be considered);

- ▲ have regard to the specific issues that have been raised; and
- ▲ refer to any relevant issues papers or reports that support the claims made in the submission.

Each consultation paper we release will provide any further specific details for submissions for that review.

Time periods for consultation

When determining the consultation period, we will aim to allow sufficient time for public engagement, consideration and written responses to be prepared by stakeholders, based on the nature and complexity of the issue under consideration and/or the timing of the consultation itself.

In most cases, we will aim to ensure our consultation periods are between four and six weeks.

More time may be allowed for submissions if:

- ▲ our proposal is particularly complex and involved;
- ▲ our proposal is at its very early stages of development; or
- ▲ the consultation period falls over a holiday period.

We believe that publishing submissions on our website helps to stimulate debate on the issues and promotes transparency amongst our stakeholders.

We aim to respond promptly to the issues raised through consultation with a decision document or further consultation document. However, the time we take to respond will be dependent on the breadth and complexity of the issues raised through the consultation and the resources we have available.

Confidential or commercially sensitive submissions

It is our policy to make all submissions publicly available on our website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive

information that has been provided on a confidential basis and appropriate prior notice has been given.

Submitters must indicate in writing at the time of their submission that they prefer it or any part of it to be treated as confidential.

Where a submission contains only some confidential or commercially sensitive information, a public version of the submission should also be provided.

Freedom of Information

Subject to certain restrictions, the *Freedom of Information Act 1991 (FOI Act)* gives members of the public a legally enforceable right to access information held by South Australian Government entities.

Information we have obtained under Part 5 of the *Independent Industry Regulator Act 1999* and Part 5 of the ESC Act that we classify as being confidential under section 30(1) of the respective Acts is exempt from the requirements of the FOI Act.

The majority of our publications are available from our website at www.escosa.sa.gov.au. Hard copies of documents published on our website are generally available to members of the public free of charge.

Applications for access to documents held by the Commission under the FOI Act must:

- ▲ be made in writing (you may choose to write a letter or use the application form available at http://www.archives.sa.gov.au/files/forms_foi_request_for_access.pdf);
- ▲ specify that the application is made under the FOI Act;
- ▲ be accompanied by the relevant application fee (exemptions apply for Members of Parliament and pension or health card holders);
- ▲ specify an address in Australia to which information can be sent;
- ▲ clearly identify the documents being sought or the matter to which they pertain;
- ▲ specify whether the documents contain information of a personal nature;

- ▲ specify the desired type of access to the document, such as inspection of the document at an arranged location or having a copy made.

Applications under the FOI Act should be forwarded to:

The Accredited FOI Officer
Essential Services Commission of SA
GPO Box 2605
Adelaide SA 5001

The Accredited FOI Officer can be telephoned on 08 8463 4444.

Follow our reviews

We publish the timetables for all current reviews on our website and invite the public to follow their progress.

We also provide guidance on upcoming reviews and publications on our website at www.escosa.sa.gov.au/news/coming-events.aspx.

Subscribe for updates

Anyone can subscribe to stay up to date on our work across any or all of the industries we regulate by subscribing to our Latest News at www.escosa.sa.gov.au/subscribe.aspx.

PROVIDING FEEDBACK AND DISPUTE RESOLUTION

To ensure that our interactions with the South Australian community remain relevant and appropriate, we maintain a customer feedback service.

We welcome feedback on our performance through the following communications channels:

- ▲ in writing at:
 - Essential Services Commission of SA
 - GPO Box 2605
 - Adelaide SA 5001
- ▲ electronically at escosa@escosa.sa.gov.au;
- ▲ by telephone on 08 8463 4444 or freecall 1800 633 592

Complaints or concerns about the service we provide will be addressed promptly.

Details on our dispute resolution process are available at

<http://www.escosa.sa.gov.au/contact-us.aspx>.

Individual customer disputes with the entities we regulate

We do not resolve general disputes between individual consumers and the entities we regulate.

The businesses we regulate are required to have complaint and dispute resolution procedures in place.

This must include the ability for a customers' complaint to be escalated within the business and ultimately include referral to an independent dispute resolution body.

For the majority of the businesses we regulate, the [Energy and Water Ombudsman SA](#) is the independent dispute resolution body.

The [Energy and Water Ombudsman SA](#) can be contacted on:

- ▲ Freecall 1800 665 565; or
- ▲ electronically at www.ewosa.com.au



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