



1 June 2012

Level 8

50 Pirie Street Adelaide

South Australia 5000

GPO Box 2605 Adelaide

South Australia 5001

Telephone (08) 8463 4444

Facsimile (08) 8463 4449

Freecall 1800 633 592

## - Open Letter to Stakeholders -

### REVIEW OF ENFORCEMENT POLICY

Having regard to the legislative and regulatory changes that impact on the Commission's roles and functions, it is reviewing the terms of its Enforcement Policy. The Commission is seeking stakeholder comment on the review, with a view to issuing the revised Enforcement Policy from **1 July 2012**.

## Background

- 1.1. The Commission is the independent regulator of essential services in South Australia. It has the functions and powers vested in it by the *Essential Services Commission Act 2002 (ESC Act)* and other industry regulation acts. To be effective in its role, the Commission must be able to respond to non-compliance by a regulated entity by enforcing the legislation under which it is given specific powers and functions.
- 1.2. The Commission's Enforcement Policy outlines the statutory powers of the Commission relating to enforcement, the range of enforcement measures the Commission has available to it and how these measures should be applied in circumstances of non-compliance.
- 1.3. The Commission's central objective in undertaking enforcement activity is to encourage and facilitate a culture of compliance by regulated industries and other industries that provide essential services in which the Commission has a regulatory role, to ensure the protection of the long term interests of South Australian consumers. The Commission is committed to achieving and maintaining compliance with all the legislative and regulatory instruments for which it is responsible in a fair, consistent and proper manner.
- 1.4. The purpose of the Enforcement Policy is to outline the:
  - statutory powers of the Commission relating to enforcement;
  - range of available strategies and measures for promoting and facilitating compliance with the regulatory regime administered by the Commission;

- range of enforcement sanctions available to the Commission in the event of non-compliance and how and when they should be applied;
  - criteria against which enforcement decisions are made to ensure fair, consistent and proper decision-making; and
  - procedures that will be followed by the Commission in the event of an alleged breach of a statutory obligation.
- 1.5. Since the Enforcement Policy was last updated by the Commission in July 2009:
- 1.5.1. the Commission's powers under the *Barley Exporting Act 2007* have expired;
  - 1.5.2. the *Water Industry Act 2012* has been passed, conferring economic regulatory functions on the Commission;
  - 1.5.3. the Residential Energy Efficiency Scheme Penalty Regime has been given effect through amendments to the *Electricity Act 1996* and the *Gas Act 1997*; and
  - 1.5.4. with the commencement of the National Energy Customer Framework (**NECF**) (expected from 1 July 2012), the Commission's retail licensing function under the *Electricity Act 1996* and the *Gas Act 1997* will cease.
- 1.6. As a result of the above changes, some administrative amendments have been made to the Enforcement Policy.

## Discussion & Key Issues

- 2.1 The Enforcement Policy can be amended or expanded from time to time when it becomes necessary to meet the needs of South Australian consumers, regulated industries, industries providing essential services in which the Commission has a regulatory role or the Commission itself.
- 2.2 The proposed amendments are necessary due to the occurrence of the events outlined at paragraph 1.5 above.
- 2.3 On the basis that the proposed amendments are not material or significant in nature the Commission can elect to revise the Enforcement Policy without consultation with key stakeholders in accordance with the Commission's Charter of Consultation and Regulatory Practice.
- 2.4 However, consistent with good corporate practice the Commission is releasing the revised Enforcement Policy together with this "Open Letter" to stakeholders explaining the changes that have been made to the policy and seeking comment on the proposed amendments.
- 2.5 Subject to stakeholder feedback, it is the Commission's intention for the amended version of the Enforcement Policy to become effective 1 July 2012.

## Key Amendments

- 3.1 The key proposed amendments to the Enforcement Policy (which is attached to this Letter as Schedule 2) include:
- the restructuring and reformatting of the content so that it is more logical and easier to follow. In particular, certain sections have been condensed so that the Policy becomes more focussed on the significance that the Commission attached to compliance and its enforcement processes;

- the removal of reference to the Commission's powers under the *Barley Exporting Act 2007*, which have expired;
- the inclusion of reference to powers under the *Water Industry Act 2012*, which has been passed conferring certain economic regulatory functions on the Commission;
- the removal of reference to the Commission's retail licensing function under the *Electricity Act 1996* and the *Gas Act 1997* which will soon cease; and
- amendments to the Glossary to reflect the changes made throughout the Policy.

A copy of the revised Enforcement Policy is available on the Commission's website for review ([www.escosa.sa.gov.au](http://www.escosa.sa.gov.au)).

### **Period of Public Consultation**

The Commission is seeking written comment on the proposed amendments to the Enforcement Policy from interested parties. Comments on the proposed amendments should be provided to the Commission by the close of business on **Friday 29 June, 2012**. An electronic copy of the submission should accompany any written submission.

It is the Commission's policy to make all submissions publicly available via its website, 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 to the Commission.

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

Responses to the review of the Enforcement Policy should be directed to:

#### Enforcement Policy – Public Consultation

Essential Services Commission of SA  
GPO Box 2605  
Adelaide SA 5001

*E-mail:* [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au)

*Facsimile:* (08) 8463 4449

*Telephone:* (08) 8463 4444

*Contact Officer:* Kelly Wagner, Manager, Compliance

### **Public Information about ESCOSA's activities**

Further information about the role and activities of the Commission, including copies of latest reports and submissions, can also be found on the Commission's website.

Paul Kerin

**CEO**