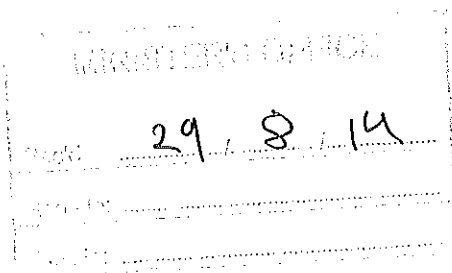


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28 August 2014



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Dear Treasurer

Essential Services Commission – Submission to the Review of Boards and Committees

I refer to the Premier's recent correspondence advising of the proposed reform of South Australian government boards and committees. The Essential Services Commission (Commission) is pleased to provide this submission for consideration in relation to the reform review.

This submission covers both the Commission itself and the Consumer Advisory Committee used by the Commission for the purposes of consultation and engagement on regulatory matters. The Commission has separately provided a copy of this submission to the Premier, in direct response to his correspondence.

Summary of submission

As an independent regulatory authority with regulatory responsibilities for essential services, the Commission forms an integral part of the broad operations of Government. The Commission submits that it should continue in operation as an independent regulator and advisory body, performing functions which complement those of the Government.

In summary:

- ▲ A strong, independent, regulatory body is required to ensure that consumers can trust that they will receive essential services of the appropriate price, quality and reliability. Similarly, the presence of such a body sends appropriate behavioural and investment signals to ensure the long-term continued provision of essential services in this State.

- ▲ The functions performed by the Commission are an essential and necessary complement to the functions of the Government, not a substitute. Those functions could not be effectively subsumed within Government and there is no other body whose functions overlap with those of the Commission. The necessary separation of policy and regulation highlights the importance of the Commission's statutory independence and the continuing need for that independence to be recognised and maintained.
- ▲ The Commission's regulatory and consultation processes are open and transparent. This provides consumers and industry with a clear understanding of the work of the Commission, the issues at stake and the impacts of the Commission's decisions for the State. The Commission is a recognised leader in this area.
- ▲ Effective stakeholder consultation is paramount to achieving successful regulatory outcomes. The Commission utilises a number of consultative mechanisms, a key one being the Consumer Advisory Committee. The Commission has been active in recent times in pursuing new approaches to consultation.
- ▲ The Commission actively seeks feedback on how well it is performing its functions, with reviews, stakeholder surveys and other feedback indicating that the Commission is well-regarded.
- ▲ The Commission recognises that regulation comes at a cost. The Commission actively tailors regulation to the specifics of the situation, to achieve net benefits for the community. The regulatory approach adopted is to minimise the imposts on industry while still ensuring that licensee compliance and performance can be properly monitored.
- ▲ The Commission exercises tight control over its operational costs, informed by its benchmarking analysis.
- ▲ The Essential Service Commission Act 2002 makes provision for the Commission to take on a broader economic inquiry and advisory role, either within or outside the current industry sectors it regulates.
- ▲ To the extent that the current review identifies board or committee functions which need to continue in operation in circumstances where the relevant board or committee is to be abolished, it may be that certain of those functions could be transferred to the Commission where the performance of those functions relates to the core competencies of the Commission and requires a degree of independence from Government.

The Commission

The Commission is a general economic regulatory body, established under the Essential Services Commission Act 2002 (ESC Act). The Commission has both industry-specific regulatory functions as well as general advisory and public inquiry functions. A central element of the Commission's regulatory role is engagement and consultation with all members of the South Australian community.

The Commission currently comprises a Commissioner appointed as Chairperson and three additional Commissioners. Staff of the Commission are appointed on terms and conditions determined by the Commission. At present, the Commission employs twenty four staff (21.36 FTE).

The Commission's present economic regulatory roles are in the water, wastewater, electricity, gas, ports and rail sectors (noting that the Parliament can confer additional roles on the Commission as required and has done so in the past; for example, in relation to the barley exporting sector).

In addition, the Commission's advisory and inquiry functions are increasingly being utilised or considered for use by Government. For example, the Commission is currently conducting an Inquiry into potential reform options for SA Water's prices. That Inquiry is intended to inform a broader debate and the work of the Commission will provide an evidence-based input to future policy discussions.

Independent regulation

The regulation of essential services and the markets in which those services are provided is critically important to the well-being of South Australians.

In performing its functions, the Commission has a statutory primary objective of protecting the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services. This must be achieved in the context of pursuing economic efficiency.

Economic regulation generally entails activities that promote fair and effective competition, where it is feasible, and seeks to provide incentives for efficient performance through regulation where it is not.

The Commission's role is to ensure that essential services are provided at a level that customers are prepared to pay for and that prices reflect the efficient costs of those services. In a number of areas, but not all, this involves dealing with regulated monopoly entities which are not subject to competitive market forces.

The establishment of *independent* regulation springs from a desire to provide consumers and investors in regulated industries with confidence in the regulatory environment by separating the roles of policy making and regulation. Therefore, as an independent regulator, the Commission must operate at arm's length from the Government of the day.

Independence recognises that the functions performed by the regulator are an essential and necessary complement to the work of the government but do not readily fit within the regular scope of that work.

Maintaining and respecting independent regulation therefore provides an assurance that all interests, including those of consumers, investors, regulated firms and other parties, will be considered on an equal and transparent basis.

From a consumer perspective, the presence of a strong, independent, regulatory body that has consumer protection, standard setting and compliance functions is very important in order to ensure that consumers can trust that they will receive services of the appropriate price, quality and reliability.

From an industry perspective, again the presence of a strong, independent, regulatory body sends appropriate behavioural and investment signals to ensure the long-term continued provision of essential services in this State.

The ESC Act, in conjunction with industry-specific regulation Acts, provides a robust framework within which the Commission must perform its regulatory functions. While this entails a degree of discretion on the part of the Commission, the overall regulatory framework, and the matters which the Commission must take into account, are all clearly defined within an over-arching statutory regime.

The abolition of the Commission, which would entail the repeal of the ESC Act and material amendment to a range of industry regulation Acts, would remove that long-term regulatory certainty. Abolition would also impose short-term adjustment costs on industry, the community and the Government.

For example, current State-based access regimes in the ports and rail sectors have achieved certification under the Competition and Consumer Act on the basis of the role that the Commission plays as an independent regulator. Absent the Commission (or a similarly independent body), the status of that certification would be questionable, leading to industry uncertainties and potential chilling of activity in that sector.

The statutory independence of the Commission is central to the overall regulatory regimes for the water, gas, electricity, ports and rail sectors. Abolition of the Commission would undermine the effective operation of those sectors. It would engender a loss of both consumer and investor confidence in those markets, both now and into the future.

Stakeholder engagement

In undertaking its statutory responsibilities, the Commission has a strong focus on community consultation and its engagement practices are widely regarded as best practice, particularly by community sector groups.

In seeking to “*protect the long term interests of South Australian consumers*” the Commission engages openly and transparently with all members of the South Australian community. This allows it to understand the implications of potential decisions and allows all stakeholders to provide input on potential impacts or to suggest alternatives and improvements.

The Commission engages through a variety of means, including the release of public consultation papers, hosting forums and workshops for discussion of regulatory matters throughout the State and through the release of information papers and Fact Sheets on its website.

The Commission’s regulatory style is one of engagement and consultation with all members of the community, rather than an adversarial or confrontational approach. The Commission is careful to ensure that its decisions are – and are seen to be – consistent with its primary objective and not unduly influenced by any party.

This approach is aimed at achieving outcomes, rather than prescribing processes, and ensures that those outcomes are informed by the widest possible range of community views.

To provide the community with a clear understanding of the Commission’s consultation and engagement practices, the Commission has published a Charter of Consultation and Regulatory Practice. The Charter is a plain-English guide which clearly explains the work of the Commission, highlights to the community the importance which the Commission places on consultation and engagement and provides guidance on the way in which the community can get involved in the regulatory process.

The Commission undertakes a formal strategic planning process annually, and develops a rolling three year Strategic Plan. That process identifies the key strategies and work programs necessary to achieve the Commission’s legislative objectives over the planning period. Consultation is a key feature of the strategic planning process.

Consumer Advisory Committee

To assist it in engagement and consultation, the Commission convenes a Consumer Advisory Committee. The Consumer Advisory Committee comprises representatives from a broad range of consumer groups, including those representing general consumers, the concerned sector, business interests, primary production, local government, the environment and the elderly. The organisations currently represented on the Consumer Advisory Committee are:

- ▲ Business SA
- ▲ Consumers SA
- ▲ Conservation Council of SA
- ▲ COTA SA
- ▲ Energy & Water Ombudsman SA
- ▲ Local Government Association

- ▲ Property Council of Australia, SA Division
- ▲ Primary Producers SA
- ▲ South Australian Council of Social Service
- ▲ Uniting Communities

Appointments to the Consumer Advisory Committee are sought through a public and transparent nomination process and made for a period of two years, with the most recent appointments made in 2014.

The Consumer Advisory Committee provides advice to the Commission in relation to its water, sewerage, electricity and gas licensing functions, and provides advice on other matters relating to those industries to the extent that such issues and functions impact on consumers.

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

The direct costs of running the Consumer Advisory Committee are minimal, at about \$7,000 per annum, when compared with the great benefits that committee brings to the work of the Commission and to the overall regulation of essential services in this State.

The Commission would be open to working with other areas of Government that might benefit from having direct access to the Consumer Advisory Committee for their own consultative requirements.

Fit for purpose regulation

The Commission is mindful that regulatory costs could impose a burden on the community and it actively seeks to tailor regulation on a fit for purpose basis. This can be demonstrated in the 'light-handed' regulatory approach adopted in regulating off-grid energy networks, minor and intermediate water licensees, and in the area of ports and rail.

Independent regulators often have considerable discretion as to the nature of the regulatory regime. Such regulatory discretion includes the level of regulatory costs imposed on regulated businesses (e.g. regulatory reporting costs, form of price regulation, nature of licence conditions etc).

Feedback to the Commission from regulated businesses often emphasises the need to minimise regulatory costs, arguing that a heavy-handed approach will deter investment and act against the long term interests of consumers. Consumer feedback, on the other hand, emphasises the need for a strong approach to consumer protection.

Effective administration by the Commission of a regulatory regime within a broad policy setting under an Act will protect the long term interests of consumers; the Commission recognises that this requires it to ensure that the benefits of its regulatory approach or responses outweigh the regulatory costs.

The Commission's approach, within the limits of its discretionary powers, is to seek to minimise regulatory costs as far as possible.

External review

The Commission is keen to receive feedback on its performance at any time.

A stakeholder survey (involving regulated businesses, consumer groups, other regulatory bodies and Government agencies) is conducted regularly to identify stakeholder perceptions of the Commission, its method of operating and its overall strengths and weaknesses.

Stakeholder feedback influences both the nature of the Commission's regulatory work program as well as the manner in which the work program is undertaken. The Commission regards stakeholder feedback of this type as an essential input to ensuring that the Commission can meet its principal objective as specified in the ESC Act.

The results of stakeholder surveys have generally shown that stakeholders consider that the Commission is performing well. More recently, the Commission has embraced a new stakeholder group in the water industry, and acknowledges that further engagement will be necessary with that new group to achieve the same standing as has been achieved with other stakeholders to date.

The Commission has been the subject of previous reviews, such as that which led to the Commission replacing the previous South Australian Independent Industry Regulator and the 2005 review of the ESC Act. Those external reviews reaffirmed the role of the Commission.

Close monitoring of operational costs

The Commission's functions are largely funded by industry licence and administration fees (those costs were about \$4.9 million for 2013/14), with a small direct payment for services provided by the Government in respect of its ports and rail access regulatory functions (about \$300,000 per annum).

The total amount of annual licence and administration fees set by relevant industry Ministers and collected by the Commission exceeds the Commission's annual operating costs. Each year the Commission transfers an average of around \$7.2 million to the Government to fund other regulatory agencies and functions, such as the Office of the Technical Regulator, the regulatory policy division of the Department of Treasury and Finance and the Consumer Advocacy Fund established under the Water Industry Act 2012.

The Commission performs its functions in a cost-effective manner. The Commission has improved the efficiency of its operations significantly over time, with expenses falling materially over the past five years.

While the Commission’s former regulatory functions in the energy industry have, in large part, transitioned to the Australian Energy Regulator, it has taken on a significant body of work in the water and wastewater sector. The regulatory work involved in that new sector is greater than was the case in the energy sector, with some 65 retail licensees to administer (compared to some 20 in the energy sector) and, in at least the short to medium term, the need to undertake significant consultation and engagement to consolidate and embed an entirely new consumer protection framework under the Government’s new Water Industry Act 2012. In transitioning to that new regulatory role, the Commission has sought internal operational efficiencies such that it has not needed an increase in the number of staff required to perform the relevant regulatory functions.

As it has increased the skills and capacities of its workforce, the Commission has placed far less reliance on external consultants to assist it in its work.

Over the past four years it has reduced its consultants’ budget from approximately \$1.3 million per annum down to current levels of around \$600,000 per annum. That shift reflects not only a strong focus on efficient use of consulting resources but also highlights the extent to which the Commission has built internal resources and capacities in regulatory and advisory areas.

The Commission has benchmarked its cost efficiency against other Australian regulators. In undertaking the benchmarking the Commission has recognised difficulties in interstate comparison given the differing scope of roles performed across jurisdictional regulators. Even allowing for such differences, the benchmarking shows the Commission to be highly cost-effective in the performance of its functions, as can be seen in the tables below.

Table 1: Comparative expense per average no. of staff (\$'000) – 2012/13

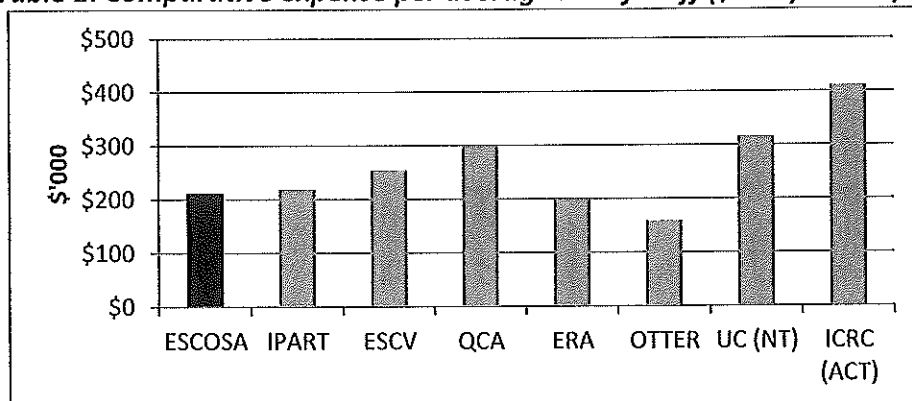
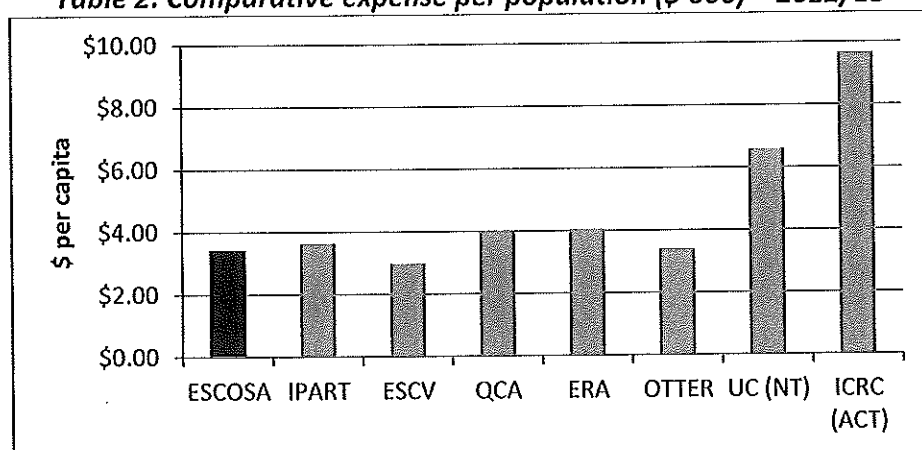


Table 2: Comparative expense per population (\$'000) – 2012/13



General inquiry and advisory role

The existence of the Commission within the broader Executive Government provides the capacity for the provision of low-cost and high quality independent economic and regulatory advice to Government.

While the catalyst for the Commission’s establishment was the need for reform in the electricity supply industry, it was recognised that there was significant potential for application of a similar independent regulatory approach in other industries. Thus the Commission was established as a general independent regulator, with the capacity to not only take on regulatory roles in other industries but also to provide advice to the Government on economic and regulatory matters.

The Commission has strong economic and regulatory advisory capacities and has conducted numerous Inquiries on behalf of Ministers and provided advice to the Treasurer on a range of economic and regulatory matters.

The existence of the Commission as an independent source of expertise on economic and regulatory matters is of benefit to the governance of this State. As shown above, the Commission is cost-effective in its operations and can provide advice on areas within the scope of its knowledge at a low cost to Government.

Given the Commission’s existing skill set and competence in the areas of economics and regulation, and its proven capacities and capabilities in community engagement, the Commission would welcome further discussions on additional functions it could perform.

That is particularly so in light of the potential for this review process to identify certain functions which need to continue but for which the relevant existing board or committee’s continuation may not be cost-effective. It may be that certain of those functions could be transferred to the Commission (with only relatively minor cost implications) where the performance of those functions relates to the core competencies of the Commission and requires a degree of independence from Government.

Conclusion

The Commission submits that both it and the Consumer Advisory Committee should be retained through the review process.

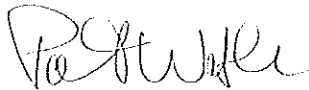
In its regulation of essential services, the Commission performs an important role for and within the South Australian community and does so in a cost effective manner.

The Commission's community engagement and consultation processes are widely recognised as best-practice, particularly by those in the concerned sector, and its Consumer Advisory Committee performs an important function in that regard.

The Commission has the capacity to take on additional roles and functions, or to undertake additional advisory work over time, given its existing capacities, infrastructure and skill set.

I would be very happy to discuss further any of the matters raised in this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patrick Walsh', written in a cursive style.

Patrick Walsh
Chairperson