

# Stakeholder Engagement Framework: Charter of consultation & regulatory practice review 2018

Final decision

27 June 2018

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# Executive summary

As the state's economic regulator of essential services, the commission's roles vary significantly.

Our work ranges from setting or monitoring prices to enforcing consumer protections and reporting on service standards. We grant licences, ensure compliance with regulatory obligations, and approve applications and price proposals. We also report on the performance of the sectors we work in and conduct inquiries when requested to by the government of the day.

Regardless of this variety, there is one constant, we need to understand the issues, options and possible impacts of what we do. To do this well, we need to engage effectively with a range of stakeholders. From regulated businesses to groups representing customers and the wider community, from engagement we can:

- learn about the issues and trends affecting the sectors we work with and the experiences of Victorian consumers
- check for coherence with other regulatory regimes to ensure our proposals are, where appropriate, aligned
- test the feasibility of our ideas by publishing draft decisions and calling for submissions
- ensure we're well informed, transparent and accountable by engaging openly, frequently and consistently.

Our commitment to effective stakeholder engagement is described in this stakeholder engagement framework incorporating our charter of consultation and regulatory practice which is required by our primary legislation.<sup>1</sup>

We've been reviewing our charter and developing a comprehensive engagement framework over the past year.

The review was aimed at updating our approach to consultation to support excellent stakeholder engagement that contributes to good regulatory outcomes.

Following an extensive process, we have designed a new framework and charter aimed at promoting a culture of excellent engagement across the commission.

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<sup>1</sup> Section 14-15 of the Essential Services Commission Act 2001

## Meeting our legislative requirements

Our primary legislation requires the commission to have a charter of consultation and regulatory practice ‘including guidelines relating to processes for making determinations and other regulatory decisions and conducting inquiries’.<sup>2</sup>

The purpose of the charter is to ensure the ‘regulatory and decision making processes of the commission and prescribed agencies are closely integrated and better informed, and avoid overlap or conflict between existing and proposed regulatory schemes is avoided’.<sup>3</sup>

Our first charter was adopted in 2003 and has been reviewed and updated a number of times since. The latest review was aimed at identifying opportunities to update and modernise our approach to consultation.

## The review process

From July to October 2017 we conducted an intensive internal process to investigate:

- how we were performing against the standards in the existing charter and best practice examples from elsewhere
- how stakeholders’ felt about our engagement and consultation efforts
- opportunities to update and modernise the charter.

The process included interviews and surveys with a range of external stakeholders and experts as well as extensive research into best practice in the public sector and regulatory practice.

A new charter was developed based on the group’s recommendations along with an engagement framework to support a culture of best practice.

The main thrust of the recommendations was to adopt a principles-based charter to focus on outcomes rather than prescriptive rules, promoting flexibility, innovation and continuous improvement.

The draft charter was placed on public exhibition for six weeks and submissions were invited from key stakeholders and the wider community. We extended the submission period for four more weeks after learning some regulated businesses were inadvertently not notified.

The majority of submissions were supportive of our proposed principles-based approach to engagement and the move to embrace a broader concept of engagement.

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<sup>2</sup> Essential Services Commission Act 2001 Section 14(1)

<sup>3</sup> Essential Services Commission Act 2001 Section 15(1)

There were suggestions for improvement and requests for clarity which were incorporated into the new charter. Other suggestions, like a request to improve the way we presented consultation information on our website have already been implemented. Other ideas have been referred to a new community of practice to be further explored and reported back to the commission.

## **The new charter is now part of a broader engagement framework**

The new charter has a strong focus on promoting a culture of engagement as part of a framework designed to:

- contribute to the achievement of our objectives
- encourage relationship building
- promote accountability in how we conduct engagement
- be meaningful and accessible
- embed the value of engagement in our work and organisational culture.

The new charter and engagement framework will become effective from 1 July 2018.

### **Appendices included:**

- Stakeholder Engagement Framework: Charter of consultation and regulatory practice

## Our new engagement framework and charter

Our new engagement framework and charter are designed to ensure we provide a range of opportunities for stakeholders and the community to participate in our projects.

The document includes:

- Our engagement framework describes the role of engagement in our work as a regulator of essential services. It describes how the framework is aimed at supporting a culture of best practice in the commission.
- Our charter of consultation and regulatory practice is a guide for stakeholders on what they can expect from us as we go about our work as the state's economic regulator of essential services. It contains:
  - a description of our five principles for excellent engagement
  - a description of our commitment to best practice in performing our regulatory functions
  - our guidelines relating to processes for making determinations and conducting inquiries
  - examples of engagement in practice including indicative timeframes
  - information about our submissions policy
  - information about how stakeholders can get involved.



# Adopting a principles-based approach

One of the key recommendations arising from the review of our engagement framework and the charter of consultation and regulatory practice was to move to a principles-based approach.

A principles-based approach allows staff to develop engagement strategies which are proportionate to the task at hand, fit for purpose and support continuous improvement.

The new charter articulates five key principles for regulatory practice and engagement aimed at ensuring the commission is recognised as a leader in the field of economic regulation.

The principles for regulatory practice and engagement provide a framework for the commission and stakeholders to measure its performance against. The framework is aimed at ensuring:

- we have flexibility to design engagement to suit the various sectors we work in and the specific nature of the issue at hand
- enable us to more effectively respond to changes in the regulatory environment, including changing community expectations and new or evolving technologies
- provide predictability and transparency to the regulated entities and our community who rely on our consultation programs to participate in our regulatory processes.

Our review highlighted opportunities for improvement in how we conduct consultations and engagement generally.

While many stakeholders were able to recall positive examples of our engagement culture and specific consultations, there were also descriptions of where we could have done better.

The new charter is designed to provide a more effective framework that embeds accountability, transparency and engagement in our work.

## Five key principles for engagement

Our key principles will guide the design and implementation of engagement and consultation in practice, as well as provide a framework to measure our performance against.

By more clearly articulating the principles, and describing what that means in practice (our guidelines), we can develop toolkits and templates for staff as well as ways to evaluate and measure our performance to drive continuous improvement.

We believe the new framework and charter provides stakeholders with a clearer understanding of what they can expect of us in terms of our engagement and consultation.

A number of submissions on the draft charter supported the view that the new charter reflects our aim of being more open and accountable to stakeholders.

Consumer Action supports the ESC adopting the key principles listed in the consultation paper. We see these as useful principles for stakeholders and can help enhance openness and accountability.

Consumer Action Law Centre – submission on draft charter 29 January 2018

I would like to thank the ESC for the opportunity to comment on the draft charter and commend the ESC for being transparent about the commitments that it will be held accountable to.

EPA Victoria – submission on draft charter 30 January 2018

## **Our principles reflect key standards for public participation**

Our principles reflect key international and national standards for public participation as well as relevant Victorian public sector guidelines including:

- Victorian Government [Statement of Expectations Framework for Regulators](#).<sup>4</sup>
- Victorian Auditor-General's Office [better practice guide](#) for public participation in government decision-making<sup>5</sup>
- International Association of Public Participation [Core Values](#)<sup>6</sup>

## **Demonstrating better regulatory practice**

The charter reflects our ambition to be a leading regulator. This includes delivering on performance targets established in response to relevant government guidelines including the [Statement of Expectations Framework for Regulators](#).

This fulfils our requirement to include in our charter 'what is to be done to ensure best practice by the commission in performing its functions'.<sup>7</sup>

We will report on our performance against the statement of expectations in our annual report and on [our website](#).

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<sup>4</sup> [Statement of Expectations - Framework for Regulators - State of Victoria \(Department of Treasury and Finance\) April 2018](#)

<sup>5</sup> [Public participation in government decision making better practice guide- VAGO 2018](#)

<sup>6</sup> [IAP2 Core-Values](#)

<sup>7</sup> [Essential Services Commission Regulations 2011 r.6](#)

# Our guidelines for making determinations and conducting inquiries

## Our guidelines are a promise to stakeholders of what they can expect

The new charter provides guidelines relating to processes for making determinations and other regulatory decisions and conducting inquiries as required by our legislative regulations.

The guidelines, including examples of engagement processes and timelines for different types of projects, provide stakeholders with a clear understanding of what they can expect from us as we conduct inquiries and make decisions and determinations.

The table below shows where the prescribed matters referred to in our regulations<sup>8</sup> are reflected in the new framework and charter.

Prescribed matters	Reference in the framework
The form and manner in which future work programs will be published in relation to each regulated industry	Principle 1 p.9
How inquiries, decisions and determinations are to be notified	Principle 1 p.9
The processes for public consultation that are to precede determinations and inquiries	Principle 2 p.9 +engagement in practice examples pp.12-14
The requirements in relation to public hearings by the commission	Principle 3 p.10
The processes for reviewing the charter	Principle 5 p.11
What is to be done to ensure best practice by the commission in performing its functions	Stakeholder engagement is a cornerstone of better regulatory practice p.8 + Principle 5 p.11

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<sup>8</sup> Essential Services Commission Regulations 2011 r.6

# The review process

## An internally led, externally informed project

We began the review of the charter of consultation and regulatory practice in June to identify opportunities for improvement and modernisation.

With a focus on establishing an organisation-wide approach that would be both effective and sustainable, we decided to use an internal deliberative process to maximise the impact on organisation culture and practice.

This initially involved bringing staff from across the organisation together over three months to assess and evaluate input from a range of sources before developing recommendations to contribute to a new charter.

This group has now evolved into a community of practice – an internal engagement champions group which will support the ongoing development and implementation of the framework.

## Extensive input from stakeholders helped shape the charter

Input from external stakeholders strongly influenced the review project from the outset.

The results from an organisation wide stakeholder survey along with an audit of feedback from a range of engagement projects helped us identify possible areas of concern. We used this information to shape interviews with a range of stakeholders from regulated businesses, consumer and community representatives and engagement experts.

A cross section of stakeholders were then invited to participate in a workshop with the internal action learning team to explore the issues raised and opportunities for improvement.

The group then developed a series of recommendations which were tested in a survey sent to the participants and also promoted on our social media channels.

The recommendations and survey feedback were used to shape the new charter and framework which was exhibited for public comment from 14 December 2017 to 19 March 2018. The initial exhibition period was extended due to an error which meant some stakeholders didn't receive the initial notification.

The draft charter was:

- emailed to more than 150 key stakeholders from regulated entities, prescribed agencies, government departments, consumer and community representatives and engagement experts
- published on our website and promoted via social media.

We received 20 formal submissions in the initial exhibition period and one more during the extended exhibition period.

We also received additional feedback from several government departments and regulated businesses who indicated support for the direction and the content of the new charter but were unable, due to timing, or felt it unnecessary to make a formal submission.

The feedback from stakeholders varied with strong support for many aspects of the new charter but also some concerns raised about others.

### Support for principles

We see these as useful principles for stakeholders and can help enhance openness and accountability. We particularly support the inclusion of the concept of engagement – effective stakeholder relationships outside of consultation processes are important for a regulator.

(Consumer Action Law Centre)

We welcome the commission's commitment (as apparent in the consultation paper's discussion of consultation versus engagement) to develop an ongoing relationship with regulated businesses to facilitate greater understanding of respective positions.

(Red Energy Lumo Energy)

### Some stakeholders were concerned about a perceived shift away from consultation

We are concerned that the ESC is proposing a more principles-based charter. We believe it would be more appropriate to publish a charter which places clear accountabilities on the ESC to ensure that the regulatory outcomes which eventuate cannot be questioned.

(Momentum Energy)

A number of changes have been made to the final charter based on input from stakeholders. This includes a number of clarifications and additions. The changes included:

- updating a reference to our primary legislative objective to address concerns it was misstated
- adding a reference to 'independent, balanced and fair' to reflect concerns this had been lost in the original draft
- clarifying the relevant government standard
- clarifying our commitment to continuing to build our understanding of the businesses and sectors we regulate and administer
- clarifying our guidelines to ensure all matters referred to in the regulation are covered.

The final framework and charter has also been simplified with guidelines grouped under the most relevant principle.

## **Other changes resulting from updated government guidelines**

The initial draft exhibited for comment included a section relating to the requirement to explain ‘what is to be done to ensure best practice by the commission in performing its functions’ based on goals in the commission’s operational plan.

In April 2018, the State Government published a new [Statement of Expectations Framework for Regulators](#) which establishes ‘clear expectations of regulator performance and improvement between responsible ministers and regulators’.<sup>9</sup>

The final framework and charter have been updated to reflect this new standard.

## **We will review the charter to promote ongoing engagement**

The charter includes a commitment to reviewing the charter every three years or earlier where changes to our legislative responsibilities or circumstances require.

The new framework and charter provide a foundation for ongoing evaluation and reporting on our performance in this area. We will report on our performance against key engagement indicators in our annual report.

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<sup>9</sup> Statement of Expectations - Framework for Regulators - State of Victoria (Department of Treasury and Finance) April 2018

## Ongoing feedback

Anyone who would like to provide feedback on this document or the commission's engagement and consultation in practice can do so by:

- sending an email to [communication@esc.vic.gov.au](mailto:communication@esc.vic.gov.au)
- phoning during business hours

Michelle Bryne, Senior Manager Strategic Communication  
on 03 9032 1300

- or mail, marked:

Attention: Strategic Communication  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000

## Appendices

- Stakeholder Engagement Framework: Charter of consultation and regulatory practice