South Australian Productivity Commission

SA regulatory practice case studies

Inquiry into reform of SA regulatory framework

29 October 2021

Government of
South Australia

Disclaimer

The views expressed herein are those of the South Australian Productivity Commission and do not purport to represent the position of the Government of South Australia. The content of this report is provided for information purposes only. While care has been taken that the material contained in this report is accurate and up-to-date at the time of printing, the information in this report is provided on the basis that all persons having access to this report will assume responsibility for assessing the relevance, completeness, currency and accuracy of its content. The South Australian Productivity Commission and the Crown in right of the State of South Australia therefore disclaim any liability for any loss or damage arising from reliance on any information contained in it (or any use of such information) which is provided in this report or incorporated into it by reference.

South Australian Productivity Commission
GPO Box 2343
Adelaide South Australia 5001
AUSTRALIA

Telephone: 08 8226 7828
Email: sapc@sa.gov.au
Website: www.sapc.sa.gov.au

An appropriate citation for this publication is:

South Australian Productivity Commission *Regulator Case Studies*, Inquiry into reform of SA's regulatory framework, October (2021)

Contents

1. Introduction

The South Australian Government has asked the South Australian Productivity Commission (the Commission) to undertake an inquiry into reform of the SA's regulatory framework. The Commission has been asked to "make recommendations to improve the efficiency and effectiveness of regulators in the administration and enforcement of regulations, and to institutionalise ongoing improvement and better practice".

SAPC Regulator Practice Framework

The Commission developed its own framework for assessing SA regulator practice drawing on the best practice guidance and frameworks used in other Australian jurisdictions and internationally. The framework has specifically been tailored to seek the breadth and depth of information on regulator practice required to address the terms of reference for this inquiry. The Commission's framework draws mostly from the Australian and Victorian Governments' regulator performance frameworks, and those developed by the OECD and used in the UK[1].

The framework encompasses eight areas of practice which the body of literature identifies as indicative of regulator efficiency and effectiveness:

(1) legal structure and regulatory powers;

(2) approvals and decision making;

(3) regulatory impact assessment/ ex-ante assessment;

(4) ex-post evaluation;

(5) stakeholder engagement;

(6) monitoring and enforcement (risk-based and proportionate actions);

(7) data management, information sharing and use of technology; and

(8) regulator performance review and continuous improvement.

Regulator Case Study Project

The Commission engaged contractors to complete a series of case studies in selected areas of regulatory practice from regulators who elected to participate. The purpose of this work was to develop rich case studies on a small number of regulators to describe current practices, report on areas of good practice and recent improvements in practice and seek regulators' views on opportunities for further improvement.

A total of 13 case studies were collected from 7 regulatory entities. These are listed in Table 1 and presented in full in the remainder of this document. Shortened versions of these case studies have also been incorporated in the Commission's final inquiry report.

The Commission wishes to thank those regulators that agreed to participate in the studies.

---

[1] Australian Government (C[th]), *Regulator Performance Framework* (Commonwealth of Australia, 2014); Department of Treasury and Finance (VIC), *Statement of Expectations Framework for Regulators* (State of Victoria, 2017); National Audit Office (UK), *Hampton Implementation Reviews* (UK Government, 2014); OECD, *Recommendation of the Council on Regulatory Policy and Governance* (OECD Publishing, 2012); OECD, *The Governance of Regulators: OECD Best Practice Principles for Regulatory Policy* (OECD Publishing, 2014.

Table 1: Case studies

Category of practice	Regulatory entity	Case study
Approvals and decision making	**Energy Resources Division (DEM)**	Application of the lead regulator model to the approval of the Leigh Creek underground coal gasification trial
	ESCOSA	Streamlined approach to 'low risk' applications for electricity generation licences in South Australia
	Safework SA	Ethical decision making
Regulator performance review and continuous improvement	**DairySafe**	Certification against ISO standard (9001:2015)
Data management, information sharing and use of technology	**ESCOSA**	Application of the verified trust and accountability (VTA) approach and regulatory intelligence (RI) system to small water and wastewater networks
	Office of the Technical Regulator	Application of digital systems to assist compilation of the national distributed energy resource (DER) register
	ReturnToWork SA	Premium Improvement Program
Monitoring and Enforcement	**Office of the Technical Regulator**	Agility in managing monitoring and enforcement activity for gas installations during the COVID-19 pandemic
	ESCOSA	Application of ethical business regulation (EBR) to compliance and enforcement activity for the District Council of Cooper Pedy
	Safework SA	Implementation of improvements to monitoring and enforcement following the ICAC evaluation
Stakeholder Engagement	**DairySafe**	Development of the business continuity tool
	Environment Protection Authority	Stakeholder engagement strategies for the dredging the Outer Harbor proposal
	ESCOSA	ESCOSA's stakeholder engagement for the 2020 SA Water regulatory determination

2. Approvals and decision making

2.1 Energy Resources Division

About Energy Resources Division

The Energy Resources Division (ERD) administers the *Petroleum and Geothermal Energy Act 2000* (the Act) and associated regulations. One of the ERD's primary responsibilities is the regulation of petroleum, geothermal and gas storage exploration and development activity in South Australia, with a particular focus on approvals for specific activities by proponents under the Act. The ERD is located in the Department for Energy and Mining (DEM) and has a staff of approximately 35 FTEs, 10 of which belong to the Engineering Operations Branch and oversee key aspects of the regulatory approvals and compliance processes.

A major role of ERD is to act as 'lead regulator' throughout the approvals process and to consult and coordinate (or 'co-regulate') with other government agencies on the regulatory obligations to be applied to proponents. The objectives of the Act require ERD to drive certainty for business (i.e. providing clarity to proponents on regulatory requirements and investment timelines) and to ensure the public interest is protected (i.e. the sustainability of the natural, social and economic environments). These multiple regulatory obligations are accommodated under the Act, coming together in the Statement of Environmental Objectives, which forms the basis for Ministerial approval and ongoing regulatory oversight of projects.

This case study shows how the lead regulator model was applied by ERD to a pre-commercial trial of an Underground Coal Gasification plant at Leigh Creek, resulting in key engineering approvals, and the required groundwater and air quality monitoring plans, being put in place more quickly and with a lower burden on the project proponent than would otherwise have been the case.

Application of the 'lead regulator' model to the approval of the Leigh Creek underground coal gasification trial

In South Australia, proponents for petroleum, geothermal or gas storage projects need to proceed through a three stage approvals process managed by the ERD.

The three approval stages are:

- Stage 1 – Obtaining a licence under the Act*, to enable a proponent to carry out a particular activity.*
- Stage 2 – Environmental assessment and approval of Environmental Objectives. This involves assessment and approval of environmental objectives (i.e. sustainability of the natural, social and economic environments) required to be achieved by a proponent and upon which the ERD will regulate the proponent's activities.
- Stage 3 – Activity notification and approval. Once through stage 2, proponents must notify, and where relevant, seek approval from the Minister through ERD, prior to commencing any location-specific activity.[2]

---

[2] Further detail on the three stage application process and guidance provided by ERD (approvals flowcharts) for petroleum, geothermal and gas storage proponents, is available at:
<https://www.petroleum.sa.gov.au/regulation/approvals-process>

The stage 2 process is particularly crucial and involves the development of an Environmental Impact Report (EIR), covering potential threats and risks to the environment, and a draft Statement of Environmental Objectives (SEO), which is consulted on publicly, before the SEO is revised and finalised. The SEO sets out the regulatory objectives to be achieved by the proponent, as well as the assessment criteria used to determine whether the objectives have been achieved.

If approved, the SEO is then published (gazetted) in the *SA Government Gazette* and, in effect, becomes the basis for the regulatory regime to be applied to the proponent's activities.

To coordinate effectively on the multiple regulatory obligations to be embedded in the SEO, ERD has developed a co-regulatory or lead regulator approach, with a number of other agencies in South Australia.[3] Formal consultation protocols have been established under various administrative agreements between ERD and other South Australian and national regulatory agencies to support the process.[4] If applied well, this approach can lower the burden on proponents in terms of information provision and not having to navigate multiple approval pathways through a 'one window to government' approach. This approach involves ERD taking stewardship over approval processes, co-ordinating activities in parallel rather than in sequence, saving time and effort. It also enables whole of government discussions and scrutiny of the project proposal to be had simultaneously, and the ability to reach consensus across all regulatory agencies. These are, in turn, communicated back to the proponent via one-window, ERD.

This case study focuses on the application of the 'lead regulator model' to a Stage 3 approval processes for a time-limited pre-commercial Underground Coal Gasification (UCG) demonstration plant at Leigh Creek, within the old mine site (the Trial). The proponent, Leigh Creek Energy, proposed to construct and operate a UCG demonstration plant to produce synthesis gas (also referred to as syngas) for a short period of time, to test the syngas composition and process performance to enable consideration of potential commerciality.

On 19 April 2018, the Minister for Energy and Mining approved the Leigh Creek Energy SEO and conditions (i.e. Stage 2 approvals) in accordance with the Act. Whilst approval of the SEO was a significant step, this still did not provide rights to Leigh Creek Energy to begin on-ground works. To do this, Leigh Creek Energy were required to gain Stage 3 approvals to enable commencement of on-ground works and then undertake the Trial. This stage entailed not only a detailed understanding of the project engineering but approval by co-regulatory agencies of the proponent's monitoring plans for groundwater and air quality during and after the Trial.

Stage 3 began with the proponent's submission of detailed technical and engineering designs to ensure the design and intended construction and monitoring of all surface facilities, pipelines, underground gasification chamber and wells are in accordance with recognised industry standards and fit for the purpose for achieving the requirements of the final approved

---

[3] These include the South Australian Department for Environment and Water (DEW), the Environment Protection Authority (EPA), the Department of Infrastructure and Transport (DIT), Safe Work SA, the Department of Health, the Department of Primary Industries and Regions SA (PIRSA) and the Department of the Premier and Cabinet – Aboriginal Affairs and Reconciliation Division (AARD).

[4] Formal arrangements are in place with DEW, the EPA, DIT, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and SafeWork SA and can be viewed at: <https://www.petroleum.sa.gov.au/regulation/regulatory-overview#administrative> NOPSEMA oversee "off-shore" regulation of petroleum exploration and production in Australia, which is now under a national regulatory regime, whilst the "on-shore" regulation of such activities is undertaken by ERD in South Australia.

SEO and conditions. ERD undertook an assessment in consultation and with technical input from co-regulatory bodies such as the Environment Protection Authority (EPA) and Department for Environment and Water (DEW). A key component of this co-regulatory approval related to the groundwater and air quality monitoring plans. Both these plans were subject to an in-depth review and scrutiny of the EPA's groundwater and air quality branches through the one-window process and the final ERD approval was not granted until such time that internal government consensus and agreement was reached.

The lead regulator approach provided Leigh Creek Energy with one-window into government and a single decision point, rather than having to deal separately with ERD, EPA and DEW for approvals – hence approval for a complex engineering project, with significant EPA and DEW requirements, was achieved in an expedited time-frame.[5] Whilst ERD has not formally measured the time and resource savings for project proponents under the South Australian lead regulator model, informal feedback from proponents suggest that it is much quicker and less cumbersome than in some other jurisdictions, where proponents still need to deal separately with multiple regulatory agencies.

Approval for gasifier operation was granted on 3 September 2018. Gasifier initiation was reported by the proponent on 10 October 2018. On Thursday 11 April 2019, Leigh Creek Energy commenced the de-commissioning process of its gasifier in accord with its approved decommissioning plan.

The ongoing monitoring of pressure, temperature, ground water quality and soil vapour will continue for three years post-operation of the Trial, as part of the evaluation process to ensure successful de-commissioning and containment of chemicals of potential concern within the gasifier is demonstrated.

Strengths and opportunities for improvement

The key strengths in this case study are that by ERD taking a 'lead regulator' role they were able to:

- Speed up the approval process – by paralleling regulatory approvals processes for Leigh Creek Energy across multiple agencies, a saving in elapsed time for the Stage 3 approval was achieved;
- Reduce the compliance burden – Leigh Creek Energy was only dealing directly with the one (lead) agency and was not providing the same information multiple times;
- Certainty and facilitation – by using one instrument (the approved Stage 2 SEO) to capture all key regulatory obligations, Leigh Creek Energy could be confident that all aspects of the Stage 3 approvals were identified and being coordinated by ERD; and
- Better target the regulatory regime – by brokering a whole of government regulatory regime through the SEO, ERD was able to achieve a regulatory regime across multiple dimensions, that was targeted, proportional and bespoke to the Leigh Creek Energy Trial.

Evidence for the advantages of a lead regulator model is provided by a Commonwealth Productivity Commission Research Report into the regulation of the upstream petroleum (oil

---

[5] Further detailed information on the approvals for the Leigh Creek UCG Trial project, including engineering detail, commissioned reports and groundwater and air quality monitoring plans, can be found at: <https://www.petroleum.sa.gov.au/regulation/projects-of-public-interest/leigh-creek-in-situ-gasification/pre-commercial-demonstration-plant>

and gas) sector published in 2009.[6] A number of submissions to the inquiry pointed to the costs and uncertainty to the sector at that time arising from the lack of consistency, duplication, and iterative decision making processes, leading to delays for project approvals, arising from dealing with multiple regulatory agencies in the one jurisdiction, and between Federal and State responsibilities, because of the multi-jurisdictional nature of most petroleum projects (e.g. see the submissions from ExxonMobil, Nexus, APPEA and the Victorian Government).

To avoid these regulatory costs and speed-up project delivery, the Productivity Commission concluded strongly in favour of a 'lead regulator' model for the upstream petroleum sector, with one Recommendation (10.6 on page 48) reading: 'Where not already implemented, States and Territories should consider establishing a lead agency for petroleum projects. Such an agency would manage an integrated approval process and would require a clear mandate for all relevant areas (for example, resource management, environment and heritage) and clear decision making powers over these areas except in exceptional circumstances. With appropriate governance, experience in South Australia suggests that such an agency can achieve an appropriate balance between enforcing legislative provisions and expediting approvals.'

The opportunity going forward will be for the ERD to continue to keep the co-regulatory agencies engaged post Trial and to be able to respond for the next phase of the project. To this end, ERD maintained ongoing dialogue with the co-regulators throughout the gasification trial and (three year) post-gasification monitoring period, requesting advice from relevant agencies on submitted reports and monitoring data where required.

This approach has greatly assisted both ERD and co-regulators in smoothly transitioning into Leigh Creek Energy's next stage of operations and associated approvals. ERD recently engaged hydrogeology specialists at both DEW and the EPA on Leigh Creek Energy's EIR for the first stage of (full-scale) commercial development activities, in particular ensuring the submitted Hydrogeological Conceptual Site Model adequately meets Federal Government Guidelines for referral to the Independent Expert Scientific Committee (IESC) on Coal Seam Gas and Large Coal Mining Development.

---

[6] Productivity Commission (2009), *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, Research Report, Melbourne, April. Available at: https://www.pc.gov.au/inquiries/completed/upstream-petroleum/report/upstream-petroleum.pdf

2.2 Essential Services Commission Of South Australia

About ESCOSA

The Essential Services Commission of South Australia (ESCOSA) is SA's independent economic regulator and an advisory body established under the *Essential Services Commission Act 2002* (ESC Act). Key sectors of focus for ESCOSA are transportation, energy and water. It is overseen by a Commission (currently comprising four Commissioners) and has a staff of around 30 FTEs.

One of ESCOSA's roles is to regulate the licensing of electricity generation in SA. While the market operation, rule-making and economic regulation of those entities operating in the National Electricity Market (NEM) takes place at the national level, the licensing regime for generation units remains at the State and Territory level.[7]

ESCOSA's licensing work continues to have regulatory and strategic importance for SA, especially as new forms of renewable and embedded generation have joined the NEM (e.g. wind, solar and battery storage) and issues of system security and stability have arisen. This case study focuses on how ESCOSA has developed robust internal processes that clearly document the licensing approval process and coordination with other regulators to ensure the necessary technical requirements are met. A streamlined licence approvals process, which is less time and information intensive, has recently been established for smaller, 'low risk' electricity generators.

Streamlined approach to 'low risk' applications for electricity generation licences in SA

Persons operating electricity generation plant with a capacity of greater than 100 kVA are required to hold a licence under the *Electricity Act 1996* (Electricity Act) prior to commencing operations, subject to some exemptions outlined in the *Electricity (General) Regulations 2012*. ESCOSA is the licensing authority for the purpose of the Electricity Act.[8]

In performing its licensing functions, ESCOSA must have as its primary objective the protection of the long-term interests of SA consumers with respect to the price, quality and reliability of electricity and gas supply, and must also have regard to the factors outlined in section 6(1) of the ESC Act, which include 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 entities and the incentive for long-term investment; and
- promote consistency in regulation with other jurisdictions.

---

[7] The Australian Energy Market Operator (AEMO) is the national market operator for the NEM, whilst the Australian Energy Market Commission (AEMC) is the rule-making body for the NEM and the Australian Energy Regulatory (AER) is the economic regulator, dealing mainly with monitoring and enforcement of conduct and revenue determinations, for network operators in the NEM, and is part of the Australian Competition and Consumer Commission (ACCC).

[8] An overview of the ESCOSA licensing process, including a detailed Advisory Bulletin and copies of relevant application forms available to applicants for electricity licences, is available at < https://www.escosa.sa.gov.au/industry/electricity/licensing/licence-applications>

Subject to the above factors, the key criteria for assessment of electricity generation licence applications are outlined in Part 3 of the Electricity Act and include that:

- the applicant and its officers are suitable persons to hold a licence and have the ability to operate a viable business; and
- the generating plant (or proposed generating plant) will generate electricity of the appropriate quality for the relevant transmission or distribution network.

In deciding whether an applicant is a suitable person to hold an electricity generation licence, ESCOSA may consider the following:

- the applicant's (and, where applicable, its officers and major shareholders) previous commercial dealings and the standard of honesty and integrity shown in those dealings;
- the resources available to the applicant – financial, technical and human; and
- any other matters prescribed by regulation.

ESCOSA has a documented internal process for generation licence applications, which outlines all steps in the assessment process and ensures that consistent procedures are followed in the assessment of each licence application.[9] The ESCOSA approvals process includes an 'assessment checklist', which keeps track of an application's progress through the system, enabling multiple staff to deal with one application and allowing continuity of process even if the primary staff member with responsibility for the application is unavailable.

The ESCOSA licensing team has also developed robust consultation networks with other relevant regulators, in particular the Office of the Technical Regulator (OTR) and the Australian Energy Market Operator (AEMO), holding regular meetings and having in place formalised information exchange arrangements about prospective licensees. These cross-agency relationships allow a more in-depth and expedited assessment of the technical aspects of licence applications, especially as they relate to system safety, security and stability.

To improve its licencing process and align it in accordance with risk, ESCOSA completed a risk assessment of its existing categories of licences to identify the possible impacts arising from a licensee's failure. Using this analysis, ESCOSA developed a new licensing assessment process for 'low-risk' licensees. The low-risk class of licensees is limited to small (under 5 MW) generators connected to the 'distribution' network, which have much smaller potential impacts for the electricity network taken as a whole, than say, a large gas-fired or wind-turbine generation plant connected to the 'transmission' network.

ESCOSA also recently developed a simplified application form for these low-risk licensees, which does not require the same amount of information from applicants that is required for other, higher-risk applicants[10]. The low-risk applications are assessed using a simplified process, with fewer verifications and assessments undertaken. They also do not require

---

[9] ESCOSA has undertaken several internal audit reviews of the integrity of their internal licence application process – to ensure that it meets legislative criteria and has appropriate systems, processes and controls in place. Those audits have found the process to be robust.

[10] ESCOSA (2021), *Application form for the issue of an Electricity Generation Licence on Grid – from 100kVA < 5MW,* the Essential Services Commission of South Australia, April. Available at: <https://www.escosa.sa.gov.au/ArticleDocuments/643/20210429-Electricity-GenerationLicenceApplicationForm-OnGrid-100kVA-5MW-PDFformat.pdf.aspx?Embed=Y>

submission of some of the information and data sought for the higher risk generation licence category. For example, ESCOSA do not require applicants to provide:

- details of the financial resources of the applicant;
- details of the technical resources of the applicant; and
- details of the human resources of the applicant.

Instead, applicants warrant that they have adequate resources to undertake the operations for which they seek the licence.

These simplified procedures are expected to reduce the administrative burden on low-risk applicants and reduce the time taken (and associated costs) for staff to assess the applications. This will have the benefit of maintaining the necessary high levels of consumer protection and system safety and security, while enabling licensees to enter the market more rapidly and at lower regulatory cost. It also allows ESCOSA staff to devote more time to the higher-risk applications.

The new license category was only introduced in April this year, so it has not been in place long enough to fully assess the impact of the new licence category. However, ESCOSA data indicates that in 2019-20, 21 licence applications (including applications for variation) were made for generation operations of less than 5 MW. This corresponded to 21 percent of licence applications finalised in 2019-20.

Strengths and opportunities for improvement

The key strength in this case study is that by introducing a risk-based approvals process for electricity generation licenses in SA, ESCOSA should be able to achieve a number of improvements:

- Simplified and faster approvals processes – since 'low risk' generation license applications are processed with less verification and assessment undertaken, they can be approved more easily and quickly;
- Reduced compliance burden for applicants – since less information is required from applicants via the simplified application form for 'low risk' generators, fewer costs are imposed on these smaller electricity generators connected only to the distribution network; and
- Better targeted the regulatory regime – by putting less time and effort into 'low risk' licence applications, ESCOSA is able to dedicate more time and resources to dealing with larger, 'higher risk' licence applications for the type of plant that is connected to the transmission network.

The target timeframe for a standard licence approval process for electricity generators at present is 16 weeks (with four weeks of public consultation with relevant government, industry and consumer groups)[11] and it is hoped that the new, streamlined approvals process for 'low risk' generators will lead to materially shorter approval times. Since the new, low risk process

---

[11] The 16 week target for ESCOSA's licence approval process excludes any delays that are caused by applicants not being able to provide the information requested or external factors (such as connection agreements between applicants and network entities not being finalised) that might see the total elapsed timing go out beyond 16 weeks. See ESCOSA (2020), *Licensing arrangements for the electricity and gas supply industries*, Energy Advisory Bulletin, the Essential Services Commission of South Australia, June, pages 3 and 7. Available at: <https://www.escosa.sa.gov.au/ArticleDocuments/200/20200626-Energy-LicensingArrangements-AdvisoryBulletin.pdf.aspx?Embed=Y>

has only been introduced recently (in April 2021), ESCOSA is yet to generate sufficient data points to establish the savings in elapsed time actually delivered from the new application and assessment process.

In terms of future opportunities, ESCOSA is currently working towards developing an online interactive application form for use by licence applicants for electricity generation in SASA. This will further reduce the administrative burden on applicants and on licensing staff.

2.3 SafeWork South Australia

About SafeWork SA

SafeWork SA administers 29 different pieces of legislation but is focused primarily on regulating SA's work, health and safety (WHS) laws with the main goal being to reduce the incidence of workplace injury.[12] The tools used by SafeWork SA to reduce the incidence of workplace injury include providing information, advice and support to business, and undertaking a range of compliance and enforcement activities to respond to incidents and prevent harms by ensuring businesses understand and comply with relevant WHS laws. Regulatory activities of SafeWork SA include:

- undertaking workplace inspections to ensure compliance with WHS laws;
- responding to workplace incident notifications and complaints, including investigating serious incidents and workplace deaths;
- assessing and issuing licences for the safe operation of plant, machinery, substances and facilities, and for prescribed occupations;
- providing information, support, and advice to assist businesses, workers, health and safety representatives and the broader public.

SafeWork SA also works within a national WHS regulation framework, coordinated through Safe Work Australia.[13] It also has a close working relationship with ReturnToWork SA (RTWSA), which is responsible for providing work injury insurance and administering the SA return to work scheme. This case study outlines several initiatives recently implemented by SafeWork SA to improve decision making by workplace inspectors.

Workplace inspections and inspector practice

Each year, SafeWork SA conducts around 12,000 site visits of workplaces as part of its proactive audit program or in response to incidents and complaints. SafeWork SA inspectors must determine whether a workplace is compliant with work, health and safety regulation, and if not, decide what actions to take. Depending on the severity of non-compliance, inspectors may decide to take enforcement actions such as issuing infringement notices.

SafeWork SA inspectors face a range of competing pressures in performing this work. On the one hand, they are expected to be consistent in upholding work, health and safety regulations. Yet businesses may apply various forms of pressure to inspectors to influence the way they exercise their powers. In such circumstances it can be challenging for inspectors to maintain a good relationship with a business or industry, while avoiding being 'captured', or, being groomed or subjected to other forms of influence.

While review and appeals processes help ensure that decisions are fair, the guidance, systems and training of inspectors also play an important role in ensuring that inspectors are able to deal with competing pressures and recognise and respond effectively to attempts to improperly influence the use of discretionary powers.

---

[12] SafeWork has a specific target of achieving a 30% reduction in the incidence rate of claims resulting in one or more weeks off work by 2022 (Strategic Plan progress report 2019, p. 10). This target is consistent with nationally agreed performance indicators (Australian Work Health and Safety Strategy 2012–2022, p.7)).

[13] SafeWork Australia is a national WHS policy setting body with responsibility for improving WHS and workers compensation arrangements across Australia.

A 2018 evaluation report on SafeWork SA's practices, policies, and procedures by the Independent Commission Against Corruption (ICAC) provided a catalyst for SafeWork SA to restructure its workforce and revise how it trains inspectors to apply their discretionary powers in the face of competing pressures and integrity risks. ICAC was critical of the systems and training of inspectors on how to deal with competing pressures and integrity issues such as grooming and capture behaviours, and potential conflicts of interest. ICAC argued that these issues applied across its organisation but were particularly acute for inspectors working and living in small communities, where their work was could bring them into direct or indirect contact with family or friends.

ICAC made several recommendations intended to lift the capability of inspectors to deal with competing pressures and integrity issues more effectively. Recommendation 33 provided that SafeWork SA should provide training to existing and new inspectors relating to managing competing pressures at workplaces, grooming and capture, and conflicts of interest.

SafeWork SA's response to implementing this recommendation involved:

1. Establishing a governance framework in early 2019 to oversee implementation of relevant ICAC recommendations. The Steering Committee comprised SafeWork SA executives and representatives from two other regulators (EPA and Consumer and Business Services) to bring an outside perspective. The Steering Committee provided input to the development and implementation of SafeWork SA's actions in response to the ICAC report. This input also informed SafeWork SA's public updates on implementation of its overall response.
2. Developing a grooming and training module, approved by the Steering Committee, for inclusion in the Inspector Development Program (IDP) for inspectors. This module was designed to develop staff capability to recognise and address grooming and capture behaviours and risks.
3. Developing a conflict of interest framework which was implemented in June 2019. This included a training program for all staff, and inclusion of relevant training in the IDP.
4. Developing a training program on 'Balanced and ethical decision making' which is compulsory for existing and new compliance and enforcement staff, and all managers and team leaders.

Every regulator trains people in the technical aspects (legislation) but this does not necessarily give personnel the practical skills to help them identify and deal with competing interests and integrity issues in a regulatory context. The SafeWork SA training program in balanced and ethical decision making is designed to assist inspectors by showing them how to deal with competing pressures and integrity issues in decision making.

The training was delivered in July and August 2021 and involved a one-day interactive workshop covering:

- the unique pressures on inspectors and investigators and the potential for conflicting interests and grooming and capture;
- expectations on inspectors and the need for transparency in decisions;
- the importance of individual values and psychological safety in decision making (through building a workplace culture that encourages people to speak up in a safe environment);
- how to make decisions in a range of ethical dilemma scenarios that are directly relevant to inspectors and investigators.

In a practical sense, the training raises an understanding of why some inspectors are viewed by stakeholders as too hard, and other are viewed by other stakeholders as too soft (for example, in the way an inspector takes account of financial or other pressures on businesses). The training is aimed at enabling staff to acknowledge rather than ignore the pressures on businesses. Scenarios cover situations where an inspector uses their discretionary powers to issue a notice and the challenges in doing this. The training is also designed to show staff how to debrief effectively, not just so that lessons are learnt but so that staff are not adversely affected by work that can be confronting on occasion. To ensure that staff feel comfortable raising internal issues affecting the way they operate and respond to issues, the training was delivered by an external consultant and staff were separated into two main groups: staff and leadership.

Training sessions delivered by SafeWork SA also generated practical outputs including a list of identified grooming behaviours relevant to SafeWork's activities, and strategies to combat or respond to these behaviours. Staff also developed a set of values which are intended to guide behaviour in SafeWork SA. The values outline the expected behaviour of staff (in 4 areas: professionalism, respect, integrity and service) and were developed by staff without involvement from leadership (these were endorsed by the leadership). Follow up (debrief) sessions were also held with leaders to focus on actions to improve the culture and provide support to inspectors so as to enable them to deal with competing pressures and integrity issues more effectively.

SafeWork SA expect the training in balanced and ethical decisions to provide several benefits:

- Improved staff effectiveness and morale as a result of inspectors and investigators having improved capacity and confidence to recognise and respond to competing pressures, and exercise of their discretion in a consistent manner.
- Earlier and more effective consideration of conflicts of interest. Staff have long been required to declare potential conflicts as they arise. Staff are now required to submit annual conflict of interest declaration.
- Improved staff performance through greater adherence to the organisational values. These values are embedded in all role descriptions and recruitment now tests candidates using the values, through interview questions and psychometric assessment.
- Improved safety outcomes through earlier recognition and action on potential conflicts of interest and grooming behaviours, as well as more effective management of competing pressures on inspectors and investigators.
- Greater stakeholder confidence in SafeWork SA as an effective and efficient regulator.

Although the initiatives described above were implemented only recently, SafeWork SA believes that the initiatives have improved staff morale and organisational culture. Evidence on this is obtained through internal staff surveys and informal feedback. According to SafeWork, the feedback indicates that staff feel they can safely raise issues in a supportive environment, speak more openly and in a more respectful manner, and that they can raise concerns with management, knowing that they will be heard and that feedback will be considered. Recently, SafeWork also commissioned internal audits to look at its policies and procedures, adherence to them and internal controls to ensure adherence. Internal consultation on the results is currently underway, SafeWork believe that they provide further evidence of an improved culture, improved decision making and effective management of integrity risks.

Opportunities for further improvement

SafeWork is assessing a number of areas for further improvement, especially in relation to balanced and ethical decision making, including:

- Examining trends in complaints data, injury rates and the outcomes of inspections and enforcement activity (including internal and external reviews of decisions) to assess the overall impacts.
- Undertaking stakeholder engagement to assess perceptions on SafeWork's performance as a regulator.
- Reviewing SafeWork's policies and procedures to incorporate ethical decision-making principles, address potential grooming and reinforce expected behaviours.
- Undertaking additional actions to embed the values developed by staff via changes to performance management, training and recruitment. Progress is to be assessed through regular staff surveys.

3. Regulator performance review and continuous improvement

3.1 DairySafe

About DairySafe

The Dairy Authority of South Australia, or 'DairySafe', is a statutory authority reporting to South Australia's Minister for Primary Industries and Regional Development. It is governed by a Board comprising three members nominated by the Minister, appointed by the Governor and funded by regulated industry fees.

DairySafe is responsible for ensuring the South Australian (SA) dairy industry complies with national food safety standards to safeguard public health. National food safety standards are developed by Food Standards Australia and New Zealand (FSANZ) and published in the FSANZ Code. The *Primary Produce (Food Safety Schemes) (Dairy) Regulations 2017* require that milk is sourced from an accredited dairy farm, is transported by an accredited transport business, and that dairy products are produced by an accredited dairy processor operating in accordance with an approved food safety program specifying compliance with Australia's food safety standards at each point in the production process.

DairySafe has around 4.2 FTEs and regulates around 215 dairy farms, 23 dairy transporters and 48 dairy processors in SA. The dairy sector in SA is diverse, comprising large multinationals and many medium and small enterprises. Businesses that export are also regulated by the Commonwealth Department of Agriculture, Water and the Environment and there are plans for audits of these export processing facilities by DairySafe to be recognised by the Australian Government.

DairySafe's regulatory activities include:

- accreditation of dairy farms, transporters and processors;
- audits of accredited businesses to ensure compliance with primary production and dairy food safety requirements;
- responding to incidents such as product recalls; and
- provision of information and support on food safety issues to farms, processors, transporters and the general public.

DairySafe possesses a wide range of regulatory tools, including: verbal warnings; increased audit frequency; compliance orders, expiation notices; show cause notices; suspension of accreditation; and prosecution.

Approach to continuous improvement

DairySafe recently sought third-party certification of its regulatory oversight, accreditation and audit systems and practices. The aims were to show its stakeholders that the organisation is highly committed to maintaining high quality systems and processes, and that it is willing to be held to the same standard of scrutiny that it applies to the businesses it regulates. It was also expected that certification would identify opportunities to improve DairySafe's systems and procedures and identify any gaps in implementation.

A global firm specialising in audit and certification was engaged by DairySafe to carry out certification against ISO standard (9001:2015). Standard 9001 is an internationally recognised quality management standard designed for organisations that must consistently produce products or services (regulatory services in DairySafe's case) that meet customer and applicable statutory and regulatory requirements.

Standard 9001 identifies the criteria that an effective quality management system should meet and covers the following areas of quality management:

1. *Customer focus and customer satisfaction,* involving identifying whether meeting 'customer' expectations is the primary focus of management. In the DairySafe context, 'customers' were the Minister and Government, the DairySafe Board, accredited dairy businesses, DairySafe approved auditors, and other food safety regulators.
2. *Leadership*, involving an assessment of the clarity of the organisation's purpose and direction.
3. *Involvement of people*, including assessing whether staff are competent, empowered and engaged throughout the organisation.
4. *Process approach*, involving looking at whether processes deliver consistent and predictable results and are managed as inter-related processes within a coherent system.
5. *Continual improvement*, looking for evidence that there is an ongoing focus on improvement and an ability to react quickly to changes in internal and external conditions.
6. *Factual approach to decision making*, including assessing whether decisions are based on analysis and evaluation of data and consideration of cause and effect, including unintended consequences.
7. *Relationships management*, covering whether important relationships are identified and well managed.

The certification process involved two stages[14]. Stage 1 commenced with an audit of DairySafe's regulatory oversight, accreditation and audit systems and practices against the areas of quality management set out in standard 9001 to identify potential gaps and areas of non-conformance. This assessment was undertaken by an external auditor and involved a review of documents provided by DairySafe and a one and half day workshop with DairySafe staff. Stage 2 involved a follow up audit to assess the actions taken in response to the first audit, and to arrive at an overall assessment of whether DairySafe's quality management systems met the requirements of standard 9001. This stage also involved reviewing implementation of a sample of DairySafe's internal processes (such as business accreditation). The outcome of this stage was to recommend that certification proceed after corrective actions identified in the audits were implemented and verified.

The main benefit of the certification process was that it provided a level of assurance to DairySafe and its 'customers' that its regulatory oversight, accreditation and audit systems and practices meet internationally accepted standards for quality management. As it involved undertaking a full review of all key internal processes, it resulted in DairySafe implementing actions that strengthened its internal process controls, which were mapped and then communicated to staff. It also improved management's oversight of progress in achieving key

---

[14] To achieve certification, DairySafe engaged a consultant at a cost of around $6 000, which reflected the size of the organisation. Ongoing certification and audit is expected to cost around $3 000 per year. The main costs were related to staff involvement, covering strategic and organisational planning, establishing and revising relevant policies, and mapping procedures and workflow.

performance indicators outlined in DairySafe's strategic plan, and of changes in external and internal issues relevant to DairySafe's work. All issues identified in the certification audits were areas of minor non-conformance, rather than major risks to food safety, and were seen as opportunities for improvement. DairySafe also consider that the certification process delivered additional benefits of:

- increasing the credibility with and satisfaction of stakeholders;
- achieving greater consistency in the delivery of products and regulatory services;
- improving internal communication, planning and administration processes;
- better integrating and aligning internal processes to improve productivity and outcomes; and,
- identifying opportunities to lower costs and speed up decision making resulting in more effective use of resources.

Opportunities for further improvement

DairySafe intends to seek re-certification in October 2021, providing an opportunity to assess the impact of changes made in response to the initial certification, and to include recent initiatives implemented by DairySafe, such as the introduction of a new IT system supporting the accreditation process and audit program.

4. Data management, information sharing and use of technology

4.1 Essential Services Commission Of South Australia

About ESCOSA

The Essential Services Commission of South Australia (ESCOSA) is SA's independent economic regulator and an advisory body established under the *Essential Services Commission Act 2002* (ESC Act). Key sectors of focus for ESCOSA are transportation, energy and water. It is overseen by a Commission (currently comprising four Commissioners) and has a staff of around 30 FTEs.

One of ESCOSA's roles is to regulate the licensing of electricity generation in SA. While the market operation, rule-making and economic regulation of those entities operating in the National Electricity Market (NEM) takes place at the national level, the licensing regime for generation units remains at the State and Territory level.[15]

ESCOSA's licensing work continues to have regulatory and strategic importance for SA, especially as new forms of renewable and embedded generation have joined the NEM (e.g. wind, solar and battery storage) and issues of system security and stability have arisen. This case study focuses on how ESCOSA has developed robust internal processes that clearly document the licensing approval process and coordination with other regulators to ensure the necessary technical requirements are met. A streamlined licence approvals process, which is less time and information intensive, has recently been established for smaller, 'low risk' electricity generators.

Overview of the regulatory function being reviewed

The Essential Services Commission of South Australia (ESCOSA) is South Australia's independent economic regulator and an advisory body established under the *Essential Services Commission Act 2002* (ESC Act). Key sectors of focus for ESCOSA are transportation, energy and water. It is overseen by a Commission (comprising a Chair and four Commissioners) and has a staff of around 30 FTEs.

One of ESCOSA's key roles is to regulate small-scale off-grid network service providers (small scale providers) for the electricity, gas and water industries, across a range of regulatory activities (e.g. licensing, codes and rules of conduct, compliance monitoring and enforcement, and price regulation). For the water industry, this is a potentially large task, as there are 70 small-scale network service providers in South Australia (with around 120,000 customers).

This case study focusses on how ESCOSA has begun to use new data analysis tools (the Regulatory Intelligence System) combined with a new risk-based approach to classifying the operators of these systems (the Verified Trust and Accountability approach) to lower compliance costs, better target monitoring and enforcement activity, and save time and resources. Whilst the new system is currently at an advanced development stage, it has

---

[15]   The Australian Energy Market Operator (AEMO) is the national market operator for the NEM, whilst the Australian Energy Market Commission (AEMC) is the rule-making body for the NEM and the Australian Energy Regulatory (AER) is the economic regulator, dealing mainly with monitoring and enforcement of conduct and revenue determinations, for network operators in the NEM, and is part of the Australian Competition and Consumer Commission (ACCC).

already been used to expeditiously assess one water industry licensee's application for a licence variation to expand its sewerage business.

Application of the VTA approach and RI system to assess a recent water industry license variation

The water, electricity and gas industries are declared to be "regulated industries" for the purposes of the ESC Act, which allows ESCOSA to regulate small-scale network service providers in those three industries, so as to protect the long-term interest of consumers with respect to price, quality and reliability of essential services.

It does this through applying a range of complementary regulatory mechanisms (covering both consumer protection and economic regulation) to each small-scale service provider – licensing, retail codes and rules of conduct, compliance monitoring and enforcement (with accompanying guidelines), and price regulation determinations.

This is a wide scope of regulatory functions for each of these small-scale networks.

There are 83 small-scale network entities licensed by ESCOSA in South Australia. The majority of licensees (70) provide water and / or sewerage services. The predominant form of sewerage service is what is known as a Community Wastewater Management System (CWMS). The licensees are diverse and include local government, private operators, and not-for-profit organisations. These small-scale networks are mostly located in outer metropolitan, rural and remote areas across South Australia, serving small communities.

This is a large number of regulated entities for ESCOSA to cover.

ESCOSA has been considering these issues and has, over the past five years, undertaken an inquiry proposing a new regulatory business model for small-scale providers, using digital tools and risk-based approaches, amongst other mechanisms.[16]

Two key elements of that model are the:

- verified trust and accountability (VTA) approach – a risk-based framework that will classify small system operators into either a "trusted" category (for consistently competent operators), where they will face lower reporting requirements, or not "trusted" (for those who cannot demonstrate consistent competent operation), and they will face additional regulatory oversight and information reporting requirements; and

- regulatory intelligence (RI) system – a data base that will combine licensee performance data with a wider range of key market intelligence (e.g. information from the energy and water ombudsman,[17] asset management information from the

---

[16] The final inquiry report is available at < https://www.escosa.sa.gov.au/ArticleDocuments/1005/20210713-Inquiry-SmallScaleNetwork-FinalReport.pdf.aspx?Embed=Y>

[17] A key Inquiry recommendation is to require all small-scale licensees
to be members of the ombudsman scheme, with the ombudsman agreeing to share complaint data received with the Commission under existing information sharing arrangements. ESCOSA has built up a close working relationship over many years with the energy and water ombudsman, which has included the ombudsman sharing statistical data with ESCOSA and alerting ESCOSA to any trends in generic issues. Clause 8.3 of the Ombudsman's Charter provides that the *Ombudsman may also report systemic or other important issues to the relevant government Minister or to regulatory bodies* (A copy of the Energy and Water Ombudsman's Charter is available at <https://ewosa.com.au/assets/volumes/general-downloads/EWOSA_CorporateDocument_Charter-2018.pdf)>. While in this instance the sharing of information is based on an informal agreement, ESCOSA has on occasion entered into agreements with other regulators, such as the Statement of Intent entered into between ESCOSA and the Environment Protection Authority (SA) – dated November 2016. This latter agreement specifically deals with the use and disclose of information / confidentiality.

licensees website, etc.) and is intended to enable ESCOSA's staff to focus on strategic analysis and assessment, rather than data gathering.

The RI system will support the initial and ongoing verification process.

Recently, one of the 70 small-scale water and sewerage operators applied to ESCOSA for a variation of its licence conditions, in order to take over the CWMS sewerage system for a new residential development.

The applicant (Alexandrina Council) currently provides a CWMS sewerage service to approximately 6,500 customers, plus a non-drinking water service to approximately 22 customers, which is around 10 per cent of customers in the local government area in which it operates.[18]

Using a "dashboard" generated by the RI system, it was possible for ESCOSA to quickly extract the necessary performance data to support a timely and holistic assessment of the applicant's business and confirm its suitability to take on the new CWMS sewerage business under the proposed license variation.

ESCOSA reviewed the applicant's financial management and regulatory performance for its existing water and wastewater operations, using the new RI System – in summary, the operator's recent business history was assessed across such attributes as: customer complaints (and their pattern over the past 5 years), pricing, financial sustainability, current and future capital expenditure, and the indicative remaining life of their water and wastewater assets.

For example, there was a spike in breaks / chokes from 2016-17 to 2017-18, decreasing thereafter. This generally mirrored complaint data. The decrease after the spike indicated that Alexandrina Council had addressed the issue driving the breaks / chokes. Finally, the Commission could quickly determine that total income for the service has consistently covered costs, indicating the long-term sustainable of its services, a positive outcome for customers.

The applicant's pricing and service delivery plans for the proposed new CWMS service were also assessed.

Overall, the available information (existing performance and proposed new operational parameters) indicate that the applicant is a responsible operator. There was nothing in the assessment to suggest that it lacks the capability to take over and operate the new CWMS service.

Strengths and opportunities for improvement

The key strength in this case study is that by adopting the RI system and the VTA approach to regulation of numerous small-scale water and wastewater entities in South Australia, ESCOSA has been able to:

- Establish a data base that will enable more robust, timely and adaptive regulatory decision making;
- Reduce the regulatory burden from data gathering and monitoring on industry participants (and to do this in a way that rewards trusted entities with lower reporting requirements);

---

[18] For further information see *Variation to water retail licence application – Alexandrina Council,* available at <https://www.escosa.sa.gov.au/news/water-news/jun21-news-2021-w-rlva-ac-final>

- Better target compliance and enforcement activity (with more effort going into the not trusted entities); and
- Save time and resources on data gathering and compliance activity, which can be better deployed on other more analytical and strategic tasks.

Whilst the Inquiry recommendation for all participants to join the ombudsman scheme will have a cost for service providers, there are costs associated with any independent dispute resolution scheme, and statutory requirements already oblige service providers to participate in a scheme of some sort. Case handling fees are directly dependent upon whether a dispute is referred to the ombudsman, but ESCOSA believes this should encourage licensees to resolve disputes prior to requiring ombudsman services.

Under the new scheme, utilising the VTA approach and RI system, the reporting costs of competent operators should reduce, given reduced annual reporting requirements, with the focus shifting to licensees identifying any material changes to operations. ESCOSA has already built up a data source for each licensee based on reports received up until commencement of the new scheme. The reporting obligations of non-competent operators may be greater, but once again associated costs will be under the control of the operator under the VTA approach.

The opportunity going forward will be to work collaboratively and cooperatively with licensees (and intending licensees) to "roll out" the new RI system and VTA approach, to classify the 70 small-scale water and wastewater licensees in South Australia into the trusted and not trusted categories, and for ESCOSA to then apply a more sophisticated and proportionate regulatory regime to each of those businesses.

4.2 Office of the Technical Regulator

About the OTR

The Office of Technical Regulator (OTR) is established under the *Electricity Act 1996*, the *Gas Act 1997* (the Gas Act), the *Energy Products (Safety and Efficiency) Act 2000*, and the *Water Industry Act 2012*. The OTR's primary role is to provide safety and technical regulation of the energy and water sectors in South Australia (SA), with a particular focus on the safety of workers, consumers and property, as well as compliance with legislation and applicable regulatory standards. The OTR is located in the Department of Energy and Mining (DEM) and has a staff of approximately 57 FTEs.

A key role of the OTR is ensuring the safety of gas installations and their adherence to the necessary technical requirements under the Gas Act and regulatory standards. This monitoring and enforcement role is underpinned by a 'proactive' auditing regime, which targets operators who are less experienced or who have not met standards in the past. The proactive audit regime includes both 'field' audits and 'desktop' audits. The OTR also has complaint-driven and random auditing programs that complement the proactive audit programs.[19]

Overview of the regulatory function being reviewed

A key role of the OTR is ensuring the compliance of electrical work undertaken by qualified tradespeople, including the connection of customers to the South Australian electricity distribution network (run by SA Power Networks). In the past, this process used a system of paper-based "certificates" completed by tradespeople and supplied to the OTR.

This case study shows how the replacement of that paper-based system with a digital system has led to number of improvements in how this regulatory task is carried out. In particular, in late 2019 and early 2020, it allowed the OTR and SA Power Networks to respond rapidly and efficiently to the urgent need to establish a register of distributed generation for the national energy market operator.

Application of eCoC to the compilation of the distributed energy resource (DER) register and to core compliance activity

In South Australia, electricians are required to complete a certificate of compliance for all their electrical work. This document allows an electrician to certify that their work is safe and compliant with Australian Standards and the Electricity Act, which govern safety and technical matters in the electricity sector. The certificates are an essential tool for the technical and safety compliance regime. Traditionally, this has been done through a well-established paper-based regime.

An electronic certificate of compliance system (the eCoC), replaced the old paper-based certificate regime from 1 July 2018. While it took an 18-month transition period prior to that date, to move to the new digital system, the result is a much more cost-effective and reliable tool, which has also facilitated the faster adoption of digital technology among its users.

---

[19] Further information on the OTRs audit program for gas installations, workers and contractors is available at: <https://www.sa.gov.au/topics/energy-and-environment/electrical-gas-and-plumbing-safety-and-technical-regulation/auditing/gas-installations-workers-and-contractors>.

New customer electricity connections to the electricity grid are also captured by the new system. This requires the completion of an eCoC and submission of this to the distribution network operator, SA Power Networks. The Department for Energy and Mining and the OTR recently collaborated with SA Power Networks to collect information via eCoC for the new national Distributed Energy Resource (DER) Register.[20]

DERs encompass small-scale electricity generation units, such as roof-top solar and home batteries in households and businesses, but also includes some larger generation types, such as co-generation plants. The rapid uptake of DER created a challenge for the operator of the National Electricity Market (NEM), the Australian Energy Market Operator (AEMO), in terms of establishing how much there is, where it is and how to manage it, to ensure the safe and secure operation of the NEM. Consequently, AEMO has established an on-line register to hold and manage this data.[21]

The eCoC system allowed the OTR to assist SA Power Networks to respond rapidly to this new AEMO regulatory requirement (imposed on distribution system operators) and also minimised the compliance burden for this process by reducing duplication of data entry by electricians. An easy to follow user guide was also provided by the OTR.[22]

As SA Power Networks put it: "We are in a privileged position in South Australia that the OTR's eCoC process is completely electronic. This means that we have been able to satisfy the requirements of the DER Register without adding an additional step for installers or contractors to complete."[23]

Perhaps the greatest use of eCoC data has been to inform and enable more targeted compliance activities by the OTR, using a risk-based approach, and to some extent also by SA Power Networks.

eCoC provided the OTR with a real time window into installations that was granular, prompt and accurate. Under the previous paper certificate of compliance regime, the process to identify a site for compliance auditing was relatively cumbersome. One regulatory team within the OTR now operate a process where a set of eCoCs is extracted and the customers contacted via SMS. This allows for targeting of very recent work, and for greater visibility of the OTR-led compliance activities in the community. Additionally, contractors are only involved where a non-compliance is identified, which saves them time and allows for the OTR to operate in a way that is less easily avoided by contractors.

Strengths and opportunities for improvement

The key strengths in this case study are that by adopting a digital system for one of its core tasks (generating and storing certificates of electrical compliance) the OTR has been able to drive improved regulatory outcomes across a number of dimensions:

---

[20] The exchange of information on DER systems between the OTR and SA Power Networks is facilitated by a Memorandum of Understanding (MoU) between the two organisations.

[21] AEMO (2019), *DER Register: Information for Installers in South Australia*, Fact Sheet. Available at: https://aemo.com.au/-/media/files/electricity/nem/der/2019/der-register-implementation/aemo-der-register-factsheet-for-installers_use-case-3-sa.pdf?la=en

[22] OTR (2019), *Electronic Certificates of Compliance: Certifying a Distributed Energy Resource (DER)*, Government of South Australia. Available at https://www.sa.gov.au/__data/assets/pdf_file/0003/584607/eCoC-Certifying-a-Distributed-Energy-Resource.pdf

[23] SA Power Networks (2019), *Announcing the Distributed Energy Resources (DER) Register*, Media Release, 26th of November. Available at: https://www.sapowernetworks.com.au/data/306410/announcing-the-distributed-energy-resources-der-register/

- Timeliness and agility – in the case of the DER Register, it allowed the OTR to provide a more rapid and agile response in support of SA Power Networks complying with the AEMO request;
- Reduced compliance burden – for the DER Register project and in the conduct of its core regulatory functions (i.e. information gathering and audits of compliance), the OTR has reduced the time and effort imposed on electricians and contractors; and
- Better targeted interventions – the rich, real time data provided by eCoC has enabled a better and more risk-based approach to core regulatory functions that target high risk areas, achieving better regulatory outcomes and improving the allocation of the resources within the OTR.

Whilst such changes can require an upfront investment of time and money by regulators, and effort to bed down new systems amongst the regulator's stakeholders, they can deliver multiple benefits for the regulator and for stakeholders.

The opportunity going forward will be for the OTR to find new ways to "build out" the eCoC to capture new data and extend its application to other regulatory activities and those of other stakeholders, like SA Power Networks.

For example, the OTR has recently employed a Renewable Energy Auditor who targets DER installations to ensure that inverter commissioning, smart meter wiring and other wiring safety matters see early compliance attention. eCoC also provides methods for this inspector to conduct "desktop audits" on inverters installed to ensure that these meet South Australian specific requirements (such as voltage disturbance ride through). SA Power Networks has also used the DER data to identify sites where solar generators were installed without seeking authorisation.

The OTR intends to continue the digitisation of its processes and activities in such areas as fire system commissioning reporting, and intends to further develop integration with SA Power Networks' systems to provide more efficient ways for electricians to declare the detail of their work.

Upcoming changes to the OTR case management processes and systems are designed to minimise administration and provide inspectors with a broad overview of the work conducted by tradespersons across the state. These changes are enabled by eCoC and will allow for more sophisticated targeting of work for audit, as well as more efficient resolution of non-compliant installations.

4.3 ReturnToWork SA

About RTWSA

RTWSA is responsible for providing work injury insurance and regulating the South Australian Return to Work Scheme (the Scheme). RTWSA is a statutory authority established under the *Return to Work Corporation of South Australia Act 1994* to administer the *Return to Work Act 2014* and the Return to Work Regulations 2015. The Scheme is funded via employer premiums and provides financial support to people who have been injured at work to cover wages, reasonable medical treatment and return to work services. The objective of the Scheme is to support workers injured at work and ensure that agreed action is undertaken to:

- recover from injury
- remain at, or return to work following injury (including after retraining, if required)
- live independently and be restored to the community when return to work is not possible.

In administering the Scheme, RTWSA seeks to ensure that:

- workers and employers receive appropriate, timely and effective services in the event a worker suffers a work injury;
- employers pay their fair share of premium; and
- all parties meet their statutory rights and obligations.

Supporting regulatory activities undertaken by RTWSA include:

- education programs (e.g. covering businesses, and medical and allied health services providers);
- self-insured evaluations covering large companies and state government entities;
- accreditation of impairment assessors and the review of impairment assessments against relevant guidelines; and
- enforcement of statutory requirements including issuing fines and/or interest penalties and undertaking prosecutions where necessary.

RTWSA works collaboratively with SafeWork SA due to their common interests in reducing workplace injury. This includes providing data to SafeWork SA (as authorised by legislation and supplemented by a Memorandum of Understanding) and regular interactions. RTWSA also interacts with tax authorities such as the ATO and Revenue SA and with SA's Compulsory Third Party Insurance Regulator in relation to education forums, working with shared stakeholders, and aligning medical certificates.

This case study covers the Premium Improvement Program (PIP) recently implemented by RTWSA as an example of an initiative that was designed to improve interactions with regulated businesses through the application of digital (online) technology to service re-design and delivery.

The Premium Improvement Program

The RTWSA is fully funded through employer premiums. New employers must register with RTWSA and all registered employers must pay an annual insurance premium at the beginning of the financial year based on expected payrolls. Employers were also required to submit a remuneration return within a defined period (initially 3 weeks, then extended to 10 weeks, after

the end of the financial year) detailing the actual payroll for the purpose of calculating premium adjustments (with around 96% of employers receiving a premium adjustment). In 2019-20, $519 million in insurance premiums was collected from more than 53,000 registered employers. In addition, 2,523 employers ceased registration during the year and 5,439 new business registrations were received (RTWSA 2019-20 Annual report, p. 42).

The PIP was developed in response to business feedback that existing registration and premium processes and online services were inflexible, slow and cumbersome. The PIP involved changes to premium policy, internal process redesign and development of improved online services for premium registration, premium payment and reporting and was intended to address business concerns about existing online services and deliver significant internal operational efficiencies.

The PIP was implemented in two phases between June 2018 and October 2020. Phase 1 (June 2018 to July 2019) involved several changes to premiums policy and introduced individual online user accounts to streamline transactions:

- Employers were given greater flexibility to calculate and pay premiums, including choice as to whether to base premiums on the existing estimation method or a new method based on actual remuneration in the previous year, with no premium adjustment at year end. Additional payment flexibility enabled employers to pay premiums in a lump sum or via instalments, and by removing caps on the amount that could be paid via credit card.
- New online accounts were introduced in January 2019 with a range of new features including allowing individual users (such as an accountant) to link a single user account to multiple employers (rather than requiring each business to have a separate account and password) and allowing users to change passwords more easily. This was an important change because many employers use an accountant or other professional to transact on their behalf. Through this RTWSA were able to identify 661 individual users who linked their account to 10 or more employers.
- In developing the new online account there was a focus on simplifying the remuneration return and premium payment processes. This resulted in RTWSA eliminating 16 data fields, reducing repetition and improving the overall user experience (see further details below).

Phase 2 was implemented between July 2019 and October 2020 and covered the employer registration processes. Previously, registration was via an online form (pdf), with all fields being mandatory. Employer feedback indicated the online form was difficult to complete and resulted in many employers calling RTWSA for assistance. Also, significant internal effort had to be devoted to checking the information provided by businesses for the purpose of assigning an industry classification to employers.

The changes implemented in Phase 2 were developed by RTWSA staff, with input from external experts. Process redesign was led by RTWSA staff and focused on minimising the amount of information collected from employers, and then redesigning the online registration form in a workshop with a behavioural economist. The behavioural economics expertise helped staff with framing and structuring of questions in ways that were intended to produce better quality information, higher rates of compliance and also useful customer feedback. A user experience (UX) specialist was also engaged to review and improve the resulting registration process, and to develop the code (wireframes) that was then implemented by RTWSA staff on its IT systems.

What were the benefits of the PIP?

In October 2020 RTWSA undertook an internal review of the results of the PIP which examined the benefits to employers and RTWSA. The review identified a number of benefits from the program for employers, and for RTWSA:

- Many employers took advantage of additional flexibility in estimating premiums, with around half (52.6% in 2019-2020) electing to take up the new option to use the previous year's remuneration as the basis for calculating current premiums. This led to a major reduction in the number of businesses required to pay an end of year premium adjustment, a reduction of the workload on RTWSA staff involved in processing remuneration returns and handling phone calls from businesses.

- Take-up of new individual accounts was extremely high (89% of employers by July 2019). High uptake was supported by a public advertising campaign. The additional flexibility provided for password changes resulted in a large reduction in the burden on employers and work for RTWSA staff. It was estimated, for example, that there were 2,700 fewer calls from employers to RTWSA to reset passwords.

- Employer compliance with the requirement to submit annual returns increased from around 82% to 87% in 2020, which was even more pleasing for RTWSA given that during this period penalties for non-compliance were suspended due to COVID.

- There was a very large reduction in the time taken to process new business registrations (from 49% within 3 business days in 2018-19; to 86% in 2019-20; and 99.5% in 2020-21). The amount of rework for new registrations (due to errors) also declined significantly (by 82% based on a comparison of error rates between the months of August and October of 2019 and 2020 respectively). The simplified processes also enabled RTWSA to reduce the number of staff dedicated to registrations (from 8 staff in 2018; to 2 staff in 2020; and since September 2020 this function has been wound into the work of Customer Advisers working across customer calls, emails and other customer service tasks).

- Employer feedback was added to the employer registration process, which provided real-time feedback on the ease of transacting with RTWSA. For example, employers were asked to provide a rating on the ease of the new employer registration process. Based on the feedback (2174 responses in 2020-21), most respondents gave the service a highly favourable rating: 42% gave a rating of 5 out of 5 (highest), 48% a rating of 4 out of 5; around 6% a rating of 3 out of 5; and the remainder (4%) a rating of 1 or 2 out of 5.

- The program helped enhance the skills and capacity of RTWSA staff to redesign and improve processes and online services. Implementing the PIP program required extensive changes to existing IT systems, including core systems and the employer portal. External expertise in behavioural economics and user experience was engaged to design and refine online processes and services. The user experience learnings from changes to the employer registration processes have been subsequently applied by RTWSA staff to other online processes. In addition, customer services and staff morale improved because officers were able to use the enhanced capacity to access employers' information, to provide more effective and value-adding interactions with employers.

In addition to the employer benefits and internal efficiency savings, the PIP also provided important strategic benefits to RTWSA. For instance, due to the high take up of individual online accounts, RTWSA was able to send more targeted and effective electronic

communication via email and text message. An additional benefit was providing RTWSA with visibility over an important group of stakeholders (the accountants and other professionals), allowing more effective communication with this group.

Areas for improvement

Areas for further improvement identified by RTWSA include the need to upgrade IT systems to provide additional functionality. RTWSA also sees further opportunities to use employer and accountant data to produce more effective and targeted communications with these groups in ways that can further increase compliance and the quality of customer interactions, and further reduce the use of high-cost mail and phone channels. Also, while the PIP has resulted in a reduction in the volume of simple phone and email queries, customer support staff are increasingly expected to deal with more complex matters that take longer to resolve and require greater knowledge and interaction with other areas of RTWSA. RTWSA is therefore considering not just the size of the customer support team but the skills mix needed to assist employers quickly and effectively.

5.   Monitoring and Enforcement

5.1 Essential Services Commission Of South Australia

About ESCOSA

The Essential Services Commission of South Australia (ESCOSA) is SA's independent economic regulator and an advisory body established under the *Essential Services Commission Act 2002* (ESC Act). Key sectors of focus for ESCOSA are transportation, energy and water. It is overseen by a Commission (currently comprising four Commissioners) and has a staff of around 30 FTEs.

One of ESCOSA's roles is to regulate the licensing of electricity generation in SA. While the market operation, rule-making and economic regulation of those entities operating in the National Electricity Market (NEM) takes place at the national level, the licensing regime for generation units remains at the State and Territory level.[24]

ESCOSA's licensing work continues to have regulatory and strategic importance for SA, especially as new forms of renewable and embedded generation have joined the NEM (e.g. wind, solar and battery storage) and issues of system security and stability have arisen. This case study focuses on how ESCOSA has developed robust internal processes that clearly document the licensing approval process and coordination with other regulators to ensure the necessary technical requirements are met. A streamlined licence approvals process, which is less time and information intensive, has recently been established for smaller, 'low risk' electricity generators.

Overview of the regulatory function being reviewed

ESCOSA's core role is the regulation of industries that provide essential services to SA consumers, which also encompasses small-scale off-grid network service providers for the electricity, gas and water industries. In addition to its price determination and licensing functions, ESCOSA also monitors the activities of regulated entities for compliance with their licence conditions and other regulatory obligations and undertakes enforcement activity to address non-compliance where required. In doing so, ESCOSA aims to encourage and facilitate a culture of compliance in line with its key objective, under the ESC Act, of protecting the long-term interests of SA consumers.

ESCOSA's enforcement policy is underpinned by a regulatory action system, which is modelled on a paradigm known as ethical business regulation. This case study looks at how ESCOSA applied these open, collaborative and supportive principles to enforcement action regarding the District Council of Cooper Pedy, which provides small-scale off-grid electricity and water services to its residents, under licences (and associated regulatory obligations) issued by ESCOSA.

---

[24]   The Australian Energy Market Operator (AEMO) is the national market operator for the NEM, whilst the Australian Energy Market Commission (AEMC) is the rule-making body for the NEM and the Australian Energy Regulatory (AER) is the economic regulator, dealing mainly with monitoring and enforcement of conduct and revenue determinations, for network operators in the NEM, and is part of the Australian Competition and Consumer Commission (ACCC).

Application of ethical business regulation (EBR) to compliance and enforcement activity for the District Council of Cooper Pedy

The compliance framework employed by ESCOSA is based on its Regulatory Action System (RAS), which aims to promote and facilitate compliance by regulated entities with their regulatory obligations. Under this framework, ESCOSA expects regulated essential service providers to have and maintain robust compliance and reporting systems. The detail of that system is set out in ESCOSA's enforcement policy.[25]

The RAS is modelled on a paradigm known as Ethical Business Regulation (EBR), developed by Professor Christopher Hodges.[26] The principles and 'toolbox' of EBR have attracted interest and support from regulators and governments worldwide (such as those in OECD and the UK).[27] In summary, EBR sets out the following evidence-based propositions about regulatory action:

- A regulatory system will be most effective in affecting the behaviour of individuals where it supports ethical and fair behaviour.
- Businesses should demonstrate constant evidence of their commitment to fair and ethical behaviour that will support the trust of regulators and enforcers, as well as of all levels of management and employees, customers, suppliers, investors and other stakeholders.
- A blame culture will inhibit learning and an ethical culture, so businesses and regulators should support an essentially open collaborative culture.
- Regulatory systems need to be based on collaboration if they are to support an ethical regime, as well as maximising performance, compliance and innovation.
- Where people break rules or behave immorally, people expect to see a proportionate response.

These maxims for good regulation are broadly consistent with the ESCOSA's regulatory approach over time, which has been to establish information flows and relationships, which both allow and require regulated businesses to:

- identify an issue as quickly as possible;
- identify the root cause of the problem;
- share information on the problem and to discuss and agree the appropriate response;
- implement the right response, and share that information;
- apologise for harm caused, and repair it or provide redress; and
- monitor the situation and see if changes need to be made to the initial response.

Where a regulated business is unwilling or unable to meet that expectation, ESCOSA has the power to exercise its statutory enforcement powers to ensure consumer protection and redress.

Taken together, the RAS and EBR approaches guide ESCOSA's enforcement responses which provide support, education and capacity-building, in response to non-compliance by

---

[25] Available at: <https://www.escosa.sa.gov.au/about-us/enforcement-policy>.

[26] Hodges, C (2015), *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics*, Hart Publishing, Oxford and Portland (Oregon).

[27] See for a list of examples, Hodges, C and Steinholtz, R (2018), *The International Adoption of Ethical Business Regulation*, The Foundation for Law, Justice and Society, Oxford, p 3.

regulated entities, in the first instance, rather than moving directly to harsher forms of enforcement action involving sanctions, penalties and litigation.

The District Council of Coober Pedy (DCCP) operates small-scale off-grid electricity and water services to its residents and has both an electricity and a water licence issued by ESCOSA. In 2018-19, ESCOSA commenced action in relation to establishing the DCCP's compliance with its water and electricity licences, and relevant legislation and codes. ESCOSA found a number of areas of non-compliance and required the DCCP to review, amend and implement revised compliance systems, processes, controls and documentation.

The key findings were that the DCCP:

- did not have in place an approved Debt Recovery Policy that documented current practices;
- lacked effective communication material and customer engagement;
- needed to take steps to avoid the escalation of customer debts;
- should improve its staff training and contingency plans for staff turnover; and
- was not correctly completing its compliance and performance reporting.

In considering the regulatory interventions necessary to address those non-compliances, ESCOSA considered a range of matters, including the DCCP's acknowledgment of the non-compliances, its commitment to work diligently towards compliance and to engage with ESCOSA openly in that progress. Given that the response from DCCP was open, timely and collaborative – and the fact that it had taken immediate steps towards rectification in accordance with an 'action plan' and was reporting to ESCOSA regularly in relation to that action plan – ESCOSA chose to pursue actions that were open, collaborative and proportional rather than harsher sanctions and penalties. These were by way of:

- education, information and assistance;
- continued monitoring of legislative compliance; and
- internal and external compliance auditing.

The DCCP is revising and documenting its compliance systems, policies, processes and controls, to address the matters of concern to ESCOSA, which should result in more appropriate management of customers experiencing financial difficulties or facing disconnection going forward.[28]

ESCOSA continues to closely monitor the DCCP's progress and is working with the DCCP to explain and facilitate resolution of regulatory queries as they arise. ESCOSA is keeping the public informed through annual regulatory performance reports, available on its website.[29]

The Ombudsman SA has been investigating a complaint under section 13(2) of the *Ombudsman Act 1972* concerning the DCCP, which covers some of the same matters identified by ESCOSA's compliance actions. In a recently published Report, the Ombudsman SA found serious shortcomings in DCCP's past management of the council's debt and

---

[28] See ESCOSA (2020), *Compliance review – District Council of Coober Pedy Report – Water and Electricity*, the Essential Services Commission of South Australia, January, available at: <https://www.escosa.sa.gov.au/ArticleDocuments/21640/20210205-Electricity-WaterComplianceReviewReport-DistrictCouncilCooberPedy.pdf.aspx?Embed=Y>.

[29] Available at: <https://www.escosa.sa.gov.au/industry/water/regulatory-reporting/regulatory-performance-reports> and <https://www.escosa.sa.gov.au/industry/electricity/regulatory-reporting/regulatory-performance-reports>.

disconnection policies, in particular towards some indigenous residents[30]. Throughout its review, ESCOSA communicated with the Ombudsman SA. As noted in the Ombudsman's Report, ESCOSA kept the Ombudsman SA informed of its progress as it worked closely with the DCCP to address matters that were identified by ESCOSA as warranting reform and improvement. This allowed the most pressing issues in the Ombudsman SA's investigation to be expedited.

Strengths and opportunities for improvement

The key strengths in this case study is that by working with regulated entities in an open, collaborative and supportive way, as an initial 'front end' compliance response, ESCOSA considers that its enforcement policy is able to rectify the breach, achieve redress for customers and develop a culture of compliance in a more effective way, compared with taking a more adversarial approach. In line with EBR, ESCOSA seeks to undertake actions that are proportionate, continuous and risk based. Where infringements are not capricious and the regulated entity expeditiously cooperates with ESCOSA, an open, collaborative and supportive response is used to address the harm caused to consumers and improve the compliance and culture of the offending entity. This is more likely to deliver a quicker and less costly resolution for all parties than an adversarial process.

In terms of future opportunities for improvement, the on-going challenge with EBR and RAS approach is to avoid 'regulatory capture' whereby the regulator gets too close to the industry that it is regulating and becomes too invested in the engagement, education and capacity-building process, to be able to stand-back and take harsher enforcement measures when that action is required. Ultimately, a balance needs to be struck. ESCOSA has implemented strategies to mitigate the risk of regulatory capture in several ways. For example, through: an internal culture which recognises the need for independence; a number of internal controls (e.g. policies relating to ethical behaviour, conflicts of interests and gifts, benefits and hospitality); and clarity with licensees as to the separate and independent roles and functions of ESCOSA within the regulatory system. ESCOSA's RAS approach seeks to encourage compliance, initially in a supportive and cost-effective manner, while still reserving stronger enforcement measures where those strategies do not have the desired outcome.

---

[30] For detail of the Ombudsman's investigation and findings, see the Report at: *<https://www.ombudsman.sa.gov.au/publication-documents/investigation-reports/2021/District-Council-of-Coober-Pedy-2018-04687.pdf>.*

5.2 Office of the Technical Regulator

About the OTR

The Office of Technical Regulator (OTR) is established under the *Electricity Act 1996*, the *Gas Act 1997* (the Gas Act), the *Energy Products (Safety and Efficiency) Act 2000*, and the *Water Industry Act 2012*. The OTR's primary role is to provide safety and technical regulation of the energy and water sectors in South Australia (SA), with a particular focus on the safety of workers, consumers and property, as well as compliance with legislation and applicable regulatory standards. The OTR is located in the Department of Energy and Mining (DEM) and has a staff of approximately 57 FTEs.

A key role of the OTR is ensuring the safety of gas installations and their adherence to the necessary technical requirements under the Gas Act and regulatory standards. This monitoring and enforcement role is underpinned by a 'proactive' auditing regime, which targets operators who are less experienced or who have not met standards in the past. The proactive audit regime includes both 'field' audits and 'desktop' audits. The OTR also has complaint-driven and random auditing programs that complement the proactive audit programs.[31]

Overview of the regulatory function being reviewed

This case study looks at how the OTR's proactive gas installation auditing program demonstrated agility in managing the impacts of COVID-19. By using a new digital system to pivot their auditing program, in a way that was COVID-19 safe, the OTR retained its ability to target domestic installations and to ensure that the regulator continued to develop its knowledge of the skills and character of individual contractors during COVID-19. This enabled the OTR to have the information necessary to continue to apply a risk-based approach to regulation during the pandemic period.

Monitoring and enforcement activity for gas installations during the COVID-19 pandemic

In SA, gas fitters and installers are required to complete a certificate of compliance for all their gas installation and appliance conversion work. This document allows a gas fitter to certify that their work is safe and compliant with *Australian Standards* and *the Gas Act*, which govern safety and technical matters in SA. These certificates are an essential tool for the technical and safety compliance regime, managed by the OTR.[32]

The work of the OTR's proactive audit program is varied both in scope and complexity. This ranges from relatively simple installations, such as domestic gas hot water heaters, to larger commercial or industrial installations, which require specific expertise to assess. The OTR's gas installations team has developed a targeted and risk-based monitoring and enforcement regime over many years to deliver gas safety outcomes.

---

[31] Further information on the OTRs audit program for gas installations, workers and contractors is available at: <https://www.sa.gov.au/topics/energy-and-environment/electrical-gas-and-plumbing-safety-and-technical-regulation/auditing/gas-installations-workers-and-contractors>.

[32] An important distinction here is that the focus of the OTR is on the technical compliance and safety of the work performed, however, gas fitters and contractors are also required to be licenced by Consumer and Business Services (CBS) in the Attorney-General's department, who administer the occupational licencing regime in South Australia.

Generally speaking, gas contractors and installers being 'monitored' by the OTR fall into two main categories. These are the:

- experienced category — contractors who perform the work regularly and to a high standard are aware of the technical requirements which govern their work and demonstrate competence in their work and present a low risk on compliance issues; and
- inexperienced category — those contractors or installers who may be performing work in which they are inexperienced or unfamiliar, are found to present a larger safety risk and so see more attention from the OTR.

Understanding the nature of the work typically performed by a particular contractor is critical to the effectiveness of the OTR's regulatory compliance regime. This allows resource planning and targeting of high-risk activities. Informed by the outcome of site audits, the risk based approach utilised by the OTR rewards contractors who demonstrate a higher skill / compliance level through competence, via reduced auditing, and incentivises contractors with lower skill / compliance levels to upskill, through increased feedback following an audit.

This dual pronged approach allows the OTR to focus its regulatory activities on those installations which are more likely to contain non-compliant or dangerous work, while permitting well run and experienced organisations more freedom from regulatory oversight. Targeted regulation enables the OTR to effectively deploy its limited resources to audit those works more likely to be found to be non-compliant.

 The OTR applies a commensurate series of consequences as part of its enforcement strategy.[33] Gas contractors and installers found to have performed non-compliant work are generally encouraged or directed to resolve the issue, if it is minor. For more serious breaches, contractors are interviewed and, where skills deficiencies are identified, they may be referred to a Registered Training Organisation (either a private training provider or a TAFE) to undertake upskilling courses to fill gaps in their knowledge or skills. For those who perform work which is dangerous or who are unwilling or unable to complete the work to a high standard, they may be the subject of expiation or prosecution by the OTR, or in extreme cases, referred to CBS for reconsideration of their occupational licences.

The operations of the gas installations team (the gas team) have recently been modernised by the adoption of a new digital system. The OTR's electronic Certificate of Compliance system (eCoC) began replacing the old paper-based compliance certificate regime from 1 July 2018. The eCoC system has greatly improved the speed and efficiency of the OTR's regulatory operations across a range of areas and was the subject of an earlier Case Study regarding its application to compliance certificates for connections of distributed generation units to the electricity grid.[34]

---

[33] Further information on the OTR's compliance and enforcement policy for the gas, electricity and water sectors can be found at: <https://www.sa.gov.au/topics/energy-and-environment/electrical-gas-and-plumbing-safety-and-technical-regulation/compliance-and-enforcement/policy>.

[34] This case study was on the OTR's application of eCoC to the compilation of the Distributed Energy Resource (DER) Register and to core compliance activity – see Box 5.2 in SAPC (2021), *Inquiry into reform of South Australia's regulatory framework,* Draft Report, Government of South Australia, August, pages 137-38.

[35] SafeWork has a specific target of achieving a 30% reduction in the incidence rate of claims resulting in one or more weeks off work by 2022 (Strategic Plan progress report 2019, p. 10). This target is consistent with nationally agreed performance indicators (Australian Work Health and Safety Strategy 2012–2022, p.7)).

Enabled by the stream of data provided by eCoC, the gas team redesigned their audit process to contact the owner of a property via SMS in the first instance. This is typically followed-up with a short phone call to explain the nature of the OTR contact and arrange a time for audit. Several benefits were delivered with this change, including a large reduction in administrative overhead in generating audits and the ability to generate work for OTR inspectors in short order.

With the advent of COVID-19, during 2020 and 2021, the OTR – like most businesses – was forced to adapt its operations to minimise risks associated with the pandemic. Given the remote auditing of gas installations is not possible, the gas team found that they needed to adapt their processes or would be unable to perform their role as regulators. The eCoC system was able to deliver data about the work being performed in sufficient detail to enable the gas team to target, for example, hot water service installations that were either outdoors or with sufficient space to allow social distancing and other COVID-19 precautions. While this may appear simple, it would not have been feasible without a widely adopted electronic compliance form integrated with the case management tools within the OTR.

This then provided the team with the agility needed to continue their operations within mandated lockdown constraints and to ensure that the gas installation work performed in SA continues to be audited by the OTR, so that the public can be assured it is safe and completed to a high standard. Inspectors within the team found that this approach delivered several benefits. Direct contact with a property owner allowed for the OTR to reassure those parties that an audit could be conducted safely. Additionally, it allowed for confirmation that the installation which would be the subject of the audit was as described, and accessible without the need to enter shared areas.

In the periods where lockdown occurred, access to eCoCs and audit records allowed OTR officers to determine trends for compliance issues with respect to individual contractors and appliance types. This data was analysed by the OTR to form the justification for future education programs for the public and trade stakeholders on safety, legislative or technical compliance issues. The ability to identify appliances with some degree of detail also helped identify risks which are the subject of safety alerts, notices, or recalls.

Strengths and opportunities for improvement

The key strengths in this case study are that by using a new digital system to pivot their auditing regime for gas installations towards a category of appliances that allowed for a COVID-19 safe audit process, the OTR was able to:

- Re-focus the audit program in an agile way – by identifying types of appliances which were likely to be installed outdoors or in locations where the risk to OTR inspectors and the property owners could be minimised, the proactive audit regime was able to continue in a modified form during the pandemic period;
- Ensure public safety and confidence – using eCoC's database allowed the OTR to arrange an audit with the owner of the system via SMS and phone call, in a way that provided them with confidence that it could be completed safely with respect to social distancing and other COVID-19 precautions; and
- Continue to build information for targeted interventions – the OTR retained its ability to audit domestic gas installations and gain information on the skills and character of individual contractors and installers during COVID-19. This enabled the OTR to have

the information necessary to continue to apply a risk-based approach to gas product and safety regulation during the pandemic period.

What this case study also demonstrates is that a highly granular dataset, of the type provided by eCoC, coupled with sophisticated case management tools supporting the audit program, is a powerful regulatory solution. It allows regulators to adjust their compliance auditing, safety alert and education activities to target very specific characteristics, either based on risk, optimisation of resource use, or, in this case, to enable a pivot in the audit program, in response to a change in circumstances, to types of appliances that could continue to be audited during the COVID-19 pandemic.

The ability to target specific parameters (e.g. appliance type, job location, work undertaken by a particular contractor, work performed within certain date ranges, and the history of work for a particular address) provide analytical tools for risk-based enforcement. Contractor history can be reviewed to ascertain the number of audits and their compliance / breach statistics, this assists in targeting recalcitrant offenders. This analysis enables rapid, customisable planning of proactive audits and reactive accident responses in regional areas, where the geographic optimisation of work leads to increased productivity. It also allows for geographic work selection to optimise inspector efficiency in metropolitan Adelaide.

In the future, the development of analytics can enable the OTR to make strategic and informed operational decisions on statistical evidence, but also assists the OTR in planning education for stakeholders as a response to re-occurring breaches or incidents. Examples include advertising BBQs or space heaters service safety campaigns based on incident statistics or prioritisation of 'roadshow' presentation content informed by re-occurring breach numbers.

The opportunity going forward will be for the OTR to further develop the uses of the eCoC and their electronic audit platforms, including electronic audit plans (via iAudit or equivalent) that allow inspectors to capture and report audit / investigation evidence electronically and then dispatch it to the cloud portal from the field for integration into the OTR's case record management system. This productivity gain will then allow for analysis of data to enable even more targeted audit or enforcement programs, and for resources to be directed to specific compliance elements. Planned future enhancements include the integration of electronic audit plans and reports generated in the field with the OTR's internal systems in "real time" and automated breach letters and oversight for compliance statements closing out remedial work within prescribed periods. This will then help to further minimise administrative overheads and increase efficiency, accuracy, and quality of records.

5.3 SafeWork South Australia

About SafeWork SA

SafeWork SA administers 29 different pieces of legislation but is focused primarily on regulating SA's work, health and safety (WHS) laws with the main goal being to reduce the incidence of workplace injury.[35] The tools used by SafeWork SA to reduce the incidence of workplace injury include providing information, advice and support to business, and undertaking a range of compliance and enforcement activities to respond to incidents and prevent harms by ensuring businesses understand and comply with relevant WHS laws. Regulatory activities of SafeWork SA include:

- undertaking workplace inspections to ensure compliance with WHS laws;
- responding to workplace incident notifications and complaints, including investigating serious incidents and workplace deaths;
- assessing and issuing licences for the safe operation of plant, machinery, substances and facilities, and for prescribed occupations;
- providing information, support, and advice to assist businesses, workers, health and safety representatives and the broader public.

SafeWork SA also works within a national WHS regulation framework, coordinated through Safe Work Australia.[36] It also has a close working relationship with ReturnToWork SA (RTWSA), which is responsible for providing work injury insurance and administering the SA return to work scheme. This case study outlines several initiatives recently implemented by SafeWork SA to improve decision making by workplace inspectors.

This case study outlines how SafeWork SA, uses intelligence-led and risk-based analysis to prioritise workplace interventions.

Monitoring and enforcement

A 2018 evaluation and report on SafeWork SA's practices, policies, and procedures by the Independent Commission Against Corruption (ICAC) provided a catalyst for SafeWork SA to implement major changes to the way it administers WHS legislation in South Australia. The ICAC report raised several major concerns about SafeWork SA's overall approach to workplace inspections, including lack of a clear framework for determining matters such as inspection priorities, the balance between proactive and reactive inspections, and between announced and unannounced inspections, and the quality and consistency of inspections. The ICAC made 39 recommendations which were accepted by SafeWork SA. One recommendation was that SafeWork SA ensures its proactive inspection activities be driven by intelligence, assessment of risks, and research on how to assist workplaces in adhering to WHS laws (recommendation 17).

SafeWork SA's approach to implementing ICAC's major recommendations involved a structured change management process underpinned by a strong human-resources focus. This included restructuring the organisation and the workforce to break down silos between

---

[35] SafeWork has a specific target of achieving a 30% reduction in the incidence rate of claims resulting in one or more weeks off work by 2022 (Strategic Plan progress report 2019, p. 10). This target is consistent with nationally agreed performance indicators (Australian Work Health and Safety Strategy 2012–2022, p.7)).

[36] SafeWork Australia is a national WHS policy setting body with responsibility for improving WHS and workers compensation arrangements across Australia.

teams (finalised 1 July 2019), implementing a wide range of business process improvements, developing a new organisational training framework for improved staff training and development, including dedicated training for staff involved in implementing and monitoring compliance and enforcement (SafeWork SA Annual activity reports for 2018-19).

In response to the specific ICAC recommendation that SafeWork SA use intelligence and assessment of risks to drive its proactive inspections, SafeWork SA developed a Proactive Compliance Campaigns program. Under this program, SafeWork SA uses a variety of intelligence to identify priority areas for inspection and enforcement campaigns. Priority areas are identified based on analysis of historic injury risk using claims data from agencies such as RTWSA and Safe Work Australia, as well as internal information such as data on notifiable incidents. The stated aim of proactive compliance campaigns is to achieve a reduction in work-related injuries, illnesses and fatalities, and to reduce the incidence of non-compliance with work, health and safety requirements.

In addition to injury and notifiable data, SafeWork SA aligns its campaigns to the Australian Work Health and Safety Strategy 2012-2022, developed to drive key national activities to achieve improvement in work health and safety. For example, the AWHSS identifies priority industries such as agriculture, road transport, manufacturing and construction with historically high rates of injury. It also identifies priority types of injuries, including musculoskeletal disorders, mental health conditions and cancers (including skin cancer and asbestos-related cancers). SafeWork SA's campaigns assist in meeting the desired outcomes of the national strategy.

Since 2019, SafeWork SA has designed and implemented proactive compliance campaigns covering 12 different industry sectors and specific activities such as Safe Work Method Statements (SWMS) for high-risk construction work, the use of elevating work platforms (such as mobile scissor lifts), and asbestos removalists and assessors.

Processes for planning and conducting proactive activities are documented in an Audit Program and Proactive Compliance Campaign policy, finalised in late 2020. Campaigns are scheduled throughout the year and populated into a compliance campaign calendar, to assist with resource needs, communications and reporting. Campaign briefs are developed that outline the objectives, campaign triggers and justification, key actions and risks and reporting requirements. Once an area is identified for a proactive compliance campaign, SafeWork SA publicises its intention to undertake these campaigns and releases information explaining the basis for the campaign. It also provides detailed guidance material to assist relevant businesses to identify and address WHS risks.

During a campaign, inspections may be undertaken with or without notice. Where an inspector identifies instances of non-compliance with work, health and safety requirements, further action may be taken, depending on circumstances. Actions vary along a spectrum from providing further advice to businesses, issuing improvement notices or prohibition notices, accepting an enforceable undertaking[37], revoking, suspending or cancelling licenses and authorisations, and initiating prosecutions.

Safe Work SA inspectors operate within a principles-based framework established by SafeWork SA, which flows from the national Safe Work Australia National Compliance and Enforcement Policy. This policy identifies general principles that are to guide regulatory

---

[37] An enforceable undertaking is a written, legally binding agreement between the alleged offender and SafeWork SA to implement specific actions to improve work, health and safety (Strategic Plan, p 10).

decision making and the administration of enforcement powers, including through proactive compliance campaigns. The national enforcement policy, for examples, says that the exercise of inspectors' powers should take account of various factors including:

- The seriousness of the breach and the actual or potential consequences, including whether risks are immediate or imminent.
- The culpability of the duty holder and the extent to which conduct falls below acceptable standards and the extent to which the duty holder contributed to the risk.
- The compliance history and attitude of the duty holder.
- The impact of enforcement action on the encouragement of compliance or deterrence from non-compliance.
- Any mitigating or aggravating circumstances. (SafeWork Australia, National compliance and enforcement policy, p. 7).

An internal quality control process ensures the compliance and enforcement policy is applied consistently. Once a case files is created it is reviewed by Team Leaders during the life of the matter. Case files are further reviewed prior to closure to ensure the actions of the inspector are in accordance with the relevant procedures, referred to in a compliance and investigations manual. SafeWork SA is currently developing a Quality Assurance framework to apply to all auditing functions across the agency.

After the conclusion of a campaign, SafeWork SA publishes an evaluation to inform stakeholders and improve future campaigns. SafeWork SA has to date published three campaign reports relating to: Respirable Crystalline Silica, Elevating Work Platforms (EWPs) Audit Report and Safe Work Method Statement in high-risk construction. These reports include recommendations to improve future compliance activities. For example, the campaign report on the high-risk construction sector recommended that SafeWork:

- conduct unannounced follow-up audits in 2021 to confirm improvement across the construction sectors;
- audit a higher proportion of civil construction in 2021;
- develop a compliance campaign for managing the risk of falls in the residential sector;
- engage with stakeholders such as industry bodies, unions and other key stakeholders to reinforce the need for businesses to identify high risk construction activities and implement risk mitigation plans in consultation with workers (Safe Work Method Statements 2020 Audit Report, p. 16).

The impact of campaigns on SafeWork SA, business and safety outcomes differ depending on the scope and the level of compliance identified during campaigns. The evaluation of the elevating work platform (EWP) campaign, for example, identified several positive outcomes. One was greater business awareness and understanding of the safe use of EWPs, and through clearer [guidance material](#) issued by SafeWork SA, improved clarity for businesses using EWPs on how to comply with their general WHS duties. For SafeWork SA, the guidance material also created an opportunity for improved safety outcomes and will in future allow more effective inspections.

A further benefit of proactive compliance campaigns is that they produce important information to supplement historical information on injury claims. Non-compliance identified by inspectors during campaigns, together with RTWSA claims data, enables SafeWork SA to better identify and monitor high-risk businesses, thereby reducing the potential burden on low-risk

businesses. A future priority for SafeWork SA is to undertake analysis on the safety performance of businesses targeted in future compliance campaigns to determine if campaigns have had a positive impact on claims.

Areas for improvement

SafeWork SA has identified several priorities for improving future Proactive Compliance Campaigns. This includes:

- extending its collaborative approach to developing campaigns to include other government entities that hold relevant intelligence, monitoring and evaluation capabilities;
- building on the positive outcome of campaigns by strengthening the involvement of industry, worker and business stakeholders;
- investigating, trialling, and adopting new technology in compliance activities (such as body worn cameras and drones); and
- collaborating with other jurisdictions through SafeWork Australia to share lessons, data and insights.

SafeWork SA's client and activity database system (InfoNET) was improved to facilitate development of proactive campaign and to assist with reporting. Further improvements have been identified by SafeWork and are currently being scoped and costed to enhance the capability and mobility of inspectors.

SafeWork SA is also considering opportunities to build on practices adopted during the response to COVID-19. During the initial phase of Covid, SafeWork SA contributed to the development of industry specific guidance material by Safe Work Australia, and shared this information through social platforms and key stakeholder groups. As in person audits were suspended during this time, SafeWork SA conducted enquiries via phone, to enquire into the level of understanding by business owners on how to best manage the risks associated with COVID-19. These phone calls were followed up with email correspondence, containing guidance material specific and relevant to the needs of the business. Although this approach is less likely to identify non-compliance in the workplace, it could be utilised to gauge the level of understanding of business about emerging safety issues.

SafeWork SA also closed its customer service front counters due to COVID-19 and directed customers to the website for information or offered appointments for more complex matters. SafeWork has continued this practice, with no negative impact on service delivery.

6. Stakeholder Engagement

6.1 DairySafe

About DairySafe

The Dairy Authority of South Australia, or 'DairySafe', is a statutory authority reporting to South Australia's Minister for Primary Industries and Regional Development. It is governed by a Board comprising three members nominated by the Minister, appointed by the Governor and funded by regulated industry fees.

DairySafe is responsible for ensuring the South Australian (SA) dairy industry complies with national food safety standards to safeguard public health. National food safety standards are developed by Food Standards Australia and New Zealand (FSANZ) and published in the FSANZ Code. The *Primary Produce (Food Safety Schemes) (Dairy) Regulations 2017* require that milk is sourced from an accredited dairy farm, is transported by an accredited transport business, and that dairy products are produced by an accredited dairy processor operating in accordance with an approved food safety program specifying compliance with Australia's food safety standards at each point in the production process.

DairySafe has around 4.2 FTEs and regulates around 215 dairy farms, 23 dairy transporters and 48 dairy processors in SA. The dairy sector in SA is diverse, comprising large multinationals and many medium and small enterprises. Businesses that export are also regulated by the Commonwealth Department of Agriculture, Water and the Environment and there are plans for audits of these export processing facilities by DairySafe to be recognised by the Australian Government.

DairySafe's stakeholder engagement policies and initiatives

Stakeholder engagement is important because of its potential to directly influence food safety culture in regulated organisations and needs to reflect the diverse nature of the sector. DairySafe's various stakeholder engagement activities are set out in its *Communication Plan for 2020 – 2024*. This document sets out the objectives, target audiences, risks, communication modes and methods for measuring stakeholder perceptions of DairySafe.

DairySafe engages with stakeholders by:

- building relationships with industry through well governed 'engagement' and a diverse board leadership (the DairySafe Board includes one member of the industry appointed for their technical expertise).
- developing and issuing guidance materials such as the *Accreditation Handbook*, which sets out the requirements to obtain accreditation and to continue to operate as a dairy business and the *Guidelines for the Safe Manufacture of Dairy Products*, which details hazards and risks in products being manufactured and suggestions on ways to reduce risks.
- holding industry workshops on specific issues to inform industry understanding, and effective application of, food safety protocols.
- undertaking stakeholder surveys every 2 years to measure performance (with the most recent survey undertaken in June 2021).
- distributing regular newsletters, bulletins and emails, which for example, highlight trends from audits or flag with industry areas of focus in upcoming audits, and other

developments such as guidance on cleaning requirements developed in response to COVID-19.

Recently, DairySafe instituted a system of industry awards which are intended to publicly recognise dairy businesses that successfully integrate food safety into their business culture.

DairySafe also views its audit activities as an important engagement opportunity, rather than just a means to verify compliance.

The July 2021 stakeholder survey showed that 90 per cent of stakeholders who completed the survey,[38] were satisfied or very satisfied with the quality of communications from DairySafe (the remainder were neither satisfied nor dissatisfied). This was a slight improvement from the 2019 survey (85 per cent satisfied or very satisfied). Other results indicated DairySafe was viewed by stakeholders as a reliable source of food safety advice (90 per cent agreed or strongly agreed), and that most respondents (82 per cent) were confident or very confident in DairySafe as a food safety standards regulator. The main opportunity for improvement identified in the survey related to awareness and usage of DairySafe technical support. For example, only one third of respondents had engaged with DairySafe technical support (although all of those that did reported being satisfied or very satisfied with this support).

Business continuity tool

Recently, DairySafe developed and implemented a business continuity tool for assessing business continuity risks that is designed, in part, to support DairySafe's stakeholder engagement activities. Business continuity refers to the capacity of a business to plan for and respond effectively and safely to unexpected business disruptions. This initiative aligns to the strategic objectives outlined in DairySafe's *Communications Plan*, including to: 'engage across industry to promote a food safety culture', and to develop an 'industry information value proposition'.

This initiative arose from discussions with other food safety regulators about the links between business resilience and food safety risk. Some regulators argued that there is a direct link between food safety outcomes and the capacity of a business to manage unexpected events causing business interruptions such as bushfires, power failures, or loss of key staff. The relevance of these risks was highlighted by the impacts of recent bushfires and COVID-19 on the South Australian dairy industry.

The online tool was developed by DairySafe with funding from the Department of Primary Industries and Regions and enables dairy processors[39] to self-assess their vulnerability to business interruptions and identify actions to improve their resilience. Available on the DairySafe website, the tool allows a business to quickly test their preparedness for business disruption through a 15-minute self-assessment. After entering business details and responding to a range of questions, the online tool identifies tailored options to reduce exposure to business continuity breakdown, based on a two-dimensional risk matrix. One dimension on the risk matrix is product risk. A product risk rating is assigned based on the highest risk product produced by the business, with the options being low, medium or high. Products rated low risk include milk powder, UHT milks, hard cheeses; products rated medium, include salted butter, ice cream and pasteurised milk; and products assessed as high

---

[38] 291 stakeholders received the survey and 80 completed surveys were returned (a response rate of nearly 28 per cent).
[39] The first version of the tool was tailored to dairy processors and a version tailored to dairy farmers is currently under development.

risk include fresh cheeses, mould-ripened cheeses and dairy desserts. These ratings are based on national food safety standards. A second dimension on the risk matrix is the self-assessed level of maturity in managing business continuity risks. The matrix has three maturity levels ranging from least mature to highest (opportunistic, managed, and optimised).

Based on the characteristics of the business and the self-assessed maturity level, the tool generates a list of suggestions for raising the level of maturity in managing business continuity risks. These may cover areas such as stakeholder engagement, seeking input from experts and regulators, staff training and development, using staff incentives and awards, developing performance indicators, implementing risk management techniques such as supply-chain mapping and testing contingency plans. These suggestions are provided in the form of a report identifying areas of strength and improvement, which allows businesses to respond as necessary. The system also provides the option of a reminder email after 12 months to enable the business to undertake a reassessment, enabling changes to be tracked.

Regulated businesses are not required to use the tool. To encourage uptake, results are not shared with the regulator. Business are, however, encouraged to discuss the results with auditors.

The tool was only officially launched in August 2021. DairySafe has had favourable informal feedback from processors involved in its development. Those involved in testing the prototype were asked to respond to a user evaluation survey. Nearly all respondents agreed or strongly agreed with statements that the model was easy to apply, clear and easy to follow, delivered value to industry, and identified some opportunities for their business.

Opportunities for further improvement

Based on experience with the business continuity tool, DairySafe is consulting on a version tailored to dairy farmers' business risks. Another key area for future development is assessment of the impacts. The expected benefits of the tool include:

- Improving the technical ability of business to identify risks and address them (including whether businesses have got back up systems to prevent business interruption that pose a threat to business viability and food safety).
- Positive impact on business financial sustainability – a more sustainable industry means is better able to resource the management of food safety risks.
- Larger expected impacts on particular types of businesses such as new or fast-growing ones, artisan producers and larger businesses going through significant changes (such as changes in ownership or control).
- Lifting stakeholder perceptions of DairySafe as a regulator (to be assessed in future stakeholder surveys).

6.2 Environment Protection Authority

About the EPA

The EPA is South Australia's independent environment protection regulator. It aims to protect and enhance the environment through the regulation of air, water and soil pollution, waste, noise and radiation.

The EPA administers the *Environment Protection Act 1993*, *Radiation Protection and Control Act 1982* and *Plastic Shopping Bags (Waste Avoidance) Act 2008* and develops guidelines and codes of practice. It undertakes many different regulatory activities requiring stakeholder engagement, including:

- licensing, inspecting and auditing of activities impacting the environment;
- developing environmental policies covering water, catchments, air, noise and waste;
- undertaking environmental assessment of proposed new developments;
- delivering pollution avoidance and reduction programs for water, catchments, air, noise and waste;
- providing support to local government on environmental matters;
- monitoring and reporting on air and water quality and reporting on the state of the environment (EPA Annual report, p 8).

Approach to stakeholder engagement

The broad nature of EPA's regulatory activities means a diverse set of stakeholders are often involved, including regulated businesses, government and nongovernment entities, and local residents.

EPA undertakes many different types of public engagement, on a wide variety of regulatory issues including licensing, environmental incident response, land and groundwater contamination, and policy and program development and review. It's approach on these issues is dictated by a combination of statutory requirements, corporate policy and the specific circumstances surrounding particular issues (such as the nature of proposed activities and the characteristics of affected local communities).

Some engagement processes undertaken by EPA are required under legislation or regulation. For example, the *Environment Protection Act 1993* (the Act) enables the EPA to develop environment protection policies (EPPs), which define the standards to be achieved in dealing with environmental problems such as air, water and noise pollution. The Act specifies a number of consultative steps in the making of EPPs including public notification, release of an explanatory report, a public meeting, a minimum consultation period of 8 weeks, and prescribed bodies that must be consulted with when developing the legislation. Where there is specific interest from the community, the EPA will exceed these legislative consultation requirements.

The EPA has also recently implemented new corporate policies relating to public engagement designed to lift the overall quality of engagement, recognising the consultation approach will be tailored to the issue at hand. The EPA's new engagement charter sets out the EPA's consultation goals, approach and processes, including in relation to public notification. In particular, it outlines a 'residents first' policy when it comes to public engagement. This means

that when the EPA has information which affects individual residents and householders, it will engage with, and listen to, those people first before informing the wider community.

The charter provides that the EPA will undertake a mix of proactive and reactive public engagement, depending on circumstances, with the aims of informing communities about the role and actions of the regulator, and seeking community input to decisions.

The charter encourages (and where necessary, requires) industry-led consultation with their local communities. The EPA has developed specific consultation guidelines for industry and site contamination liable parties, and offers advice and support to industry to achieve effective public engagement. An example of stakeholder consultation in relation to the dredging of Outer Harbor illustrates how public consultation occurs in practice.

Stakeholder engagement in practice – dredging the Outer Harbor

In May 2018, the Minister for Planning approved a development application by Flinders Ports Pty Ltd (Flinders Ports) to widen the Outer Harbor shipping channel to accommodate larger vessels. Flinders Ports was also required to apply for a licence under the *Environment Protection Act 1993* before it could commence dredging. In August 2018 Flinders Ports applied for a license and EPA subsequently undertook public consultation on the application.

At the development approval stage, the EPA required Flinders Ports to adopt a lower impact dredging methodology to reduce the extent of sea grass loss, and real-time turbidity monitoring and thresholds which required dredging to cease if thresholds were exceeded (EPA Flinders Ports Outer Harbor dredging proposal – community submissions report, p 1). The monitoring data was publicly accessible and used by the EPA to assess compliance with dredging licence conditions.

During the statutory notification period, the EPA had nearly 100 stakeholder interactions on the licence application. Issues raised were then summarised in a report released publicly by EPA. Two key issues raised in consultation were: the extent of the impact of dredging on native seagrasses; and the need for safeguards if dredging caused widespread and extensive turbidity (EPA Flinders Ports Outer Harbor dredging proposal – community submissions report, p. 1). The public input demonstrated to Flinders Ports that EPA imposed licence conditions were strongly supported by the public.

The EPA also strongly encouraged Flinders Ports to undertake its own community engagement before, during and after the dredging program and asked it to respond publicly to community submissions in the form of a community submissions report.

Stakeholder communication in practice – public notification

A key goal of the EPA's engagement charter is to improve EPA's approach to public notification in response to environmental incidents, such as air or water pollution. Rather than prescribing notification approaches, the charter outlines the principles that should guide who, how and when to notify the community about an incident, including:

- residents directly impacted will be informed first, except where there is an immediate public health risk that requires urgent notification of the broader community.
- assessments of the environmental or health impact are to guide notification decisions. Notification may be restricted in certain circumstances, such as where assessed impacts are low, where there is potential for community concern, and where

- notification may jeopardise an investigation or prosecution or breach the privacy of individuals or third parties.
- communication is to be targeted at communities most affected, through local media and local stakeholder networks, and through direct contact.
- the EPA is to work with other agencies involved in incidents to provide accurate information that meets community needs. It is also to work with industry to encourage timely transparency regarding environmental incidents.

Measuring stakeholder engagement

The effectiveness of public engagement is monitored qualitatively and quantitively by the EPA on a regular basis. All community interactions are recorded with stakeholder data and information analysed, with regular reports published. At the conclusion of a public consultation, a community submissions report or community engagement report is published summarising the feedback, key issues and themes raised during the consultation. Information on public engagement is also published in EPA's annual report.

In 2018 the EPA procured EngagementHQ software to complement traditional engagement methods with a digital community engagement platform. This enables members of the community who wish to participate in a consultation, but do not have the time or desire to engage with the EPA in person, or via email or phone, to do so digitally. The EPA's www.engage.epa.sa.gov.au is an online engagement portal that has powerful back end tracking that enables the EPA to determine the number of visitors, what information they read or downloaded, and offers interactive tools such as Q&A, Forum, News Feed, Timeline, Document Library and online interactive maps where people can upload photos, drop pins and make comments about a location.

Improvement opportunities

The EPA's corporate plan for 2020-21 identifies implementing the revised engagement charter and public notifications protocol as key priorities for EPA.

Beyond this, EPA continually assesses the effectiveness of its stakeholder engagement. The EPA has developed a 'Community Engagement Champions' program, providing training to key individuals within the organisation that have shown an aptitude for community engagement in their regular role. They complement the community engagement resources when additional community engagement support is required. Development opportunities and a network of practice, enable the 'champions' to utilise the skills they have gained though professional training. This extension of the community engagement capabilities within the organisation has led to significant positive outcomes, enabling proactive and collaborative engagement projects to be implemented within the EPA.

6.3 Essential Services Commission Of South Australia

About ESCOSA

The Essential Services Commission of South Australia (ESCOSA) is SA's independent economic regulator and an advisory body established under the *Essential Services Commission Act 2002* (ESC Act). Key sectors of focus for ESCOSA are transportation, energy and water. It is overseen by a Commission (currently comprising four Commissioners) and has a staff of around 30 FTEs.

One of ESCOSA's roles is to regulate the licensing of electricity generation in SA. While the market operation, rule-making and economic regulation of those entities operating in the National Electricity Market (NEM) takes place at the national level, the licensing regime for generation units remains at the State and Territory level.[40]

ESCOSA's licensing work continues to have regulatory and strategic importance for SA, especially as new forms of renewable and embedded generation have joined the NEM (e.g. wind, solar and battery storage) and issues of system security and stability have arisen. This case study focuses on how ESCOSA has developed robust internal processes that clearly document the licensing approval process and coordination with other regulators to ensure the necessary technical requirements are met. A streamlined licence approvals process, which is less time and information intensive, has recently been established for smaller, 'low risk' electricity generators.

Overview of the regulatory function being reviewed

One of ESCOSA's most significant regulatory functions is the setting of SA Water's total allowable revenue every four years, which ultimately feeds through to the prices charged (and service standards) for water and wastewater to customers. The latest completed review concluded in June 2020 (for the 2020 to 2024 period) – the final SA Water Regulatory Determination.[41]

This case study shows how a well-structured and meaningful engagement strategy for consumers and other regulators in the context of the 2020 SA Water Regulatory Determination process can result in better outcomes for the economic regulation of large utilities.

Stakeholder engagement in the 2020 SA Water regulatory determination

Stakeholder consultation is part of ESOCSA's core business; it has published a Charter of Consultation and Regulatory Practice[42] and also has a Consumer Advisory Committee (CAC), established under the ESC Act.

This particular case study looks at how the regulator moved beyond this established stakeholder engagement framework, to build a more bespoke approach to support customers, customer representatives (demand-side) and regulatory stakeholders to have effective input to

---

[40] The Australian Energy Market Operator (AEMO) is the national market operator for the NEM, whilst the Australian Energy Market Commission (AEMC) is the rule-making body for the NEM and the Australian Energy Regulatory (AER) is the economic regulator, dealing mainly with monitoring and enforcement of conduct and revenue determinations, for network operators in the NEM, and is part of the Australian Competition and Consumer Commission (ACCC).

[41] A copy of the final determination is available at <https://www.escosa.sa.gov.au/projects-and-publications/projects/water/sa-water-regulatory-determination-2020>.

[42] A copy of the Commission's *Charter of consultation and regulatory practice*, November 2019, is available at <https://www.escosa.sa.gov.au/consultation/charter-of-consultation-and-regulatory-practice>.

a large regulatory determination process, thereby improving the overall quality of regulatory decisions. The framework and approach were established in 2018 and the actual engagement process played out through 2019-20.

Each revenue reset for SA Water is a complex process involving the analysis of many aspects of SA Water's business (e.g. operating costs, proposed investments, the cost of capital, service standards and the requirements of other regulators). Ultimately, any revenue determination process seeks to reach an appropriate balance of the legitimate interests of the regulated business and those of its consumers and other stakeholders across a range of temporal and product dimensions.

A key stakeholder group is SA Water's customers, and particularly small household customers (mums and dads) who make-up the vast bulk of the customer base. Because these small retail customers are dispersed, are not always well equipped to understand the key analytical issues and each only has a relatively small interest in the outcome of the revenue reset process, they can be a hard group to engage meaningfully in a complex regulatory determination process. There is a role for regulators in supporting input from this group.

Another key stakeholder group is those other bodies who regulate aspects of SA Water's business (e.g. for water quality, technical and pumping standards and for environmental outcomes). This is important because regulatory requirements (e.g. higher water quality standards) can impact on the revenue requirements (e.g. more revenue may be required to achieve the higher standards).

To ensure adequate engagement with these groups and to provide a structured flow of information to the ultimate decision maker (ESCOSA), the regulator established a new stakeholder engagement process for the 2020 Water regulatory determination, which provided various forums for customers, customer representatives, regulators and other stakeholders to debate, discuss and understand the needs, preferences and priorities of SA Water's diverse customer base (e.g. in terms of such issues as pricing, service standards, support for vulnerable consumers, network infrastructure investments, etc.).

The new process provided a much more structured approach to gathering stakeholder input, including published reports, and also provided a forum for direct engagement between SA Water and stakeholders, when compared to ESCOSA's previous regulatory determination processes, which relied more heavily on a standard public submission process and existing forums, like the CAC. Three groups were established:

- A Negotiation Forum – this provided a process for testing SA Water's initial regulatory business plans prior to them being submitted to ESCOSA for review. The Negotiation Forum comprised: a three-person Customer Negotiation Committee (CNC),[43] which was asked to elicit and represent the perspectives, preferences and priorities of SA Water's diverse customer base; three senior representatives of SA Water; and an Independent Probity Advisor, appointed to oversee the fairness of the process.

- A Consumer Experts Panel (CEP) – which was effectively joint sittings of ESCOSA's and SA Water's CACs. The Panel provided feedback and advice to ESCOSA during the

---

[43] For more information on the CNC, see <https://www.escosa.sa.gov.au/industry/water/retail-pricing/sa-water-regulatory-determination-2020/negotiation-forum>

review process and prepared a Priorities Report,[44] which set out key issues that the CEP expected SA Water to consider and respond to as it developed its Regulatory Business Proposal. There was also an important "feedback loop" to the CNC on matters to be considered in the Negotiation Forum process.

- A Regulators Working Group – this was established to provide a forum for the various regulators of SA Water to coordinate their efforts for achieving positive outcomes for the South Australian community through their combined regulation of SA Water.[45]

The outcomes from these three groups fed into the Commission's deliberations through a structured governance arrangement. This ensured that the regulator had a richer information set (than would otherwise have been the case) and that the key issues raised by consumers and regulators were fully tested against SA Water's Regulatory Business Proposal for the four-year period.

Strengths and opportunities for improvement

Whilst a stakeholder engagement approach of this magnitude may only be appropriate for very large scale and complex regulatory processes, it does provide some useful insights into how stakeholders can be engaged in a highly structured way by regulators and better regulatory outcomes achieved.

The key strength in this case study is that the demand-side is better supported in putting their perspective and evidence to the regulator and they are also empowered to engage directly with the supply-side (SA Water) through a structured negotiation process (the Negotiation Forum). Arguably, greater engagement by key stakeholder groups also enhances the legitimacy of the final outcomes of the regulatory process.

The new approach also included a number of elements that improved the transparency of the regulatory determination process, for example using multiple input channels (e.g. the new groups and forums were in addition to the existing role of public submissions and the CAC group), publication of key outputs from these new engagement forums (e.g. the CNC and CEP reports) and publishing a post-project review to ascertain feedback from stakeholders and identify improvements for the next regulatory determination process.

The opportunity going forward will be to build upon this process for future SA Water regulatory determinations. ESCOSA did commission a post-project review, which canvassed the views of stakeholders between August and October 2020 (and provided some synthesised pointers for future processes).[46] The feedback suggested that stakeholders believed consumer views should be at the centre of regulatory processes and that the new approach to stakeholder engagement had taken an important step in that direction. The post-project review report is being used to assist ESCOSA to establish the stakeholder engagement framework and approach to be used for the next four-year regulatory determination for SA Water (to apply from 1 July 2024). That process will be finalised in the second half of 2021, providing certainty of governance for that next determination far earlier in the process.

---

[44] For more information on the CEP, including their Priorities Report, see <https://www.escosa.sa.gov.au/industry/water/retail-pricing/sa-water-regulatory-determination-2020/sa-consumers-expert-panel>.

[45] Those regulators include ESCOSA, the Environment Protection Agency (EPA), SA Health, the Office of the Technical Regulator in the Department of Energy and Mining (DEM), the Department of Environment and Water (DEM) and Consumer and Business Services (CBS).

[46] A copy of this report is available at <https://www.escosa.sa.gov.au/ArticleDocuments/21592/20201304-Water-SAWRD20-ExternalPostProjectReview-FinalReport-PatrickWalsh.pdf.aspx?Embed=Y>.