

CONFIDENTIAL



REPORT FOR:	Council		
MEETING DATE:	10 May 2022		
REPORT FROM:	Chief Executive Officer		
REPORT TITLE:	Essential Services Commission of SA (ESCOSA) Submission		
FILE NAME:	F22/103	RECORD NO:	AR22/20598

STRATEGIC DIRECTIONS

1 Community

1.1 Our City has a sustainable growth in population.

4 Infrastructure

4.1 Our physical infrastructure meets our community needs.

5 Governance and Financial Sustainability

5.3 We are in a surplus financial operating position

5.5 We meet or exceed legislative and accreditation requirements for all relevant programs.

SUMMARY/ABSTRACT

This report presents to Council the Local Government Association (LGA) Consultation Paper on the scheme proposed by the Essential Services Commission of SA (ESCOSA) for the provision of advice in accordance with section 122 of the *Local Government Act 1999*. The purpose of the report is to seek a resolution of Council to provide feedback to ESCOSA in relation to the proposed scheme.

RECOMMENDATION

Council:

1. Endorses the Local Government Association (LGA) advocacy position in relation to the scheme established in section 122 of the *Local Government Act 1999* under which the Essential Services Commission of SA (ESCOSA) will provide advice to councils in relation to strategic management plans, and notes the following concerns in response to the ESCOSA proposed framework and approach:
 - The scope of information requested by ESCOSA should be directly relevant to and used for the purpose of provision of advice regarding councils Long-Term Financial Plan, Infrastructure and Asset Management Plans and total revenue sources, in accordance with the requirements of section 122 of the *Local Government Act 1999*.
 - the first four years of operation of the scheme should be used to set a baseline for each council and then, using a risk-based approach, the scope of the review could be scaled up for a particular council if a need is identified. This is consistent with ESCOSA's espoused "better regulation" approach, which it describes as being risk-based, proportionate to the problem that is being addressed and subject to continuous improvement and monitoring.

- The period for which historical data is provided should reflect the timeframe anticipated within the proposed scheme, i.e. four years, and a request for historical information for a longer period is not supported.
- The costs associated with the proposed scheme are far in excess of what was anticipated, and the scope of the proposed scheme should be reduced to address the unreasonable costs.
- The removal of the discretion provided in the *Local Government Act 1999* for Council to determine the reasonable assumptions to be used in the development of the Long-term Financial Plan is strongly rejected. These assumptions may include consideration of the Local Government Price Index (which accounts for the costs of items usually purchased by councils as opposed to CPI which accounts for the costs of items usually purchased by households), endorsed Enterprise Bargaining Agreements, the ABS wage price index and other actual cost factors which collectively provide a more accurate representation of inflation pressures to be considered by Council.
- The use of the term 'CPI constrained' will lead to unreasonable criticism of councils that justifiably increase rates greater than CPI and will have a practical effect of capping council rates to the CPI rate. 'Rate capping' was not supported by Parliament. The assertion that councils should be CPI constrained is rejected.

BACKGROUND

On 30 April 2022, the new 'strategic management plan advice scheme'¹ established in section 122 of the *Local Government Act 1999* (the Local Government Act) will commence. This scheme requires the designated authority (the Essential Services Commission of SA (ESCOSA)), on a four yearly rotating schedule, to review a range of council strategic management planning documents and provide advice to the council. The councils to be reviewed in each year of the cycle is determined by ESCOSA. The Port Augusta City Council is scheduled for 2025/26 of the first four year cycle of the scheme. The ESCOSA advice to councils and each council's response must be published in both the draft and adopted Annual Business Plan.

The strategic management plan advice scheme was approved by Parliament as part of the *Statutes Amendment (Local Government Review) Act 2021*. The State Government argued that the sector would benefit from a robust framework for financial accountability. The arrangements were ultimately supported by the local government sector as an alternative to rate capping.

Port Augusta City Council is already operating within a constrained environment due to its financial position.

DISCUSSION

ESCOSA has released its 'Draft Framework and Approach' (DFA) for the strategic management plan advice scheme and called for submissions by 27 May 2022. The LGA will be making a sector wide submission to ESCOSA and has called for initial administrative feedback by 13 May 2022 to inform development of that submission. The LGA is encouraging councils to make a formal submission direct to ESCOSA and has prepared a Consultation Paper to assist councils with providing a submission. A copy of the Confidential LGA Consultation Paper is provided as **Attachment 1**.

Attachment 1 – CONFIDENTIAL LGA Consultation Paper

The LGA has identified a number of concerns with the ESCOSA DFA in the Consultation Paper and intends to advocate strongly on behalf of the sector in response to those. Of particular note are the following:

- **Scope of the review:** The scheme established in section 122 focus ESCOSA on the Long-term Financial Plan (LTFP) and Infrastructure and Asset Management Plans (IAMP), in particular any changes to those documents and revenue sources.

The proposed information requests from ESCOSA extend beyond the minimum requirements as per the *Local Government (Financial Management) Regulations 2011* to the full suite of information available in the Model Financial Statements and seeks historical information dating back to 2007/08, far in excess of what is reasonable.

- **Increased in projected costs:** the increase in scope adopted by ESCOSA has led to a significant increase in projected costs for the scheme. Indications given in Parliament by then Minister Chapman were a scheme that would cost in the order of \$20,000 per council, however ESCOSA have suggested the cost per council will be approximately \$52,000.
- **Impact on discretion to determine assumptions used to develop LTFP:** The LGA strongly objects to any removal of the discretion available within the *Local Government Act 1999* to determine reasonable assumptions to be used in the development of the LTFP. The scheme established in section 122 does not authorise ESCOSA to constrain councils to any particular indices. In attempting to only give weight to one inflation index and discounting any others, ESCOSA inappropriately limit the discretion bestowed upon councils under the *Local Government Act 1999*. The LGA has significant concerns regarding the use of the phrase 'CPI constrained', which implies that councils should limit their rate increases to CPI and no more. The practical effect of the use of this expression will result in councils being judged and criticised in relation to a measure that ESCOSA have deemed appropriate when in fact this is a matter for each council to determine.

Conclusion

The Strategic Management Plan Advice scheme is established in section 122 of the *Local Government Act 1999* and commenced on 30 April, with first round councils required to provide information to ESCOSA by 30 September 2022. Whilst there may be value to councils in receiving high level advice on strategic management plans, the DFA proposed by ESCOSA is overly onerous in terms of information provision by council and the costs are far in excess of what was anticipated. A submission to ESCOSA setting out concerns with the proposed DFA is warranted and the recommendation below proposes a submission for councils consideration.

CONFIDENTIALITY PROVISIONS

Pursuant to section 90(2) and (3)(j) of the *Local Government Act 1999* the Council orders that the public be excluded from attendance at that part of this meeting relating to Agenda Item 24.1 (Feedback on ESCOSA proposed Framework and Approach - s122 Strategic Management Plan Advice scheme), to enable the Council to consider this item in confidence on the basis the Council considers it necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence the following information or matter:

- information the disclosure of which would divulge information provided on a confidential basis by a public authority, being the Local Government Association of SA (LGA)

the disclosure of which would, on balance, be contrary to the public interest, being information provided by the LGA in relation to proposed advocacy and sector wide submission in response to the Essential Services Commission of SA 'Draft Framework and Approach' that the LGA has requested be kept confidential at this stage.

The disclosure of this information would, on balance, be contrary to the public interest because it is in the public interest for the Council to be able to communicate on a confidential basis with the LGA about proposed sector advocacy and thereby act

cooperatively with the LGA in achieving positive outcomes for the local government sector.

Accordingly, on this basis, the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or matter confidential.

Having considered this item in confidence under Section 90(2) and (3)(j) of the Act, the Council, pursuant to Section 91(7) of the Act orders that the report, attachments, discussions and minutes relating to this agenda item, be retained in confidence until 30 June 2022 or until such time as the information is made publicly available by the Local Government Association of SA (LGA), and that this order be reviewed every 12 months.

RISK MANAGEMENT

1: Financial/Budget/Asset Management

N/A

2: Legal/Policy

N/A

3: Environment/Planning

N/A

4: Community

N/A

John Banks
29/04/2022

Local Government Rates Oversight Scheme – ESCOSA Draft Framework and Approach

LGA Consultation Paper

April 2022

CONFIDENTIAL

Introduction

On 30 April 2022, the new 'rates oversight scheme' established in section 122 of the *Local Government Act 1999* (the Local Government Act) will commence. This scheme requires the designated authority (currently the Essential Services Commission of SA (ESCOSA)), on a four yearly rotating schedule, to review a range of council strategic management planning documents and provide advice to the council. The councils to be reviewed in each year of the cycle is determined by ESCOSA. The ESCOSA advice to councils and each council's response must be published in both the draft and adopted Annual Business Plan.

The rates oversight scheme was approved by Parliament as part of the *Statutes Amendment (Local Government Review) Act 2021*. The State Government argued that the sector would benefit from a robust framework for financial accountability. The arrangements were ultimately supported by the local government sector as an alternative to rate capping.

ESCOSA has now released its '**Draft Framework and Approach**' (DFA) for the rates oversight scheme. It has released this to the public and called for submissions. The LGA intends to make a submission drawing upon input from member councils.

Confidentiality

This consultation document is provided to LGA member councils on a confidential basis. A previous version of the document was released without the 'confidential' watermark in error. Please do not utilise the earlier version of this consultation paper in any council report.

The document contains LGA advocacy positions and is intended to inform the development of a sector wide response to the ESCOSA DFA public consultation process. The document is also intended to assist councils with the development of submissions to both the LGA and ESCOSA. Access is provided to LGA member councils only via the secure member access to the LGA website.

If this document is considered as part of a formal council agenda the LGA requests that it be considered in confidence under section 90(3)(j) on the basis that the LGA is constituted as a public authority¹. An example confidentiality order, consistent with the requirements of this section is provided as Appendix 1 to this document.

LGA consultation process

The focus of this consultation document is to identify issues of strategic importance to the sector and seek views from the sector as to the Secretariat's interpretation of the DFA. The LGA also welcomes any feedback on the specific questions posed by ESCOSA. The detailed submission to be prepared by the LGA will address each of the questions asked in the DFA.

¹ *Local Government Act 1999*, Schedule 1, Part 1—Local Government Association, s 1(3)

The LGA consultation timeframes are as follows:

ESCOSA DFA released

31 March 2022

LGA Consultation Paper released	Week beginning 4 April 2022
LGA LG Equip Zoom Update – Rates Oversight	21 April 2022
Deadline for feedback to the LGA Secretariat (to be consolidated into a sector-wide submission)	13 May 2022
Deadline for submissions direct to ESCOSA	27 May 2022

ESCOSA's closing date for submissions is 27 May 2022. This date was extended at the request of the LGA. If member councils provide a submission directly to ESCOSA, we request that a copy also be forwarded to the LGA Secretariat.

It is recognised that the 13 May due date for feedback to the LGA Secretariat may present some challenges in achieving a council endorsed response. The Secretariat welcomes administrative responses within this timeframe and encourages councils to provide a formally endorsed submission directly to ESCOSA.

It is important that all councils consider the implications of ESCOSA's proposed DFA and provide feedback, not just those councils scheduled in the first year of the four yearly cycle.

Council responses and copies of submissions made directly to ESCOSA can be provided to Andrew Lamb, LGA Local Government Reform Partner at andrew.lamb@lga.sa.gov.au.

The LGA will hold an LG Equip Zoom Update session on the Rates Oversight Scheme on **21 April 2022**. In this session, the LGA Secretariat will outline the issues and provide participants with a significant opportunity to ask questions. The session will be open to elected members and relevant council employees. Mr Adam Wilson, CEO, ESCOSA will be in attendance at the Zoom update.

Other resources currently available to the sector in relation to the rates oversight scheme include:

- LG Equip Information Paper – Rates oversight scheme (available [here](#))
- LG Equip Information Paper – LG Reform and its potential impact on financial and asset management planning (available [here](#)).

Executive Summary

The LGA understands the rates oversight scheme in a manner consistent with the words of the Local Government Act and the Second Reading Speeches of respective Local Government Ministers.

Based upon member council feedback provided through LGA-sector consultation on the *Statutes Amendment (Local Government Review) Bill 2020*, the LGA supports a rates oversight scheme, in the form articulated in the Parliamentary debates and legislation.

As outlined in this document, the LGA expresses concern that the scope, level of detail and costs, proposed in ESCOSA's DFA represents a significant departure from Parliament's expressed intentions.

Whilst the scheme is referred to colloquially as the 'Rates Oversight Scheme', it is important to note that the scheme was inserted into section 122 which deals with strategic management plans and is therefore essentially a review of s122 related documents. The amendments to section 122 were designed as an oversight scheme, not an audit or an otherwise comprehensive review of a councils' financial, budgetary, risk and control settings.

The LGA is not persuaded that section 122 is broad enough to permit a review of the scope contemplated in the DFA:

*The **essence of the scheme** [emphasis added] is that the Essential Services Commission (Commission) will provide to each of the State's 68 local councils (on a four-yearly rotational basis) advice on the:*

- *appropriateness, and effective maintenance and implementation, of the council's long-term financial plan (LTFP), and infrastructure and asset management plan (IAMP), including any material amendments proposed or made in respect of those plans, and*
- *appropriateness of proposed financial contributions by the council's ratepayers under those plans.²*

The LGA considers that the 'essence of the scheme' is contained within section 122, which:

- provides that the designated authority must provide advice to the council on *the appropriateness of the relevant matters in the context of the council's long-term financial plan and infrastructure and asset management plan* (s122(1f)(a)); and
- defines the '**relevant matters**' as *material amendments made or proposed to be made to the council's long-term financial plan and infrastructure and asset management plan and the council's reasons for those amendments and revenue sources outlined in the funding plan* (s122(1e)).³

The LGA acknowledges that the Act provides that the designated authority must have **regard to the following objectives**:

- (i) *the objective of councils maintaining and implementing long-term financial plans and infrastructure and asset management plans;*
- (ii) *the objective of ensuring that the financial contributions proposed to be made by ratepayers under the council's long-term financial plan and infrastructure and asset management plan are appropriate and any material amendments made or proposed to be made to these plans by the council are appropriate⁴;*

² ESCOSA, Local Government Rates Oversight Scheme, *Draft Framework and Approach* (March 2022), Executive Summary – Page 1.

³ Noting that at this time, no regulations under section 122(1e)(c) have been proclaimed.

⁴ s122(1g)(a), *Local Government Act 1999*

This section is primarily about the requirement of councils to perform their functions in accordance with the Objects set out in section 3 of the Local Government Act. That is, a statutory object of councils is to *"provide for appropriate financial contributions by ratepayers to those services and facilities"* (s.3(f)).

Section 122(1g) restates the objectives set out in section 3 and merely provides that ESCOSA must have regard to *the council's* objective of providing for "appropriate financial contributions by ratepayers to those services and facilities".

Interpreted in this manner, section 122(1g) is not intended to expand the scope of ESCOSA's proposed review⁵. In fact, the opposite is true. Through its choice of words, section 122(1g) is centring ESCOSA's review on specific objects in the Local Government Act. As these and no other objectives are provided in section 122, ESCOSA should not pursue objectives not specifically provided for.

This argument is strengthened by virtue of the nature of the documents contemplated within 'the relevant matters'. The LTFP (including the funding plan) is a high level document which *outlines the intended sources of total revenue (such as revenue from rates, grants and other fees and charges)* and therefore the LGA considers that the focus should be on whether the proposed aggregate revenue sources are appropriate (having regard to the objective under s122(1g)(a)(ii)).

The LGA therefore submits that the scope of review contemplated by section 122 is much more limited than as proposed in the DFA. The DFA also posits that the ESCOSA has a discretion to expand the scope of its review⁶ by requesting additional information or by deciding to provide advice on other matters it considers appropriate⁷.

The LGA does not agree that ESCOSA has a unilateral power to expand this scope. Rather, the discretion provided by these sections is merely to enable the collection of such additional information ESCOSA requires *to provide advice on the LTMP and the IAMP* for the objectives set out in section 122(1g).

To the extent that ESCOSA does have a discretion about:

- which documents it requires councils to provide; and
- the range of matters it analyses, as part of its review,

the LGA submits that ESCOSA should err on the side of a limited, high-level review, as contemplated by Parliament. It should seek information that is necessary for it to perform its statutory function, but no more than that.

The LGA accepts that councils will benefit from high-level advice on LTFP's and IAMP's. The LGA is not convinced that the proposed DFA will deliver additional benefits to the sector, commensurate with the significant additional cost.

Instead, the LGA recommends that ESCOSA design a rates oversight scheme that:

- is limited in scope to reviewing the intended revenue sources outlined in the funding plan and material amendments made or proposed to be made to the council's LTFP and IAMP (and such other documents required to properly understand these two documents), and the council's reasons for those amendments;
- is further limited in scope to the objectives set out in section 122(1g)(a); and
- provides each council with high-level advice about the LTFP (including funding plan) and IAMP.

⁵ Whilst this is ESCOSA's limited focus, we note that Councils are required to act consistently with all of the clauses in section 3 of the *Local Government Act 1999*

⁶ DFA pg 9, 'The scheme is relatively general and provides the Commission with considerable scope in relation to scheme design and implementation, as well as the advice which is to be provided to each council.'

⁷ ESCOSA, Local Government Rates Oversight Scheme – Draft Framework and Approach, March 2022, Section 2.3.2

As the rate oversight scheme is new, the LGA considers it prudent to use the first four years to set a baseline and then using a risk-based approach, scale up the scope of the review for a particular council if a need is identified. This aligns with the wording of s122(1f)(b) which provides that the designated authority, may, if it *considers it appropriate having regard to the circumstances of a particular council, provide advice in relation to any other aspect of the council's long-term financial plan and infrastructure and asset management plan*. It is also consistent with ESCOSA's "better regulation" approach, which it describes as being risk based, proportionate to the problem that is being addressed and subject to continuous improvement and monitoring⁸.

Finally, ESCOSA provides in Principle 2 in the DFA:

"in the absence of significant shocks outside of a council's control, its long-term plans would not be expected to exhibit significant variation through time (they should not vary due to political cycles, or short-term transient operational or financial concerns)."

The LGA notes that councils are democratically elected to represent the hopes and aspirations of local communities. These communities (as expressed through their votes) are entitled to change their priorities and elect new representatives. Ultimately, decisions about revenue and expenditure remain the responsibility of elected members of council and long-term plans will change as a result of political cycles. It is also noted that the local government sector is often constrained by political decisions of state and federal government which may affect service delivery, infrastructure development and other costs to council. For example, there may be a sudden offer of grant funding for an asset on a council's long-term capital program which, in order to secure the funds, the council must match dollar for dollar. These matters must be responded to in a timely way that considers the best interests of each council's community and may result in unanticipated changes to a council's LTFP and/or IAMP. ESCOSA advice should therefore provide a framework within which elected members can make informed decisions, understanding the implications of those decisions.

Background

Rates Oversight Scheme - Changes in Scope

The rates oversight scheme, now embedded in the Local Government Act⁹, resulted from a series of negotiations with the State Government, as an alternative to rate capping. A number of rate capping proposals had been included in legislative amendments put forward by the State Government and in Private Members' Bills.

Rates oversight - first iteration

The first iteration of rates oversight was introduced into Parliament by then Local Government Minister Stephan Knoll on 17 June 2020, as an element of the *Statutes Amendment (Local Government Review) Bill 2020* (the Review Bill).

That proposal focused on changes to council rates. Councils would have been required to explain:

- increases in revenue from general rates including the reasons for the change;
- the impact of the rates change;

⁸ ESCOSA, "Charter of consultation and regulatory practice", November 2019, page 5 (available at <https://www.escosa.sa.gov.au/regulatory-approach/charter-of-consultation-and-regulatory-practice>)

⁹ Section 122, *Local Government Act 1999*, commencing 30 April 2022.

- information as to whether consideration had been given to alternatives to the proposed change in total revenue from general rates, such as alternative expenditure measures or funding proposals; and
- information as to how the proposal was consistent with the council's long-term financial plan and infrastructure and asset management plan.

During his Second Reading Speech¹⁰ on the Review Bill, Minister Knoll explained the scope, thus:

"Councils will now be required to receive and consider advice from an independent body on their proposed revenue from general rates for each financial year. Councils will need to provide information on their proposed rate revenue to this body at the end of the calendar year, along with critical information on the context in which this revenue change is proposed. This will include the council's view of the impact of the rate change on its ratepayers, whether the council has considered alternate mechanisms such as the responsible use of debt, the use of council reserves or exercising spending restraint and, most importantly, how the proposed change is consistent with the council's long-term financial plan and infrastructure and asset management plan."

Based on member input, the LGA accepted the principle of a rates oversight scheme, whilst advocating strongly for a more modest scope and a more realistic reporting timeline.

Rates oversight - second iteration

On 13 October 2020, as a result of LGA and sector advocacy, then Minister for Local Government, Vickie Chapman, introduced a modified rates oversight scheme, with a more limited scope. The scope of the ESCOSA review was centred around a council's LTFP and its IAMP.

During debate on the Review Bill, then Minister Chapman told the House of Assembly¹¹:

*"These amendments make significant changes to the rate monitoring scheme included within the bill, following extensive discussion with the LGA. In summary these changes require council to receive advice from a designated authority on their proposed revenue every three years rather than every year¹², refocus this advice from council's annual business plans to the revenue decisions that they make within the context of the council's 10-year financial plan, remove the minister's ability to direct the designated authority to consider particular matters, remove the minister's ability to direct councils on the basis of a report from the designated authority and clarify that the designated authority is the Essential Services Commission of South Australia unless another body is prescribed. I also note that most of these amendments are the same as the amendments that were filed on 24 September. **The only further amendment is to remove the ability of the designated authority to require councils to provide information as it determines** [emphasis added]."*

Note that the clearly expressed intention of the State Government was to specifically remove ESCOSA's ability to require councils to provide any information it determined. Rather the ESCOSA's role was clearly articulated as:

- A review of a council's LTFP and IAMP, in particular, any changes to these documents;

¹⁰ SA Parliament, House of Assembly Official Hansard, Second Reading, *Statutes Amendment (Local Government Review) Bill*, the Hon S.K. Knoll (Schubert—Minister for Transport, Infrastructure and Local Government, Minister for Planning), 17 June 2020.

¹¹ SA Parliament, House of Assembly Official Hansard, Legislative Review Committee, the Hon V.A. Chapman (Bragg—Deputy Premier, Attorney General, Minister for Planning and Local Government), *Statutes Amendment (Local Government Review) Bill* Committee Stage, 13 October 2020.

¹² Note that, as a result of LGA advocacy, ESCOSA will now review each council every four years instead of every three.

- ESCOSA's scope of inquiry was limited to the objectives set out in new subsection 122(1g), namely:
 - the objective of councils maintaining and implementing long-term financial plans and infrastructure and asset management plans;
 - the objective of ensuring that the financial contributions proposed to be made by ratepayers under the council's long-term financial plan and infrastructure and asset management plan are appropriate and any material amendments made or proposed to be made to these plans by the council are appropriate.
- ESCOSA did not have the power to unilaterally increase the scope of its reviews. For this to occur, a Regulation was required.

This version of rates oversight scheme, explained by the Minister, was the version approved by the Parliament.

Rates oversight - third iteration

The rates oversight scheme set out in ESCOSA's DFA is effectively the third iteration of the proposed scheme. The ESCOSA DFA represents a significant increase in the proposed scope of the rates oversight scheme and, in many areas, goes beyond what was contemplated in even the first iteration outlined previously in this paper. The LGA does not support the approach proposed by ESCOSA in the DFA. In the table, below, the LGA responds to specific matters and questions posed by ESCOSA, in relation to the DFA.

All references to legislation in this document, including in the table, are references to sections in the *Local Government Act 1999*, most of which will commence on 30 April 2022.

Call for submissions

The LGA Secretariat is seeking submissions from councils by **13 May 2022** and administrative responses are welcome. Direct submissions to ESCOSA are required by 27 May 2022 and we request that a copy of any direct submissions also be provided to Andrew Lamb, Local Government Reform Partner (andrew.lamb@lga.sa.gov.au).

The LGA is aware of the length and complexity of the issues contained in this consultation paper. However, we are already aware anecdotally that these issues are likely to be of considerable interest to many councils. ESCOSA has posed a large number of very specific questions and we thought it important to respond to each of these so that the sector's consent could not be implied where a response was not provided to ESCOSA. For these reasons this consultation paper is necessarily detailed.

This consultation paper has been provided to facilitate councils returning information to the LGA which will inform the development of a more detailed, formal submission to ESCOSA. It is not intended that this consultation paper be provided to ESCOSA as part of a direct submission.

This paper provides preliminary views of the LGA Secretariat, and they are intended to be tested with member councils prior to development of the LGA final submission. It is important that the LGA and member councils can work through the issues in a frank and confidential manner without undue concern that testing an idea will lead to, for example, adverse media comment. Further the LGA Secretariat's comments are designed to encourage understanding and debate on the DFA, with a final LGA Board view to be determined following the completion of the consultation process with councils.

Councils are welcome to adopt any of the views expressed in the consultation paper as part of their own direct submission to ESCOSA.

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
Ref: 2.3.1 Overarching intent of the legal framework	<p>ESCOSA recitation of the legal framework is substantially correct. However ESCOSA draws upon second reading speeches and a range of ancillary powers in section 122 to assert a wider scope than authorised by the legislation.</p> <p>Section 122 requires ESCOSA to focus on the LTFP and IAMP. Further powers are given, if required, to enable ESCOSA to request additional documents or information, necessary to properly understand the 'relevant matters'. The power to obtain these additional documents is incidental to enabling ESCOSA to perform its core function in relation to the 'relevant matters'.</p> <p>It is not the case that the incidental power to obtain clarifying documents authorises ESCOSA to expand the scope of its review.</p> <p>The LGA is concerned that ESCOSA's expansive interpretation of the ambit of its review will result in significant additional work by council administrations to create and supply additional information. This interpretation is also a primary driver for the significant additional costs that ESCOSA propose to invoice each council.</p> <p>Minister Chapman gave the SA Parliament indications that the costs of ESCOSA reviews per council would be in the order of \$20,000¹³. The LGA is concerned about the \$52,000 per council, per review figure, included in ESCOSA's consultation paper.</p> <p>To the extent that ESCOSA does have a discretion the LGA submits that it should be exercised in a manner consistent with the limited scope of review contemplated in the Act and in Minister Chapman's second reading contribution.</p>	<p>(ESCOSA Question 2.1)</p> <p>Do stakeholders agree with this interpretation of the legal framework?</p> <p>If not, why not?</p>

¹³ Hansard SA House of Assembly, 13 October 2020, Second Reading Debate on the Statutes Amendment (Local Government Review) Bill 2020

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
Ref: 2.3.2 The scope and context of the advice	<p>Further ESCOSA has used the objectives set out in s122(1g) to justify an additional increase in the scope of their review. This is not how s122 is intended to operate.</p> <p>The LGA reiterate earlier comments that section 122(1g) restates the objectives set out in section 3 and merely provides that ESCOSA must have regard to the council's objective of providing for "appropriate financial contributions by ratepayers to those services and facilities".</p> <p>The LGA note that the DFA states:</p> <p><i>"...the Commission must have regard to ensuring that the financial contributions proposed to be made by ratepayers, under the council's LTFP and IAMP [emphasis added], are appropriate."</i>¹⁴</p> <p>Section 122(1g) is focussed on aggregate revenue sources, and it is not necessary to disaggregate this data further as proposed in the ESCOSA DFA.</p>	<p>(ESCOSA Question 2.2)</p> <p>Do stakeholders agree with this interpretation of the scope and context of the advice to be provided under the scheme?</p> <p>If not, why not?</p>

¹⁴ DFApg. 9

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
Ref: 4.2 The Principles underpinning the analytical framework	<p>These principles proposed by ESCOSA appear to be consistent with the legislative amendments and are a sound basis for designing a limited, high-level review as contemplated by the legislation.</p> <p>However, the LGA is not convinced that these principles have been applied in designing the proposed framework and approach. In particular, despite indicating a focus will be given to key overarching targets and measures, the scope of information required from councils indicates a more granular level of review. The proposed framework and approach appears to delve into a deeper level of operational data which, given the volume of required information outlined, adds complexity both to councils in terms of responding and ESCOSA in terms of analysis required.</p> <p>The LGA accepts that it is easier for a council to provide existing documents than it is to compile information into new documents. The LGA supports the use of data already available to ESCOSA via the SA Local Government Grants Commission. The proposed DFA includes requirements for councils to provide information that will require a significant amount of work from councils to populate the templates provided. The LGA again notes that each additional document reviewed by ESCOSA adds to the scope of the review, the time taken by ESCOSA personnel to analyse the information provided (including comparing the information provided in each document with each other document provided) and the resulting costs of the review.</p> <p>With regard to Principle 5 (DFA, p13): it is noted that the LGA does not collect data; the LGA utilises whole of sector data from the Local Government Grants Commission database reports. The LGA is not a party to the ESCOSA Rate Oversight Scheme and is not subject to ESCOSA's information-collecting powers contained in section 122.</p>	<p>(ESCOSA Question 4.1)</p> <p>Do stakeholders consider these principles appropriate for the analytical framework?</p> <p>If not, why not? How should they be changed and why?</p>

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
Ref: 4.3 Overarching analytical framework	<p>The first and second iteration of the rates oversight scheme were described (by the State Government) as high-level advice about the state of and sustainability of councils' financial positions, as set out in their LTFP and IAMP.</p> <p>The DFA proposes a far more detailed analysis of each council's financial position. Some of the information proposed to be reviewed (eg cost controls, service risk profiles, demographics of ratepayers, reports of audit committees, information on a per rateable property basis) would require significant time and resources to analyse and report on.</p> <p>The LGA has not seen evidence that a review considering this additional detail would provide greater overall benefit to the local government sector than a high-level review. The DFA does not comment on the benefits of requiring this detailed information, compared to the costs of obtaining and analysing it.</p> <p>Further, ESCOSA proposes to analyse councils' documents by reference to a range of criteria, likely beyond the purview of the rates oversight scheme. For example, ESCOSA proposes to examine 'program stability', which is described as <i>"the provision of reliable quality services over time, and requires a stable and consistent set of actions, from the perspective of day-to-day operational practices and infrastructure management"</i>.</p> <p>The LGA submits:</p> <ul style="list-style-type: none"> that the legislation does not contemplate a review of day-to-day or operational matters. The review should not consider such a level of detail; and In any event, elected councils are entitled to make changes to the manner in which services are provided. <p>ESCOSA advice therefore should be limited to high-level advice enabling council members to understand the implications of their revenue decisions with reference to their LTFPs and IAMPs.</p>	<p>(ESCOSA Question 4.2)</p> <p>Do stakeholders consider this an appropriate analytical framework?</p> <p>If not, why not? How should it be changed and why?</p>

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
Ref: 4.4.1.1 The relevance of historical trends	<p>The DFA proposes the collection of historical data going back to 2007-08. The LGA acknowledges that historical trends are an important consideration, however we suggest that a timeframe of ten years historical data should provide sufficient reference. This reflects the current timeframe for LTFPs and LAMPs in the Act (being for a period of ten years) and would allow ESCOSA to look back ten years and forward ten years.</p> <p>The LGA notes that some information older than 7 years is likely to have been archived and will not therefore be readily available. Similarly, the LGA is concerned with a number of template forms contained in the DFA which appear to require the creation (or re-creation) of new data sets.</p> <p>The LGA submits that in accordance with principle 5, councils should only be required to provide information which is, in fact, readily available. The LGA does not support a review approach which requires council staff to gather, analyse and report existing information to ESCOSA in new templates/formats.</p> <p>The LGA does not believe that the resources required to collect information back to 2007-08 is commensurate with the potential insight to be gleaned from this historical data. This is particularly so as since 2005, councils have made significant improvements in accounting practices, risk control and information gathering and reporting. As a result, practices older than ten years are unlikely to have relevance to recent trends.</p>	<p>(ESCOSA Question 4.3)</p> <p>Do stakeholders consider it necessary to consider historical trends when applying the analytical framework?</p> <p>If not, why not? How should it be changed and why?</p> <p>(ESCOSA Question 4.4)</p> <p>Do stakeholders consider this to be an appropriate approach for the collection of historical information?</p> <p>If not, why not? How should it be changed and why?</p>
Ref: 4.4.1.3 Accounting for scale	<p>The LGA question the value to be gained by going to a deep level of granularity. The LGA also believe that picking one metric to normalise information by could be misleading. ESCOSA will still be able to draw meaningful conclusions by looking at total revenue sources without looking at per rateable property.</p> <p>The LGA reiterates that council rates are not a fee for service. Federal, state and local tiers of government in Australia operate on the principle that all citizens make an equitable contribution to the costs of running their government. Not all citizens</p>	<p>(ESCOSA Question 4.5)</p> <p>Do stakeholders agree that, where it is useful to do so, information should be normalised on a per rateable property basis?</p>

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
	<p>use all services such as public libraries, playgrounds or jetties and they are unlikely to travel over every local road or bridge. Citizens contribute to the costs of all government services, even if they do not use those services.</p> <p>Decisions about council service levels are matters for the elected members of councils.</p> <p>High-level ESCOSA advice on the financial implications of council decisions is welcomed.</p>	<p>If not, why not? How should it be changed and why?</p>
Ref: 4.4.1.4 Accounting for inflation	<p>The CPI measures increases in the costs of goods and services purchased by households/ consumers. This is a different bundle of goods and services than the bundle purchased by councils.</p> <p>The LGPI measures increases in the costs of goods and services actually purchased by councils. The LGPI is a more relevant index by which to judge whether council expenditure and revenue increases are reasonable.</p> <p>It is reasonable for ESCOSA to use CPI as an initial reference point (eg to note that costs faced by councils are rising faster than costs faced by consumers).</p> <p>If actual council expenditure costs are rising in accordance with the LGPI (rather than CPI) it is reasonable for council budget setting to be based upon the more relevant index.</p> <p>The Local Government Act provides discretion for councils to determine the reasonable assumptions to be used in the development of their LTFP. These issues were comprehensively reviewed as part of the passage of the Statutes Amendment (Local Government Review) Act 2021 and ultimately councils were not required to use specific indices. Rather, councils now have an obligation to include the assumptions used in the development of their LTFP. In attempting to prescribe the inflation index, ESCOSA inappropriately limit the discretion bestowed upon councils under the Act.</p>	<p>(ESCOSA Question 4.6)</p> <p>Do stakeholders agree that use of the CPI is an appropriate index to utilise when considering a council's operating income and expenditure growth over time?</p> <p>If not, why not? How should it be changed and why?</p>

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
<p>Ref: 4.4.2</p> <p>The key questions to address</p> <p>Whether a council's LTFP and IAMP are robust, consistent with each other and successfully implemented, with actual performance relative to plans monitored?</p> <p>Do the LTFP and IAMP, and the implementation of those plans, ensure the sustainability of the council's long-term financial performance and position?</p> <p>What are the implications of the above for a council's long-term financial sustainability and service risk profile, and the consequent appropriateness of the path projected for</p>	<p>The LGA believe that the first three key questions on page 22 encapsulate much of what is required of a high-level review of the 'relevant matters'.</p> <p>A high-level review would satisfy ESCOSA's section 122 obligations whilst also providing councils with useful but not extraneous advice.</p> <p>The LGA are still considering the detail of these questions in the context of broader comments above.</p> <p>Under section 122, it is not ESCOSA's role to audit whether a council has 'successfully implemented' the LTFP and IAMP. However, ESCOSA should have 'regard to' the historical trends evidenced by the financial indicators. For example, if a council's LTFP is projecting an Asset Sustainability Renewal Ratio of 100 percent for the next ten years but over the last five years the ratio has been below that, ESCOSA would be justified in highlighting this and recommending that the council review the robustness of the assumptions that have formed the LTFP.</p> <p>The 'relevant matters' relate to the material amendments made or proposed to be made to the LTFP and IAMP (and the potential impact on the revenue sources outlined in the funding plan) not to the implementation of the plans.</p> <p>The LGA agree that the implications of a council's long-term financial sustainability forms part of ESCOSA's scope however the LGA does not agree that a council's 'service risk profile' is a matter contemplated by s122.</p> <p>The further factors which ESCOSA propose to review (ie. cost control, ratepayer demographics and practical implementation) descend into a level of detail beyond the scope of the legislation. Rather, these are matters for the</p>	<p>(ESCOSA Question 4.7)</p> <p>Do stakeholders consider these to be appropriate questions for implementing the analytical framework?</p> <p>If not, why not? How should they be changed and why?</p>

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
<p>general rates and other income sources?</p>	<p>democratically Elected Members of council, council administrations, council auditors and council Audit Committees.</p> <p>The LGA agree that the three key financial ratios are an appropriate mechanism which should guide high-level advice however we do not believe it is the role of ESCOSA to verify or audit the information that feeds into the ratios.</p>	
<p>Ref: Table 5: Key questions</p>	<p>The LGA proposes an approach consistent with the high-level review contemplated by s122.</p> <p>The <i>Local Government (Financial Management) Regulations 2011</i> Regulation 5(1) outlines that a LTFP must include:</p> <p>(b) a summary of proposed operating and capital investment activities presented in a manner consistent with the note in the Model Financial Statements entitled Uniform Presentation of Finances; and</p> <p>(c) estimates and target ranges adopted by the council for each year of the long-term financial plan with respect to an operating surplus ratio, a net financial liabilities ratio and an asset renewal funding ratio presented in a manner consistent with the note in the Model Financial Statements entitled Financial Indicators.</p> <p>(2) A long-term financial plan must be accompanied by a statement which sets out—</p> <p>(a) the purpose of the long-term financial plan; and</p> <p>(b) the basis, including key assumptions, on which it has been prepared; and</p> <p>(c) the key conclusions which may be drawn from the estimates, proposals and other information in the plan.</p> <p>The LGA therefore submit that the focus of ESCOSA's key questions should be on the information (that is required by the regulations to be included) in the LTFP (ie. what are the historical figures indicating about the validity and robustness of</p>	

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
	<p>the assumptions used to predict the proposed high-level trends). Note that many councils provide more information in their LTFP than required by the regulations. The LGA does not believe that such a choice by a council expands the scope of the review contemplated by s122.</p> <p>The LGA does not believe it is the role of ESCOSA to verify or audit the data contained in council LTFPs and/or the ratios. The LGA notes that council financial statements are already audited by external auditors.</p> <p>The LGA does not support the scope of ESCOSA's review including any matter or any process which is already provided for in the legislative scheme governing SA councils (eg audits, comparisons of council data).</p>	
Material amendment	<p>The LGA agrees with ESCOSA that what is a 'material' amendment to a LTFP or IAMP will depend on the council being considered. The LGA does not believe it is appropriate to further constrain the definition of materiality. Councils have an existing understanding around what is considered 'material' in the context of their financial statements, as guided by Australian Accounting Standards. This understanding should be drawn on to guide ESCOSA in this regard.</p>	<p>(ESCOSA Question 4.8)</p> <p>Do stakeholders consider the proposed approach to a material amendment appropriate?</p> <p>If not, why not? How should it be changed and why?</p>
<p>Ref: 4.4.3</p> <p>How the analytical framework can address the key questions and what information is required to do so</p>	<p>The LGA does not support Methodological Proposal 3 which further expands the proposed scope of the review, adding additional analysis methods that will considerably increase council costs. For example the review of audited financial statements and audit committee reviews are all matters regulated by other parts of the Local Government Act with other bodies and individuals responsible for their oversight.</p> <p>The LGA does not support the ESCOSA review replicating any task already provided for in the statutory scheme.</p>	<p>(ESCOSA Question 4.9)</p> <p>Do stakeholders consider this an appropriate approach to the analytical framework to assess the key questions in Table 5?</p> <p>If not, why not? How should the approach be amended and why?</p>

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
	<p>The LGA accepts that section 122(1e) enables ESCOSA to make guidelines relating to the provision of information by councils. The LGA submits that this section authorises guidelines dealing with <i>how</i> relevant information is provided. The LGA does not consider that section 122(1e):</p> <ul style="list-style-type: none"> • expands the possible scope of a rates oversight scheme; nor • does it authorise the acquisition of documents that are beyond the objectives of a review, as set out in section 122(1g). <p>Section 122(1e) requires each council to provide "all relevant information" on:</p> <ul style="list-style-type: none"> • material amendments made or proposed to be made to the council's LTFP and infrastructure and asset management plan and the council's reasons for those amendments; and • revenue sources outlined in the funding plan (which is part of the LTFP). <p>This section relates to the provision of information. The LGA does not consider it lawful or appropriate to use section 122(1e) guidelines to increase the scope of the rates oversight review.</p> <p>The powers of ESCOSA to obtain information for s122 reviews are clearly defined in s122(1j). That is, ESCOSA "may, by written notice, require a council [emphasis added] to give the designated authority, within a time and in a manner stated in the notice (which must be reasonable), information in the council's possession [emphasis added] that the designated authority reasonably requires for the performance of the designated authority's functions under this section".</p> <p>This power does not extend to information held by parties external to a council (ie. the LGA and/or LGFA).</p> <p>As argued above, the range of information that ESCOSA may obtain is limited by the words and context of s122. The LGA does not believe that the (usually wide) discovery powers available to ESCOSA pursuant to the <i>Essential Services</i></p>	

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
	<p><i>Commission Act 2002</i> are applicable when conducting a review pursuant to s122 of the Local Government Act.</p> <p>The expression "all relevant information" is, at first glance, broad. However, this expression must be read in the context of:</p> <ul style="list-style-type: none"> the purpose of the amendments to section 122, as articulated in the Second Reading Speeches; the description of the LTFP and IAMP as the 'relevant matters'; and the objectives of the Act, set out in section 122(1g). <p>The LGA does not agree that the expression 'all relevant documents' authorises the inclusion in the review of a wide range of documents, which are not necessary for ESCOSA to understand and provide a high-level review of the LTFP or IAMP.</p> <p>Further, the LGA does not accept that a power to obtain these documents (if such a power exists) authorises a widening of the scope of the rates oversight review.</p> <p>Furthermore, the LGA does not support the inclusion of graphs which include analysis of figures which are:</p> <ul style="list-style-type: none"> 'CPI constrained' – As outlined above, the Act provides discretion for councils to determine the key assumptions to be used in the development of their LTFP. The LGA contends that ESCOSA's role is to assess whether the assumptions that a council has used are reasonable. It is not ESCOSA's role to determine which indices or assumptions a council must use. The practical effect of this proposal could be that councils are effectively 'constrained to CPI'. 'per property' – The LGA question the value to be gained by going to a deep level of granularity. The LGA also believe that picking one metric to normalise information by could be misleading. ESCOSA will still be able to draw meaningful conclusions by looking at total revenue sources without looking at per rateable property. 	

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
<p>Ref: 4.5.1</p> <p>Content of the advice</p>	<p>ESCOSA proposes to "provide an overarching picture of any potential cost control, affordability, and sustainability risk, based upon actual performance and forecast performance. Further, the advice can utilise available qualitative information regarding a council's SMP, its current CEO sustainability assessment and its approach to setting rates to identify how any risks identified in the quantitative assessment are managed/mitigated, creating opportunity for further discussions on those matters".</p> <p>The LGA submits that the proposed 'Content of the advice' goes beyond the advice contemplated by the section 122 scheme. For example, section 122 does not contemplate that ESCOSA will assess how council manages and mitigates risks.</p> <p>The LGA position remains that the ESCOSA review is a high-level review, focused on the 'relevant matters'.</p>	<p>(ESCOSA Question 4.10)</p> <p>Do stakeholders consider this an appropriate approach to developing the content of the advice that the Commission provides to each council? If not, why not? How should the approach be amended and why?</p>
<p>Ref: 4.5.2</p> <p>Publication of the advice</p>	<p>Section 122(1h) requires councils to publish ESCOSA advice and the council's response to that advice in its annual business plan (ABP) (which must be published on the council's website).</p> <p>ESCOSA proposes that councils publish this advice in full. It argues that this is in the public interest and would not constitute commercially sensitive information.</p> <p>The LGA assumes that ESCOSA's advice will be separated into findings and recommendations with attached explanatory and supporting analysis.</p> <p>The LGA accepts that the legislation requires the publication of ESCOSA advice and that it is in the public interest for this advice to be made public.</p> <p>A very large ESCOSA report may impact adversely on the size and readability of councils ABPs.</p>	<p>(ESCOSA Question 4.11)</p> <p>Do stakeholders consider this an appropriate approach to adopt for the publication of the advice, given the legal framework?</p> <p>If not, why not? How should the approach be amended and why?</p>

<i>ESCOSA DFA Reference</i>	<i>LGA Secretariat Comments</i>	<i>Council Comments</i>
	<p>The LGA queries whether it is possible for an (ESCOSA-prepared) executive summary (ie. the findings and recommendations) to be published in the council's ABP, together with an ESCOSA link to the full document.</p> <p>This approach would ensure the full advice was available to council and all others who wished to access it, whilst keeping council ABP to a manageable size.</p>	
Ref: 4.6.1 <i>Alignment with the legal framework</i>	<p>The LGA does not agree with either the proposed analytic framework nor ESCOSA's interpretation of the legal framework.</p> <p>The LGA does not consider that the proposed analytical framework aligns with the legal framework. The analytical framework includes matters and a level of detail (eg service sustainability, costs control and affordability) beyond the scope of section 122.</p>	<p>(ESCOSA Question 4.12)</p> <p>Do stakeholders consider the analytical framework aligned with the legal framework?</p> <p>If not, why not? How should the approach be amended and why?</p>
Ref: 4.6.2 <i>Alignment with the overarching principles for the analytical framework</i>	<p>As already outlined above, the LGA believes that the analytical framework includes matters and a level of detail (eg service sustainability, costs control and affordability) beyond the scope of section 122.</p>	<p>(ESCOSA Question 4.13)</p> <p>Do stakeholders consider the analytical framework to be aligned with the overarching principles for its development?</p> <p>If not, why not?</p>

<i>ESCOSA DFA Reference</i>	<i>LGA Secretariat Comments</i>	<i>Council Comments</i>
Ref: 5.2 <i>Guidelines and information provision</i>	<p>The LGA notes Principle 5 which proposes a scheme that leverages existing information and evidence. By contrast, the 'proforma Excel template' contemplated in this question indicates that council officers will be required to populate new datasets (albeit using existing information) in new documents. The DFA contains several template documents which appear to require the insertion of large amounts of data to complete. This will:</p> <ul style="list-style-type: none"> Consume significant council resources in preparing; and Expand the scope of the ESCOSA review beyond the scope contemplated by s122, thereby increasing overall council costs. <p>Some documents may already exist but may no longer be readily available (for example, an historical document which has been archived with State Records will require time and the payment of a fee before it can be retrieved).</p> <p>The LGA submits that as far as possible, ESCOSA restrict the documents it compels councils to provide to those documents that already exist <u>and</u> which remain readily available.</p>	<p>(ESCOSA Question 5.1)</p> <p>Do stakeholders consider publishing a revised set of guidelines and proforma Excel template no later than the start of each the Relevant Financial Year appropriate?</p> <p>If not, why not? How should the approach be amended and why?</p>
Ref: 5.3 <i>Timing of information provision</i>	<p>A major concern with the first iteration of the Rates Oversight Scheme related to proposed timelines which were inconsistent with council budget preparation cycles. The timeframe set out in s122 was drafted, based upon feedback from the 68 councils, taking into account workloads of financial teams and the timing, each year, when particular documents would become available.</p> <p>Section 122(1e) gives councils the option of providing the required information earlier than the 30 September deadline. The LGA does not agree that ESCOSA has a power to vary the statutory deadline set out in this section.</p> <p>The guidelines referred to in s122(1e) enable ESCOSA to guide councils on <i>how</i> information is provided (for example, in a particular format). However, this guideline-making power must be exercised in a manner consistent with the Act.</p>	<p>(ESCOSA Question 5.2)</p> <p>Do stakeholders consider the proposed timing for information provision appropriate?</p> <p>If not, why not? How should the approach be amended and why?</p>

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
	For these reasons the LGA submits that the timeline for providing information to ESCOSA remain as set out in s122(1e).	
Ref: 7.1 Cost recovery - Introduction	<p>As set out above, several versions of rate capping and rates oversight schemes were put before Parliament. Ultimately, it was agreed that an ESCOSA review would focus on a council's 'long-term financial plan' (LTFP) and its 'infrastructure and asset management plan' (IAMP).</p> <p>ESCOSA proposes a scope of review that is considerably wider than contemplated by section 122.</p> <p>The LGA acknowledges that the more information analysed, the more expensive the resulting report will be. However, it does not follow that a review that is twice as complex or twice as expensive will provide double the value to the local government sector.</p> <p>A high-level, limited scope review will likely provide councils with sufficient information to make appropriate choices about their financial settings.</p> <p>Councils are required to reimburse ESCOSA for the costs of each review. ESCOSA has indicated that the cost per review per council may be in the order of \$52,000.</p> <p>As ESCOSA proposes to adopt the same review process for each council there is unlikely to be a significant variation in the amounts paid by different councils.</p> <p>These costs are likely to fall on a council once every four years.</p> <p>Former Minister Vickie Chapman previously advised Parliament that the costs of an ESCOSA review were "likely to be in the order of \$20,000 per council".¹⁵ ESCOSA now propose a process that would cost each council \$52,000 per review.</p>	

¹⁵ Debate on the Statutes Amendment (Local Government Review) Bill 2020, House of Assembly, 13 October 2020.

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
	<p>The LGA accepts that costs would inevitably increase, in the 18 months since Minister Chapman's Parliamentary costs statement. The LGA does not seek to bind ESCOSA to this undertaking.</p> <p>However, the increase in the scope of rates oversight reviews, as proposed by ESCOSA, has obviously led to substantial increases in the costs of the scheme to the sector. A reduction in the scope would reduce costs. ESCOSA has not made a case which would justify the proposed increase in scope.</p>	
Ref: 7.2 Reasonable costs	<p>The LGA does not agree that the legislation provides for recovering set up and developments costs:</p> <p><i>(1k) The designated authority may recover from a council (as a debt due from the council) the costs reasonably incurred by the designated authority in performing its functions under this section in relation to the council.</i></p> <p>The LGA notes that the amendments to section 262M of the Act which will create the new Behavioural Standards Panel (the Panel) permit the Panel to invoice councils for "the reasonable costs of establishing the Panel". There is no similar clause entitling ESCOSA to recover its establishment costs from councils.</p> <p>Section 122(1k) authorises ESCOSA to charge councils that for costs that are incurred "in relation to the council". This does not include the overheads or fixed costs of ESCOSA (eg recruitment costs, implementation of new IT systems) that are not attributable to a particular council or the establishment costs of the new scheme.</p> <p>It is a well-established principle that government taxation and fee for service powers must be drafted expressly. It is not sufficient for a power for a government agency to compulsorily acquire payments from third parties to be drafted in implied or indirect terms.</p> <p>As there is no legislative authority to charge councils, fixed costs, overheads and establishment costs must be borne by the State Government.</p>	<p>(ESCOSA Question 7.1)</p> <p>Do stakeholders agree with the Commission's approach to allocating its projected indicative costs across the first cycle of the scheme?</p> <p>If not, why not? How should the approach be amended and why?</p> <p>(ESCOSA Question 7.2)</p> <p>Do stakeholders agree with the Commission's approach to addressing any material difference between its actual costs and its projected indicative costs?</p> <p>If not, why not? How should the approach be amended and why?</p>

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
Ref: 7.3 Cost recovery	<p>The Act requires ESCOSA to invoice each council directly, ESCOSA propose an alternative arrangement whereby ESCOSA send one bill to the LGA. The LGA, would then recover these funds from councils. ESCOSA also propose spreading the payments over four years so that councils pay a smaller amount each year rather than a large lump payment once every four years.</p> <p>The LGA does not have statutory authority to act in the manner ESCOSA propose. All 68 councils would need to agree that the LGA should act as their agent for the purpose of payment of ESCOSA invoices.</p> <p>The negotiations required to establish and maintain 68 agency agreements appears to involve a greater workload for all involved, compared with ESCOSA simply issuing invoices directly to councils.</p> <p>The LGA is therefore disinclined to agree to the Commission's proposal that they should bill the LGA unless member councils consider this would add significant value.</p>	<p>(ESCOSA Question 7.2)</p> <p>Do stakeholders agree that the Commission should bill the LGA the total yearly cost associated with the scheme, noting that any such scheme would require unanimous agreement between the LGA and member councils covering at least the first four-year cycle?</p> <p>If not, why not?</p>
Ref: 7.3.2 When should councils be billed and with what frequency?	<p>Going forward (after the first four years), councils would need an early indication of costs to build into annual budgets.</p>	<p>(ESCOSA Question 7.4)</p> <p>Do stakeholders agree with the Commission's approach to the timing and frequency of billing?</p> <p>If not, why not? How should the approach be amended and why?</p>
Ref: 7.3.3 How should costs be allocated between councils?	<p>The LGA will be guided by feedback from member councils.</p>	<p>(ESCOSA Question 7.5)</p> <p>If the Commission were to bill each of the 68 councils separately, do stakeholders agree with its proposed approach to allocating the total yearly cost between councils?</p>

ESCOSA DFA Reference	LGA Secretariat Comments	Council Comments
		<p>If not, why not? How should the approach be amended and why?</p>

Appendix 1

Example confidentiality order

1. Pursuant to section 90(2) and (3)(j) of the *Local Government Act 1999* the Council orders that the public be excluded from attendance at that part of this meeting relating to Agenda Item **XX (Report title)**, except the following persons:
 - **List relevant staff names and position titles**
 to enable the Council to consider item **XX** in confidence on the basis the Council considers it necessary and appropriate to act in a meeting closed to the public (excepting those persons listed above) in order to receive, discuss or consider in confidence the following information or matter:
 - information the disclosure of which would divulge information provided on a confidential basis by a public authority, being the Local Government Association of SA (LGA)
 the disclosure of which would, on balance, be contrary to the public interest, being information provided by the LGA in relation to proposed advocacy and sector wide submission in response to the Essential Services Commission of SA 'Draft Framework and Approach' that the LGA has requested be kept confidential at this stage.
2. The disclosure of this information would, on balance, be contrary to the public interest because it is in the public interest for the Council to be able to communicate on a confidential basis with the LGA about proposed sector advocacy and thereby act cooperatively with the LGA in achieving positive outcomes for the local government sector.
3. Accordingly, on this basis, the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or matter confidential.

Section 91(7) Order

1. Pursuant to Section 91(7) of the *Local Government Act 1999*, the Council orders that the following documents relating to Agenda Item **XX (Report title)** shall be kept confidential, being documents relating to a matter dealt with by the Council on a confidential basis under Sections 90(2) and 90(3)(j) of the Act:
 - Report and attachments
 - Minutes
 on the grounds that the documents relate to information provided on a confidential basis by a public authority, being the Local Government Association of SA (LGA) the disclosure of which would, on balance be contrary to the public interest, being information provided by the LGA in relation to proposed sector advocacy that the LGA has requested be kept confidential at this stage.
2. The disclosure of this information would, on balance, be contrary to the public interest because it is in the public interest for the Council to be able to communicate on a confidential basis with the LGA about proposed sector advocacy and thereby act cooperatively with the LGA in achieving positive outcomes for the local government sector.
3. This order shall operate until 30 June 2022.
4. Pursuant to section 91(9)(c) of the *Local Government Act 1999*, the Council delegates to the Chief Executive Officer the power to revoke this order in whole or part.