



**Draft amendments to the Tasmanian Water  
and Sewerage Industry Customer Service  
Code**

**Consultation Paper**

**February 2015**

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## INVITATION FOR SUBMISSIONS

This Consultation Paper has been prepared to assist interested persons in making submissions on proposed amendments to the Tasmanian Water and Sewerage Industry Customer Service Code. The Consultation Paper is intended to provide the context for the proposed amendments.

It is the policy of the Economic Regulator (the Regulator) to publish all submissions on the Office of the Tasmanian Economic Regulator (OTTER) website unless the author of the submission requests confidentiality in relation to the submission (or any part of the submission). Those parts of a submission that are requested to be confidential should be submitted as an attachment to that part suitable for publication.

The Regulator will not publish submissions which contain material that the Regulator believes is, or could be, derogatory or defamatory.

Submissions should be received by close of business on **Friday, 20 March 2015**.

To facilitate the publication of submissions on the OTTER website, submissions by email are preferred. Submissions and enquiries may be made to:

office@economicregulator.tas.gov.au

or to

the Project Officer

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A copy of this Consultation Paper may also be found on the OTTER website [www.economicregulator.tas.gov.au](http://www.economicregulator.tas.gov.au). Interested parties are directed to the 'February 2015' listings under the 'What's New' tab.

The proposed amendments have been explained in detail throughout this Consultation Paper, with the more complex of the suggested changes to the Code shown in 'marked-up' format. That is, the proposed newly inserted text has been identified with the use of underlining and any text to be removed from the current published version of the Code has been shown in ~~striketrough~~ format.

## 1 INTRODUCTION

The *Water and Sewerage Industry Act 2008* (the Act) provides for the establishment of an economic regulatory framework for the provision of water and sewerage services, including, under section 57, the issue of a Customer Service Code (the Code). The Act, under Part 4 Division 1, establishes the Water and Sewerage Economic Regulator (the Regulator), prescribing its functions, powers and obligations under that Act. It is in accordance with those provisions that the Regulator must establish and administer the Code. The Act also requires the Regulator to monitor and report on the compliance of a regulated entity with the Code.

In reviewing its ongoing issues register for potential amendments to legislative instruments, the Regulator has identified a number of issues relating to the Code that should be addressed to ensure its accuracy and ongoing administrative efficiency. The proposed amendments to the Code are outlined in this Consultation Paper, along with a discussion on each proposal. The proposed amendments to the Code, with respect to how revised clauses are to be drafted, are shown in marked-up text/boxes throughout.

In accordance with Part A of the Code, the Regulator must advise the Minister of any amendments, rescissions or substitutions and provide the Minister with a copy of the amended or substituted Code.

The Regulator will not amend, rescind or substitute the Code until regulated entities and other stakeholders have had a reasonable opportunity to make representations and those representations have been considered, in accordance with the *Consultation Policy and Procedures of the Tasmanian Economic Regulator Guideline* (Consultation Policy).

The Regulator will give reasonable notice to a regulated entity of any amendments or substitutions to, or rescission of, the Code.

As soon as practicable after amending, rescinding or substituting the Code, the Regulator will cause –

- a notice of the rescission or making of the amendment or substitution to be published in the Gazette;
- a notice of the rescission to be published on the Regulator’s website; and
- the amended or substituted Code to be published on the Regulator’s website.

## 2 PROPOSED AMENDMENTS

### **Proposal 1: Amend Part A – Amendment to this Code**

#### *Fast track amendment clause*

If the Regulator seeks to amend the Code it must first undertake consultation, which is then conducted in accordance with the Regulator’s Consultation Policy. This current requirement can lead to inefficiencies in cases where:

- (a) consultation on the proposed change(s) has already occurred as part of a separate process (eg, a Price Determination Investigation process, amendments to guidelines, etc) and a second round of consultation would, therefore, be unnecessary; or
- (b) changes to legislation require the Code to be amended for consistency, and the Regulator, therefore, exercises no discretion over such amendments.

The provision of a ‘fast track amendment’ clause in the Code would allow the Regulator to bypass consultation in cases where the Code must be amended to reflect changes in legislation (non-discretionary), and in cases where consultation on the proposed amendment has already been undertaken as part of another process.

To this end, it is proposed that a section that facilitates fast track arrangements for Code amendments, in the aforementioned circumstances, be inserted into Part A of the Code. It is proposed that the fast track provisions mirror those of the Tasmanian Electricity Code and, therefore, extend to include the fast tracking of amendments which are of a minor or procedural nature and those that are required to correct a manifest error.

A suggested draft of the proposed new fast track clause is provided below. Terms in italicised text indicate terms which are presently defined in the Code.

#### **b. FAST TRACK AMENDMENT TO THIS CODE**

The *Regulator* may change the code without conducting consultation if the *Regulator* considers that it is necessary or desirable to change the code in relation to any matter which is:

1. of a minor or procedural nature;
2. required to reflect a change in legislation or industry technical standards;
3. required to correct a manifest error; or
4. one on which the *Regulator* has previously consulted with all relevant licensees or interested parties in accordance with the *Consultation Policy and Procedures of the Tasmanian Economic Regulator Guideline*, and
  - i. it was explained during the consultation that the decision or solution based on that consultation may be given effect by a code change;
  - ii. the proposed code change does give effect to that decision or solution in relation to the matter;
  - iii. adequate records of the consultation and submissions received during the consultation are publicly available; and
  - iv. the proposed code change is consistent with *water law*.

#### **Formatting changes to Part A of Code**

To accommodate the insertion of the proposed ‘fast track amendment clause’, as outlined above, it is proposed that the ‘Amendment to this code’ section under Part A of the current Code be divided into two sub-sections.

Those being:

- a. General amendment to this code; and
- b. Fast track amendment to this code.

To facilitate this, it is proposed that each of the current headings in Part A of the Code be numbered, such that the new provision can be referenced directly as “Part A (II)(b)”.

Furthermore, some minor wording changes to the proposed newly numbered Part A (II)(a) will have to be made as a consequence of the fast track amendment clause insertion. A summary of the proposed renumbered clauses in Part A of the Code, along with other required amendments (shown in marked-up format), is provided below:

## **PART A – INTRODUCTION**

This code is made under section 57 of the *Water and Sewerage Industry Act 2008* and in accordance with the *Water and Sewerage Industry (Customer Service Standards) Regulations 2009*.

### **I. PURPOSE**

The purpose of this code is to specify standards and conditions of service and supply with which a *regulated entity* (and its agents) must comply in providing certain *regulated services to customers*. It applies in respect of a *regulated entity's* water supply services intended for drinking water, reticulated drinking water that is *non-potable water*, and *sewerage services*.

.....

### **II. AMENDMENT TO THIS CODE**

#### **a. GENERAL AMENDMENT TO THIS CODE**

This code may be reviewed by the *Regulator* on its own initiative or at the request of any person or the Minister.

The *Regulator* may amend, rescind or substitute this code.

The *Regulator* must advise the Minister of any amendments, rescissions or substitutions and provide the Minister with a copy of the amended or substituted code.

Subject to clause II(b), ~~The~~ *Regulator* will not amend, rescind or substitute this code until *regulated entities* and other stakeholders have had a reasonable opportunity to make representations and those representations have been considered, in accordance with the *Consultation Policy and Procedures of the Tasmanian Economic Regulator Guideline*.

.....

**b. FAST TRACK AMENDMENT TO THIS CODE**

The Regulator may change the code without conducting consultation if the Regulator considers that it is necessary or desirable to change the code in relation to any matter which is:

.....

**III. COMMENCEMENT**

Clauses 5.2, 5.3, 5.4.1(e), (k), (l), (n), and (o), 5.6, 7.3, 7.5 and 14.5 of this code apply to a *regulated entity* from 1 July 2011.

The remainder of this code applies to a *regulated entity* from 1 July 2010.

**IV. SEPARATE WRITTEN CONTRACTS**

A separate written contract, entered into in accordance with section 61 of the *Water and Sewerage Industry Act 2008*, for the provision of a *regulated service* need not comply with this code.

**V. INTERPRETATION**

Italicised terms in this code are defined in Part D - Definitions.

**Proposal 2: Amend clause 5.3 – Issue of bills**

The Code does not currently specify the timeframes that bills must be issued within by a regulated entity, nor does it place any obligation on a regulated entity to issue a bill within a determined period of time from when the meter, in respect of a property relating to a bill, is read. This can lead to customers receiving multiple bills (for multiple billing periods) within short periods of time, potentially causing financial difficulties for these customers.

The National Electricity Retail Rules requires both electricity and gas bills to be 'issued' at least every three months. It was intended, at the time of the Code's development, that the billing arrangements for water and sewerage entities be consistent with those of businesses in other industry sectors. In this way, provisions of the Code were structured to ensure billing periods of no less than one month and no more than three months as well as an obligation upon regulated entities to endeavour to undertake meter reads every billing period. However, and as mentioned above, the Code was not drafted to specify the timing requirements for the actual 'issue' of a bill with respect to a billing period. It is important that this initial intent be clarified.

As such, it is proposed that clause 5.3 of the Code be amended to include a new sub-clause 5.3.2, which prescribes the timeframe that a bill must be issued within, following the conclusion of the relevant billing period. The Regulator proposes that 30 days is a fair timeframe for this purpose. The proposed new sub-clause is shown below:

5.3.2 A bill must be issued within 30 days of the conclusion of the *billing period* to which the charges in the *bill* relate.

### Proposal 3: Amend clause 16.3 – Consultation (customer charter)

Clause 16.3.1 of the Code states that, “Before adopting or varying a customer charter, a *regulated entity* must consult with its *customers*”. This means that any mandatory amendments to a customer charter required due to changes in legislation must be consulted upon by the regulated entity with its customers. Given the redundancy of instances of consultation where there is no discretion regarding the changes required, it is proposed that a clause be inserted into the Code to allow a regulated entity to make amendments to its customer charter without consultation in those cases where the amendments in question are required to reflect legislative changes or changes in industry technical standards.

To facilitate this change, it is proposed that amendments be made to sub-clause 16.3.1 of the Code and that a new sub-clause (16.3.2) be inserted to read as follows:

- 16.3.1 Unless clause 16.3.2 applies, ~~Before~~before adopting or varying a customer charter, a *regulated entity* must consult with its *customers*.
- 16.3.2 A *regulated entity* may vary a customer charter when required, without consulting with its *customers*, to reflect a change in legislation or industry technical standards.

### Proposal 4: Amend clause 18.3 – Provision of charter or summary

The Code requires a regulated entity to provide a copy of its customer charter or a summary of the customer charter to existing customers with the first bill following the approval of the customer charter by the Regulator. This has previously led to administrative problems for a regulated entity, where the first bill run following the approval of the customer charter fell shortly after the approval of the charter and resulted in insufficient time for the regulated entity to have its charter or summary document printed and subsequently included with customer accounts.

It is proposed that clause 18.3 of the Code be amended to include a new sub-clause (18.3.2), as outlined below, which will allow a regulated entity to seek the Regulator’s approval to provide a copy of its customer charter or summary at a later date in those circumstances where the timing obligations of sub-clause 18.3.1(a) cannot be met. In addition, and as outlined under ‘Proposal 5’ in this Consultation Paper, the term ‘customer’ has been included in references to ‘charter’ to ensure consistency with the presentation of this term throughout the Code.

- 18.3.1 Subject to clause 18.3.2, A *regulated entity* must provide a copy of the customer charter or a summary of the customer charter:
- a. to existing *customers* with the first *bill* after it has been approved by the *Regulator* in accordance with clause 16.4; and
  - b. to new *customers* within one month of becoming registered with the *regulated entity* in respect of a property.

18.3.2 Where a regulated entity anticipates that it will be unable to meet the obligations imposed under 18.3.1(a), the regulated entity must request in writing, at the time of submission of the customer charter to the Regulator for review and approval, that the Regulator allow a copy of the customer charter or summary of the customer charter to be provided to existing customers at such later date as may be agreed between the regulated entity and the Regulator.

**Proposal 5: Administrative amendments**

The Regulator has also identified a number of minor administrative changes that that it intends to implement to improve the consistency and integrity of the Code. These are described in the following table.

Clause(s) to be Amended	Proposed Amendment
2.2.1	<p>The <i>Water and Sewerage Industry (Customer Service Standards) Regulations 2009</i> (Customer Service Regulations) stipulate that a code must specify the circumstances in which a regulated entity must connect a customer. Clause 2.2.1 of the Code outlines the relevant connection arrangements/obligations of a regulated entity where the requirements of sub-clauses 2.2.1 (a) to (g) of the Code are met.</p> <p>However, the inclusion of the lead into clause 2.2.1, which reads "Subject to section 56U of the <i>Water and Sewerage Industry Act 2008</i>", actually alters the meaning/interpretation of that clause and is inconsistent with the specific provisions of Regulation 6 of the Customer Service Regulations.</p> <p>To ensure consistency with the Customer Service Regulations, it is proposed that the reference to section 56U of the <i>Water and Sewerage Industry Act 2008</i> be removed from clause 2.2.1. That is, that clause 2.2.1 of the Code be redrafted as follows:</p>
	<p>2.2.1 <del>Subject to section 56U of the <i>Water and Sewerage Industry Act 2008</i>, a</del> regulated entity must connect to a property that is owned or occupied by a person within 10 <i>business days</i>, or such later date as agreed between the <i>regulated entity</i> and the person, if:</p> <p style="padding-left: 40px;">a. the property is within 30 metres of the infrastructure; and</p> <p>.....</p>

3.2.4, 9.1.2(b), 9.2.2	<p>Amending incorrect references to clauses within the Code as follows:</p> <p><u>Sub-clause 3.2.4</u> - The reference to clause 3.1.2 in sub-clause 3.2.4 is incorrect. Notification requirements are actually located within sub-clause 3.2.2 of the Code. There is no sub-clause 3.1.2 in the Code.</p> <p>This was an oversight in the drafting of Version 1 of the Code and will be corrected with the replacement of the reference "3.1.2" (in sub-clause 3.2.4) with "3.2.2".</p> <p>That is, it is proposed that clause 3.2.4 of the Code be amended as follows:</p>
	<p>3.2.4      The notification requirements for variation, as noted in clause <del>3.1.2</del><u>3.2.2</u>, do not apply if there is in force, in relation to the <i>customer</i>, a <i>Price Determination</i> or an interim price order made in accordance with <i>water law</i> which does not require such notice to be given.</p>
	<p><u>Sub-clause 9.1.2(b)</u> - The reference to clauses 8.3.2(a) to (d) in sub-clause 9.1.2(b) is incorrect. Information requirements with respect to reminder notices can be found in clauses 7.1.1(a) to (d) of the Code. This error is to be amended with the replacement of the words "clauses 8.3.2" within this sub-clause with the words "clauses 7.1.1", as shown below.</p>
	<p>9.1.2      A <i>regulated entity</i> may only take legal action or restrict a <i>customer's water service</i> for non-payment if:</p> <p>a. more than 28 days have elapsed since the issue of the <i>bill</i> referred to in clause 5.4 and more than 14 days have elapsed since the issue of a reminder notice referred to in clause 7.1;</p> <p>b. the <i>customer</i> has been sent a reminder notice referred to in clause 7.1, consistent with the information requirements of clauses <del>8.3.2</del><u>7.1.1</u>(a) to (d), and including information on the <i>regulated entity's</i> financial hardship policy and other programs that are available to help <i>customers</i> with payment difficulties; and</p> <p>.....</p>

	<p><u>Sub-clause 9.2.2</u> - There is a reference in sub-clause 9.2.2 to clause 9.2 not restricting a regulated entity's rights to pursue a debt owed by a person who is no longer a customer.</p> <p>As there are only sub-clauses 9.2.1 and 9.2.2 in clause 9.2, the reference in sub-clause 9.2.2 should be amended to say “9.2.1”.</p> <p>It is proposed that this be addressed by revising the reference to “Clause 9.2” in sub-clause 9.2.2 to “Clause 9.2.1”. That is, sub-clause 9.2.2 will be redrafted to read as follows:</p>
	<p>9.2.2 Clause 9.2.1 does not restrict a <i>regulated entity's</i> rights under <i>water law</i> to pursue a debt owed to it by a person who is no longer a <i>customer</i>.</p>
<p>4.1.2(h) 4.1.2(i)</p>	<p>The requirements to be provided for in a regulated entity's complaints, enquiries and disputes policy are listed under clause 4.1.2 of the Code. The ‘list’ is an all inclusive list – with all sub-clauses a) to k) required to be met. To this end, the term "and" must be included after the semicolon at the end of both sub-clauses 4.1.2(h) and 4.1.2(i). This was a drafting oversight in the development of Version 1 of the Code.</p>
<p>16, 17, 18</p>	<p>A regulated entity is required under the <i>Water and Sewerage Industry (Customer Service Standards) Regulations 2009</i>, and the Code, to develop and issue a customer charter.</p> <p>Obligations with respect to the customer charter and its contents are detailed throughout clauses 16, 17 and 18 of the Code. However, there is inconsistency with referencing the customer charter within the Code with the terms ‘charter’ and ‘customer charter’ being used interchangeably.</p> <p>As ‘customer charter’ is the term defined in the <i>Water and Sewerage Industry (Customer Service Standards) Regulations 2009</i>, and to ensure accuracy and clarity, it is proposed that all instances of ‘charter’ throughout the Code be amended to read ‘customer charter’.</p>
<p>18.2.1</p>	<p>Clause 18.2.1 currently states that “a <i>regulated entity</i> may summarise or otherwise communicate the contents of its customer charter if the summary document at least addresses” requirements (a) to (k). The phrase “otherwise communicate” is ambiguous to the extent that it is unclear how the customer charter may otherwise be communicated.</p> <p>The Regulator proposes that the words “or otherwise communicate” be removed from clause 18.2.1.</p>

The nature of the aforementioned administrative changes is such that they will not have a substantive impact on the operations or requirements of the Regulator or a regulated entity.