
CHAPTER 12

ADMINISTRATIVE FUNCTIONS

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CHAPTER 12 ADMINISTRATIVE FUNCTIONS

12.1 GENERAL

12.1.1 Application

This Chapter applies to all *Licensees*.

12.1.2 Purpose

This Chapter describes the key processes associated with the administration of the *Code*, being the following:

- (a) the procedures for resolving disputes between *Licensees*;
- (b) the method of changing the *Code*;
- (c) confidentiality provisions governing all *Licensees*;
- (d) monitoring and reporting powers of the *Regulator*;
- (e) the *Reliability Review* process; and
- (f) *Code* consultation procedures.

12.2 DISPUTE RESOLUTION

12.2.1 Application and guiding principles

- (a) If a dispute arises between *Licensees* in respect of this *Code*, then the *Regulator* may determine that dispute at the request of all parties to the dispute. The *Regulator* has an absolute discretion as to whether it will hear the dispute or not.
- (b) The *Regulator* may impose conditions on which it will hear the dispute, including:
 - (1) a requirement that each party enters into a release and indemnity in favour of the *Regulator* and its *representatives* in relation to any loss, damage or liability that the party would otherwise suffer as a consequence of any act or omission done by the *Regulator* or its *representatives* in good faith in connection with the dispute; or
 - (2) that the *Regulator* will appoint another person with relevant experience and expertise to assist with the dispute or, if appropriate, to determine the dispute on the *Regulator's* behalf.
- (c) The *Regulator* may withdraw from hearing the dispute at any time before a determination is made.

- (d) The *Regulator* is not bound by the rules of evidence and may decide the procedures for hearing the dispute in its absolute discretion.
- (e) The *Regulator* may make directions as to the conduct of the hearing of the dispute, the time frame for production of relevant information, exchange of relevant information between the parties, the venue and hearing times, and other relevant procedural matters.
- (f) The *Regulator* may direct the parties to take steps to assist with the resolution of the dispute, including directing the parties to provide any material in their possession or control which is reasonably relevant to the issues in dispute.
- (g) The *Regulator's* determination is conclusive and binding in the absence of manifest error. The *Regulator* must give reasons for its determination.
- (h) Each disputing party will bear its own costs in relation to the dispute. The parties must pay the *Regulator's* reasonable costs of hearing the dispute. The *Regulator* may decide the proportion in which the parties will bear its costs having regard to the extent to which the parties have acted reasonably or been at fault.
- (i) To the extent permitted by law, neither the *Regulator* nor its *representatives* are liable for any loss, damage or liability suffered or incurred by a *Licensee* or any other person as a consequence of any act or omission of them done in good faith in connection with the dispute.

12.3 CODE CHANGE

12.3.1 How the Code may be changed

- (a) Subject to the *Minister's* powers under the *ESI Act*, the provisions of the *Code* may only be *changed* by the *Regulator* in accordance with:
 - (1) clause 12.3.3, if paragraph (2) does not apply; or
 - (2) clause 12.3.4, if the “fast track” procedures in that clause apply.

12.3.2 Code Change submissions

- (a) A *Licensee* or an *interested party* may submit a *Code change* proposal to the *Regulator*. The written submission must include a brief statement of the reasons why the proposed *change* is necessary or desirable and whether that person considers the *change* should be dealt with under clause 12.3.3 or clause 12.3.4.
- (b) The *Regulator* must decide, at its absolute discretion, within 30 *days*, whether the proposed *change* will proceed and, if so, whether amendments to the proposal are required. In making that decision, the *Regulator* may consult with such *Licensees* and *interested parties* that it considers appropriate (if any).
- (c) If the *Regulator* decides to proceed with the *Code change* proposal, the *Regulator* is to proceed under either clause 12.3.3 or 12.3.4 as applicable.

12.3.3 General Code Change procedure

- (a) If the *Regulator* considers that it is necessary or desirable to *change* the *Code* (including any *change* which is submitted to it by a *Licensee* or an *interested party* under clause 12.3.2), the *Regulator* must consult all *Licensees* and *interested parties* on the *Code* change proposal in accordance with the *Consultation Guidelines*.
- (b) The *Regulator* must consider any timely submissions received by the *Regulator*.

12.3.4 “Fast Track” Code Change by the Regulator

- (a) The *Regulator* may *change* the *Code* if the *Regulator* considers that it is necessary or desirable to *change* the *Code* in relation to any matter (including any *change* which is submitted to it by a *Licensee* or an *interested party* under clause 12.3.2), which is:
 - (1) of a minor or procedural nature;
 - (2) required to reflect a *change* in 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 *Regulator’s Consultation Guidelines*, 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 the objectives of the *ESI Act*.
- (b) In the case of any of the matters referred to in clause 12.3.4(a), the *Regulator* may consult or ask for submissions from only such *Licensees* and *interested parties* as the *Regulator* considers appropriate (if any).
- (c) After holding any such consultations or receiving any such submissions, the *Regulator* must notify all *Licensees* and *interested parties* of the proposed *change*. *Licensees* and *interested parties* may make a submission in *writing* to the *Regulator* regarding the proposed *change* within the period provided in the notice after the notice is published.
- (d) The *Regulator* must consider any timely submissions received by the *Regulator*.

12.3.5 [deleted]

12.3.6 [deleted]

12.3.7 [deleted]

12.3.8 Implementing a Code change

- (a) If the *Regulator* decides to proceed with the proposed *change* under clause 12.3.3 or 12.3.4, then the *Regulator* may make the proposed *change* and publish notice in the Tasmanian Government Gazette and on the *Regulator's* website.
- (b) The *change* will take effect on the later of:
 - (1) the date of *publication* of the notice of approval and of the *change* in the Tasmanian Government Gazette; and
 - (2) the date specified in the notice for the commencement of the *change*.

12.3.9 Notice by publication

- (a) A notice under this clause 12.3, is deemed properly given by the *Regulator* if a copy of the notice is published in the Tasmanian Government Gazette and on the *Regulator's* website.
- (b) A notice under this clause 12.3.9 is treated as being given to a person by the *Regulator* on the date when the notice is published in the Tasmanian Government Gazette.

12.3.10 [deleted]

12.4 CONFIDENTIALITY

12.4.1 Confidentiality

- (a) Each *Licensee* must use all reasonable endeavours to keep confidential any *confidential information* which comes into the possession or control of that *Licensee* or of which the *Licensee* becomes aware.
- (b) A *Licensee*:
 - (1) must not disclose *confidential information* to any person except as permitted by the *Code*;
 - (2) must only use or reproduce *confidential information* for the purpose for which it was disclosed or another purpose contemplated by the *Code*;
 - (3) must not permit unauthorised persons to have access to *confidential information*.
- (c) Each *Licensee* must use all reasonable endeavours:

- (1) to prevent unauthorised access to *confidential information* which is in the possession or control of that *Licensee*; and
- (2) to ensure that any person to whom it discloses *confidential information* observes the provisions of this clause 12.4 in relation to that information.

12.4.2 Exceptions

This clause 12.4 does not prevent:

- (a) **(public domain)**: the disclosure, use or reproduction of information if the relevant information is at the time generally and publicly available other than as a result of breach of confidence by the *Licensee* who wishes to disclose, use or reproduce the information or any person to whom the *Licensee* has disclosed the information;
- (b) **(employees and advisers)**: the disclosure of information by a *Licensee* or the *Licensee's Disclosees* to:
 - (1) an employee or officer of the *Licensee* or a related body corporate of the *Licensee*; or
 - (2) a legal or other professional adviser, auditor or other consultant (in this clause called "*Consultants*") of the *Licensee*,

which require the information for the purposes of the *Code*, or for the purpose of advising the *Licensee* or the *Licensee's Disclosee* in relation thereto;

- (c) **(consent)**: the disclosure, use or reproduction of information with the consent of the person or persons who provided the relevant information under the *Code*;
- (d) **(law)**: the disclosure, use or reproduction of information to the extent required by law or by a lawful requirement of:
 - (1) any government or governmental body, authority or agency having jurisdiction over a *Licensee* or its *related bodies corporate*; or
 - (2) any stock exchange having jurisdiction over a *Licensee* or its *related bodies corporate*;
- (e) **(disputes)**: the disclosure, use or reproduction of information if required in connection with legal proceedings, arbitration, expert determination or other dispute resolution mechanism relating to the *Code*, or for the purpose of advising a person in relation thereto;
- (f) **(trivial)**: the disclosure, use or reproduction of information which is trivial in nature;
- (g) **(safety)**: the disclosure of information if required to protect the safety of personnel or equipment;
- (h) **(potential investment)**: the disclosure, use or reproduction of information by or on behalf of a *Licensee* to the extent reasonably required in connection with the

Licensee's financing arrangements, investment in that *Licensee* or a disposal of that *Licensee's* assets;

- (i) **(Regulator)**: the disclosure of information to the *Regulator*, the *AER* or any other regulatory authority having jurisdiction over a *Licensee*, pursuant to the *Code* or otherwise;
- (j) **(reports)**: the disclosure, use or reproduction of information of an historical nature in connection with the preparation and giving of reports under the *Code*; or
- (k) **(aggregate sum)**: the disclosure, use or reproduction of information as an unidentifiable component of an aggregate sum.

12.4.3 Conditions

In the case of a disclosure under clause 12.4.2(b) or 12.4.2(h) prior to making the disclosure the *Licensee* who wishes to make the disclosure must inform the proposed recipient of the confidentiality of the information and must take appropriate precautions to ensure that the recipient keeps the information confidential in accordance with the provisions of this clause 12.4 and does not use the information for any purpose other than that permitted under clause 12.4.1.

12.4.4 Application of confidentiality provisions to the Regulator

For the purpose of clause 12.4 (other than clause 12.4.5), "*Licensee*" includes the *Regulator* and any panel or other body established by the *Regulator* under the *Code*.

12.4.5 Policies on protection of information

The *Regulator* must develop, through consultation, policies concerning:

- (a) the protection of information which the *Regulator* and *Code bodies* acquire pursuant to their various functions from use or access by *Licensees* or *Code bodies* which is contrary to the provisions of the *Code* or would be contrary to the confidentiality provisions of the *ESI Act*; and
- (b) the dissemination of such information where appropriate to *Licensees* and *interested parties*.

The *Regulator* shall publish the policies and related procedures developed in accordance with this clause.

12.4.6 Classification resolution process

- (a) A person may request the *Regulator* to inform the person whether information provided by the person to the *Regulator* is *confidential information*.
- (b) The *Regulator* must decide whether the information is confidential and respond in *writing*, setting out the basis for the *Regulator's* decision.
- (c) If the *Regulator* decides that the information provided by the person is not *confidential information*, the person may, within 7 days of receiving the

Regulator's response, provide the *Regulator* with further information which supports the person's case for classifying the information as *confidential information*.

- (d) After receiving further information provided by the person in accordance with clause 12.4.6(c), the *Regulator* must review its decision and inform the person whether or not the *Regulator* has changed its decision on this matter.
- (e) [deleted]
- (f) [deleted]
- (g) The *Regulator* must protect the information in dispute in accordance with the policies developed under 12.4.5 when the relevant stage of the classification resolution process as set out in this clause 12.4.6 is still in progress.

12.5 INCIDENT REPORTING

- (a) In accordance with any guideline published by the *Regulator*, all *Licensees* must conduct reviews of incidents or deviations from normal operating conditions in order to assess the adequacy of the provision and response of *facilities* or services, and the appropriateness of actions taken to restore or maintain *supply*.
- (b) All *Licensees* are required to submit a report to the *Regulator* following the review undertaken in accordance with the preceding clause. The report must be in accordance with, and provided within the times required by the *Regulator* and in accordance with guidelines published by the *Regulator*.

12.6 RELIABILITY REVIEW

12.6.1 Reliability Review Process

- (a) The *Regulator* must review and report at least once in every 3-year period on the performance of the industry in terms of *reliability* of the *power system*.
- (b) [deleted]
- (c) [deleted]
- (d) In reviewing and reporting in accordance with clause 12.6.1(a), the *Regulator* must have regard to the actual and prospective impacts on end-use customers.

12.6.2 [deleted]

12.6.3 [deleted]

12.7 CODE CONSULTATION PROCEDURES

- (a) The *Regulator* shall develop in consultation with *Licensees* and *interested parties* policies and procedures for consultation on *Code* matters and for more general application in respect of the exercise of discretionary decision making.

- (b) These policies and procedures shall be published by the *Regulator*.
- (c) The *Regulator* shall review and report on the consultation policies and procedures at the request of any *Licensees* or on such occasion as there is a significant *change* to either *ESI Act* or the *Code* which rely upon consultation to give effect to any policy or the making of any determination or decision by the *Regulator*.

12.8 MANAGEMENT PLANS, COMPLIANCE PLANS, REPORTING AND INDEPENDENT APPRAISAL

12.8.1 Management Plans and Compliance Plans

- (a) Within 6 *months* of receiving written notice from the *Regulator* a *Licensee* must submit to the *Regulator*:
 - (1) any *management plan* specified as a condition of its *Licence*; and/or
 - (2) a *compliance plan*.
- (b) The *management plan* may include one or more of the following plans:
 - (1) vegetation management;
 - (2) customer service;
 - (3) network contingency management;
 - (4) asset management; and
 - (5) any other plan as specified by the *Regulator* as a condition of a *Licensee's licence*.
- (c) The *management plan* must be produced by a *Licensee* in accordance with any relevant guidelines produced by the *Regulator*.
- (d) The *compliance plan* must be produced by a *Licensee* in accordance with any relevant guidelines produced by the *Regulator*.

12.8.1.1 Revised Management and Compliance Plans

- (a) A *Licensee* must regularly review its *management plan* and/or *compliance plan* and submit to the *Regulator* a revised *management plan* and/or *compliance plan* on every fifth anniversary of the date when the *management plan* or *compliance plan* was last submitted or on another date otherwise agreed with the *Regulator*.
- (b) The *Regulator* may at any time request the submission of a *management plan* or *compliance plan* but if this request does not coincide with the 5 yearly submission the *Regulator* shall give reasons and show good cause for such request. Any such request shall be a *reviewable decision*.

12.8.1.2 Amended Management Plans and Compliance Plans

In the event that a *Licensee* makes a material *change* to either the *management plan* or *compliance plan* during the five year period a *Licensee* must submit to the *Regulator* the amended *management plan* or *compliance plan* with a statement identifying the material *change*, the reasons for the material *change* and the effect of the material *change*.

12.8.2 Performance Reports

(a) A *Licensee* must provide to the *Regulator*:

- (1) a report of its performance for the *financial year* no later than the following ~~30 September~~31 October; and
- (2) if requested by the *Regulator* in *writing*, a report of its performance for each quarter of the *financial year* by the end of the following month after each quarter of the *financial year*. Any such request shall be a *reviewable decision*.

(b) The performance report must be prepared in accordance with any guidelines produced by the *Regulator* and address the performance indicators and targets determined by the *Regulator* in consultation with the *Licensee* and notified to the *Licensee*.

12.8.3 Independent Appraiser

(a) The *Regulator* may request a *Licensee* to appoint an independent appraiser to report to the *Regulator* on the *Licensee's* current *management plan*, *compliance plan* and or performance report, and anything else deemed appropriate by the *Regulator*.

(b) The *Regulator* will consult with the *Licensee* and develop terms of reference for the independent appraiser to address when reporting to the *Regulator*.

(c) The process of appointing the independent appraiser, the role of independent appraiser and the content of the report produced by the independent appraiser will be in accordance with and take into account any guidelines produced by the *Regulator*.

(d) The independent appraiser appointed by a *Licensee* must have the skills and experience appropriate to discharge the responsibilities as an appraiser in accordance with the requirements of the guidelines referred to in 12.8.3(c).

(e) The independent appraiser's primary duty is to the *Regulator*.