



## GUIDELINE

# Consultation Policy and Procedures of the Tasmanian Economic Regulator

Version ~~7~~8

~~26 February 2021~~xx March 2025

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# VERSION AND EFFECTIVE DATE

## Version and effective date

A version number and date of issue will identify every version of this Guideline. This version, Version [78](#), became effective on [26 February 2024](#)~~xx~~ [March 2025](#).

[In accordance with its functions as outlined in legislation, the Tasmanian Economic Regulator \(the Regulator\)<sup>1</sup> regulates a number of monopoly, near-monopoly and specified industries within Tasmania. Accordingly, the Regulator](#) recognises that as the [energy industry, water and sewerage industry and](#) respective regulatory environments change over time, the policy and procedures outlined in this Guideline may require updating.

The Regulator intends to review and revise the Guideline as appropriate and welcomes comment at any time regarding its content.

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<sup>1</sup> Established under section 9 of the *Economic Regulator Act 2009*.

# 1 GENERAL CONSULTATION POLICY

## 1.1 Purpose

The Regulator acknowledges that community and industry engagement is a vital part of its approach to regulation and undertakes to consult and engage with its stakeholders and the community whenever relevant. Participation in consultations is encouraged -and provides the Regulator with important insights, views and feedback that will inform the Regulator in its decision-making process.

The purpose of this Guideline is to provide guidance on the general policy and procedures that the Regulator will apply ~~in~~ when engaging and informing entities, consumers and other persons affected by the exercise of the Regulator's powers.

## 1.2 Objectives

In applying the ~~consultation~~ principles ~~as~~ outlined in section 1.5 of this Guideline, the Regulator aims to achieve consultation that:

- encourages input from interested parties and experts to inform significant regulatory decisions;
- promotes public confidence in the regulatory scheme and its administration;
- develops and maintains a relationship with stakeholders based on cooperation and trust, focusing on relevant issues;
- gives proper weight to the concerns of the relevant parties consistent with the objectives of the legislation; and
- delivers administrative fairness, and meets relevant confidentiality and legislative requirements.

### 1.1.3 Application of policy

The consultation policy contained in this Guideline is applicable to the extent that respective legislation is silent as to the conduct of consultation. Where legislation prescribes notification, consultation or confidentiality requirements, those requirements will take precedence over this policy.

## 1.21.4 When the Regulator will consult

The Regulator will consult in relation to the exercise of statutory discretions or responsibilities, which that affect the interests of entities, consumers or other persons.

### 1.2.11.4.1 Industry guidelines and standards

~~Unless required by law, w~~When amending a guideline the Regulator will generally only consult if the changes involve the exercise of the Regulator's discretion to alter or affect the rights or obligations of entities, consumers or other persons, unless consultation is required by law.

## 1.31.5 Consultation Principles

In conducting consultation, the Regulator will apply the following principles, of being:

- Transparent

For example, acting openly, such as through the public disclosure of processes and information, whilst balancing privacy and confidentiality principles.

- Fair

For example, acting honestly and impartially, such as in the provision of information and consideration of submissions.

- Accountable

For example, being answerable and responsible, such as providing reasons for decisions and welcoming feedback to improve the consultation process.

- Relevant

For example, ensuring consultation material is suitable for its audience and has a bearing on the subject matter.

- Focused (where deemed appropriate)

For example, conducting consultation that is well planned, co-ordinated and targeted to only those parties most directly affected by the proposed regulatory decision(s).

- Broad (where deemed appropriate)

For example, consulting widely to ensure the consultation captures all parties affected, or potentially affected, by the proposed regulatory decision(s).

- Informative

For example, providing adequate, understandable and useful information, such as explaining the issues relating to the matter of consultation in an appropriate style.

- Accessible

For example, being approachable and responsive, such as welcoming and providing responses to submissions, and providing accessible information, such as through the website publication of consultation papers and, on occasion, summaries to allow those consulted to quickly assess whether the material is relevant to them and whether they need to read further. In addition, information will be provided in an easily understandable format, using plain language. Where possible, allowance will also be made for submissions to be provided to the Regulator in various formats (e.g. written, verbal).

- Timely

For example, providing information and responses in a timely fashion and providing a reasonable time for interested parties to make submissions.

- Flexible

For example, permitting consultations to take a variety of forms other than written consultation, including, but not limited to, stakeholder or public meetings, working groups or focus groups. The appropriateness of each consultation approach will depend on the issue(s) under consideration, the nature of the parties being consulted, and the time available for the consultation process.

## 1.4 Objectives

~~In applying these principles, the Regulator aims to achieve consultation that:~~

- ~~• encourages input from interested parties and experts to inform significant regulatory decisions;~~

- ~~promotes public confidence in the regulatory scheme and its administration;~~
- ~~develops and maintains a relationship with stakeholders based on cooperation and trust, focusing on relevant issues;~~
- ~~gives proper weight to the concerns of the relevant parties consistent with the objectives of the legislation; and~~
- ~~delivers administrative fairness, and meets relevant confidentiality and legislative requirements.~~

## 2 CONSULTATION PROCEDURES

### 2.1 Application of procedures

The following procedures are designed to reflect the policy set out in Section 1 of this Guideline. Without limiting the Regulator's discretion to design and apply a unique consultation strategy if appropriate, the framework below provides guidance as to the manner in which the Regulator may conduct consultations in the absence of legislatively prescribed procedures.

### 2.2 Method of consultation

The method of consultation adopted by the Regulator will be designed to meet the intended purpose of the consultation, and will vary depending on factors such as the complexity of the subject matter, time constraints, the nature of the interests potentially affected, the nature and number of interested parties, and the extent of public interest. The Regulator will generally apply a consistent method of consultation in circumstances where these factors are similar.

#### 2.2.1 Inviting submissions

Generally, the consultation process will begin with an outline of the matter under consideration, including relevant issues and background information, and an invitation for submissions from interested parties. This information will be provided to those persons identified (or identifying themselves) as interested parties, and will be supported by publication on the Regulator's website and advice to relevant advisory groups. In some cases, ~~such as consideration of an application for a licence,~~ the Regulator will also provide public notice through newspapers.

In some instances, the decision of the Regulator is such that the conduct of consultation may appropriately proceed by way of notice of a draft or proposed decision and an invitation for written submissions. This method will at times have extensive consultation behind it on various issues relating to the decision, whilst at other times the matter at hand may be minor or procedural and will require more limited background comment.



The submission process is often, in itself, sufficient to appropriately inform and solicit the views of stakeholders prior to the making of a decision.

### 2.2.2 Advisory bodies, public hearings, workshops and consultants

In some instances, the Regulator may consider it appropriate to enhance the above method of consultation by:

- requesting advice from ~~already established~~ advisory bodies, such as the OTTER Customer Consultative Committee (OCCC)<sup>2</sup>. ~~Other Bodies will be consulted as they are established in accordance with the provisions of the Water and Sewerage Industry Act 2008<sup>3</sup>;~~
- conducting a public hearing – to gather and disseminate information and facilitate explanation and understanding of the subject matter;
- conducting workshops with interested parties – to explore the subject matter in greater depth, exchange ideas, generate dialogue and discuss options;
- establishing a focus group - to provide advice to the Regulator from a particular perspective; and/or
- requesting advice from specialist bodies and consultants.

## 2.3 Notifying stakeholders

The manner in which notification is made ~~goes may depend on to~~ the 'method' of consultation. As discussed, this has regard to the nature and number of interested parties, and the nature or significance of the interest and the matter at hand.

The manner in which the Regulator may bring consultation to the attention of interested parties includes:

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<sup>2</sup> ~~The OCCC is an advisory committee appointed in accordance with the Electricity Supply Industry Act 1995, Gas Industry Act 2019 and Water and Sewerage Act Industry Act 2008. It ensures that groups representing customer interests are informed as to developments in these industry sectors and that the Regulator is informed of issues from the perspective of those groups. The OCCC is an important part of the regulatory framework for the electricity, natural gas and water and sewerage supply industries. It ensures that groups representing customer interests are informed as to developments in the industry and that the Regulator is informed of issues from the perspective of those groups.~~

<sup>3</sup> ~~Section 24(1) of the Water and Sewerage Industry Act 2008 states that the Regulator may establish advisory committees to advise the Regulator on specified aspects of the administration of this Act.~~

- direct email or postal correspondence;
- notice published on the website at [www.economicregulator.tas.gov.au](http://www.economicregulator.tas.gov.au);
- notice published in local newspaper(s); and
- notice published in relevant publications (such as the Tasmanian Government Gazette).

### 2.3.1 Notice details

Where relevant, the notice of consultation will reference the:

- proposed decision, background and issues;
- method of consultation;
- scope of the Regulator's jurisdiction;
- where to locate consultation papers; and
- contact person(s).

If the Regulator seeks written submissions, then the notice may also state:

- the matters to be considered in submissions (e.g. relevant legislative provisions and guidelines);
- that submissions should be received by a nominated date, unless by prior agreement with the Regulator;
- the address to send submissions (email preferred); ~~and~~
- that all submissions may be published on the Regulator's website unless the author requests that the submission (or part of it) be treated as confidential (material subject to a request for confidentiality must be clearly identified); ~~and~~;
- that ~~the~~ the Regulator will not publish submissions which contain material that the Regulator believes is or could be derogatory or defamatory.

## 2.4 Consultation period

The consultation period will depend on factors such as the complexity of the subject matter, ~~and~~ the extent of public interest

and the impact of the proposed regulatory decision(s). Where written submissions are sought, the period during which submissions may be made will generally be 21 days. ~~However, t~~This may vary to some extent, ~~but~~The Regulator will determine, on a case-by-case basis, the consultation period will be so that it is of sufficient length to allow interested parties to prepare informed submissions.

It is clear that some highly complex or technical matters, or the volume of the subject matter, may require additional time to analyse ~~(e.g. the comprehensive review of the Tasmanian Electricity Code<sup>4</sup> in preparation for NEM entry)~~. On other occasions, the nature of the person being consulted will be relevant. If local government is involved, it may be that additional time needs to be factored in to allow consideration by the cycle of council meetings and to take account of timeframes outlined in the Second State-wide Partnership Agreement between Government of Tasmania and Tasmanian Councils on Communication and Consultation (Revised December 2010)<sup>5</sup>.

## 2.5 Consultation papers

Consultation papers, such as issues papers, draft reports, terms of reference, licence applications and draft regulatory instruments, will be made available on the Regulator's website at [www.economicregulator.tas.gov.au](http://www.economicregulator.tas.gov.au), to assist interested parties in considering the issues and making comment.

## 2.6 Publication and consideration of submissions

To promote transparency, submissions may be published on the Regulator's website, unless the author requests that the submission, or part of it, be treated as confidential. Any material for which a request for claim of confidentiality is made should be clearly identified, and accompanied by reasons in support of that claim (see clause 2.7.1). -

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

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<sup>4</sup>~~The Tasmanian Electricity Code is issued by the Regulator pursuant to the Electricity Supply Industry Act 1995.~~

<sup>5</sup>Local Government Division, Department of Premier and Cabinet - Second State-wide Partnership Agreement between Government of Tasmania and Tasmanian Councils on Communication and Consultation

The Regulator will acknowledge in writing all submissions received during consultation and will advise the author if issues raised in a submission fall outside the scope of the Regulator's jurisdiction, noting that the Regulator is subject to general administrative law requirements to only have regard to relevant considerations in decision-making.

The Regulator may request further information from the author of a submission and seek a response from the relevant party regarding issues raised in a submission.

## 2.7 Confidentiality

The Regulator has a legislative duty to preserve the confidentiality of information that could affect the competitive position of an electricity or gas entity or other person, or which is commercially sensitive for some other reason<sup>6</sup>.

~~In respect of water and sewerage, t~~The Regulator and any other person(s) must preserve the confidentiality of information acquired in the course of carrying out duties in relation to the administration of the [Water and Sewerage Industry Act 2008, Act](#) with the exception of several prescribed conditions under which confidential information may be disclosed<sup>7</sup>.

The Regulator also has a legislative duty in respect of the protection of personal information (such as pursuant to the *Personal Information Protection Act 2004*).

The Regulator will apply the following principles when considering the treatment of material provided in response to its consultation processes if the person making the submission claims that the material is confidential.

### 2.7.1 Principles governing confidential submissions

- 1 Any information in a submission which the person making the submission considers to be confidential must be identified.
- 2 The person claiming confidentiality is to provide reasons in support of the claim in accordance with the following:

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<sup>6</sup> *Electricity Supply Industry Act 1995*, section 16, and *Gas Industry Act 2019*, section 16.

<sup>7</sup> *Water and Sewerage Industry Act 2008*, section 101.

- a. For information provided under the *Electricity Supply Industry Act 1995* or *Gas Industry Act 2019*, the person must explain the potential impact of disclosing the information on the person's competitive position or of the otherwise commercially sensitive nature of the information.
  - b. For information provided under the *Water and Sewerage Industry Act 2008*, the person must demonstrate that disclosing the information would cause detriment to that person, or to the person from whom that person received the information, and that this detriment would outweigh any public benefit to be gained from the disclosure.
- 3 Material that the Regulator accepts as confidential may be accorded less weight in the decision-making process than material that is published and withstands challenge and exposure to the market.
  - 4 If the Regulator does not accept a claim of confidentiality, the Regulator will advise the person making the submission of that decision and provide that person with the opportunity to withdraw the whole or relevant part of the submission.
  - 5 The Regulator reserves the right to disregard material for which confidentiality is claimed but which the Regulator does not consider should be treated as confidential.

## 2.8 Regulator's decision

Within a reasonable period from the close of consultation, the Regulator will publish its decision and reasons on the website at [www.economicregulator.tas.gov.au](http://www.economicregulator.tas.gov.au). The reasons for the Regulator's decisions<sup>8</sup> will recognise submissions received and the response of the Regulator to relevant issues raised in them. The Regulator will provide notification of its decision to parties who made submissions, or provided a response. Notification will be by direct correspondence or by notice on the website at [www.economicregulator.tas.gov.au](http://www.economicregulator.tas.gov.au) or relevant publications. Where the decision is published on the Regulator's website, hard copies will generally be made available upon request.

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<sup>8</sup> The *Electricity Supply Industry Act 1995* (Part 9); *Gas Industry Act 2019* (Part 7); and *Water and Sewerage Industry Act 2008* (Part 5) provide for the administrative review of certain decisions of the Regulator.