



*Review of the Consultation Policy and Procedures of
the Tasmanian Economic Regulator Guideline and
the Policy on the Treatment of Confidential
Submissions*

Consultation Paper

February 2025

Printed February 2025
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1 INVITATION FOR SUBMISSIONS

This Consultation Paper has been prepared to assist interested persons and stakeholders in making submissions on the amalgamation of, and proposed amendments to, the *Consultation Policy and Procedures of the Tasmanian Economic Regulator Guideline - Version 7* and the *Regulator's Policy on the Treatment of Confidential Submissions - Version 4*. The Regulator will consider submissions prior to the proposed amendments to these regulatory instruments being finalised and taking effect.

It is the Regulator's policy to publish all submissions on the Office of the Tasmanian Economic Regulator's (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 kept 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 14 March 2025.

To facilitate the publication of submissions on the OTTER website, submissions in electronic form are preferred. Submissions and enquiries may be submitted to:

office@economicregulator.tas.gov.au

or to

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Copies of this Consultation Paper and the draft *Consultation Policy and Procedures of the Tasmanian Economic Regulator Guideline - Version 8* are available on the OTTER website: [Consultations | Office of the Tasmanian Economic Regulator](#).

Following consideration of all submissions, the changes (with or without alteration) will be reflected in the final *Consultation Policy and Procedures of the Tasmanian Economic Regulator Guideline - Version 8* which will be published on the OTTER website.

2 INTRODUCTION

The *Consultation Policy and Procedures of the Tasmanian Economic Regulator Guideline - Version 7* (Consultation Guideline) provides guidance on the general policy and procedures that the Regulator intends to apply in engaging and informing entities, consumers and other persons affected by the exercise of the Regulator's powers. The Consultation Guideline also provides guidance on the Regulator's responsibilities with respect to consultation. The current Consultation Guideline was issued on 26 February 2021.

The Regulator's *Policy on the Treatment of Confidential Submissions - Version 4* (Confidentiality Policy) provides the principles that the Regulator will apply in regard to submissions, or information contained in submissions, that the person making the submission considers to be confidential. The current version of the Confidentiality Policy was also issued on 26 February 2021.

This Consultation Paper provides information on the proposal to combine the Regulator's Consultation Guideline and its Confidentiality Policy into a new *Consultation Policy and Procedures of the Tasmanian Economic Regulator Guideline - Version 8* (Revised Guideline). It also outlines minor drafting amendments to facilitate the amalgamation of the two guidelines and to improve its clarity and readability.

3 ISSUES

3.1 Treatment of confidential submissions

During the Regulator's 2021-22 pricing investigation into Aurora Energy's retail electricity (standing offer) prices, two interested parties provided a joint response as part of consultation on the Regulator's Draft Report, Draft Determination and Draft Price Approval Guideline.

The parties noted that the Regulator had withheld from public scrutiny, on commercial confidentiality grounds, a consultancy report prepared by the Utilities Regulation Advisory and Oakley Greenwood on Aurora Energy's cost to serve. The parties asserted that their ability to assess and comment on the Draft Report had been constrained by a lack of access to important and relevant information.

In response, the Regulator gave an undertaking to review its confidentiality provisions prior to conducting the next pricing investigation in 2024-25.

The Regulator's current principles governing confidential submissions are:

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:
 - 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.
6. The Regulator reserves the right not to publish material, for which confidentiality is not claimed or not accepted, if the Regulator believes that the material is, or could be, derogatory or defamatory.

The default position of the Regulator has been to publish all submissions received as part of consultation processes. This is consistent with the transparency principal of the Regulator's Consultation Guideline.

However, the Electricity Supply Industry Act and the Gas Industry Act each require the Regulator to preserve the confidentiality of information that could affect the competitive position of a regulated entity or other person, or information that is commercially sensitive for some other reason. Further, the Water and Sewerage Industry Act prohibits the disclosure of information acquired in the course of the administration of the Act if that information is confidential and, at the time the information is provided, the person providing it states that it is of a confidential nature.

Therefore, the Regulator is prohibited, under the Acts that govern its regulation of the electricity supply industry, gas industry and water and sewerage industry, from publishing certain information where that information has been identified by the person providing the information as being confidential.

In this context, the Regulator proposes to retain the option to not publish material that has been identified as confidential by the person making the

submission, provided that the person provides satisfactory supporting information to evidence the claim of confidentiality.

The current Confidentiality Policy provides that material that the Regulator accepts as confidential may be accorded less weight in the decision-making process than material that is published. This is because published material may be scrutinised and challenged by other interested parties, while unpublished material is not subject to the same scrutiny. Further, 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.

It is proposed to retain these discretions, to be applied on a case-by-case basis as appropriate.

While the Regulator is satisfied that the current principles remain appropriate and will continue to ensure the Regulator's consultation processes are open and transparent (while preserving confidentiality where required by the relevant Acts), it welcomes the views of interested parties on its treatment of confidential submissions.

3.2 Consultation policy and procedures

The Regulator's commitment to review its treatment of confidential submissions has provided an opportunity for the Regulator to consider its consultation arrangements and policies more broadly. As part of that process, the Regulator has decided to integrate its principles for the treatment of confidential submissions into its Consultation Guideline. To this end, the Regulator has merged its Consultation Guideline and Confidentiality Policy into a Revised Guideline. As part of this process, the Regulator also proposes the inclusion of some minor drafting revisions, primarily for clarity and improved readability.

The provisions of the current Consultation Guideline provide that *"unless required by law, when amending a guideline the Regulator will 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"*. The Regulator does not consider that the proposed amendments, as documented in the Draft Revised Guideline, alter or affect the rights or obligations of entities, consumers or other persons.

However, given the amalgamation of the two regulatory instruments, the Regulator recognises that the proposed revisions do appear reasonably substantial in nature. Therefore, the Regulator considers that a period of public consultation is appropriate.

A marked-up draft version of the Revised Guideline has been provided supplementary to this Consultation Paper. Proposed drafting amendments to the current Consultation Guideline are summarised under Section 4 of this Consultation Paper.

4 SUMMARY OF PROPOSED CHANGES

As noted previously, the Regulator is proposing a series of amendments to the Consultation Guideline. Apart from the introduction of confidentiality principles, these amendments are generally administrative in nature and have been introduced to provide clarity on some matters and improve readability.

Table 1: Amendments

Clause	Proposed Amendment
Version and effective date	Update text in the “Version and effective date” section so that it is clear that the functions of the Regulator, and consultation on relevant matters, extended beyond those relevant to only the electricity, gas, and water and sewerage sectors.
1.1 Purpose	Introduce a “Purpose” section at 1.1 of the Revised Guideline to clarify the reason/intention behind the Consultation Guideline.
1.2 Objectives	Move section 1.4 “Objectives” up to section 1.2, immediately after the newly inserted “Purpose” section.
1.3 Application of policy	Revise clause 1.3 to clarify that where legislation prescribes notification, consultation or confidentiality requirements, those requirements will take precedence over this policy.
1.4 When the Regulator will consult	Minor drafting amendment.
1.4.1 Industry guidelines and standards	Minor drafting amendment.
1.5 Consultation principles	<p>Update the “Focused” principle to clarify that “Focused” is referring to engaging with only those parties most directly affected by the proposed regulatory decision(s).</p> <p>Insert a new principle of the Regulator being “Broad”, where appropriate. For example, consulting widely to ensure that consultation captures all parties that may be affected by the proposed regulatory decision(s). This reflects to Regulator’s current practice.</p> <p>Update the “Accessible” principle to clarify that the Regulator may, on occasion, provide summaries to allow those consulted to quickly assess whether the material is relevant to them and whether they need to read further. In addition, that the Regulator will provide information in an easily understandable format, using plain language. Where possible, the Regulator will also allow for submissions to be provided in various formats. This reflects to Regulator’s current practice.</p> <p>Insert a new principle of the Regulator being “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. This reflects to Regulator’s current practice.</p>

2.2.1 Inviting submissions	Minor drafting amendment to remove a specific example of the Regulator publishing a notice in a newspaper when considering an application for a licence. Licence applications are infrequent and may not necessarily be advertised in a newspaper unless there is a legislative requirement.
2.2.2 Advisory bodies, public hearings, workshops and consultants	Insert a footnote defining the term “OTTER Customer Consultative Committee”.
2.3 Notifying stakeholders	Minor drafting amendment.
2.3.1 Notice details	Minor drafting amendments.
2.4 Consultation period	<p>Amend to note that the consultation period may also depend on the impact of the proposed regulatory decision(s), and clarify that the Regulator will determine, on a case-by-case basis, the consultation period so that it is of sufficient length to allow interested parties to prepare informed submissions.</p> <p>Remove reference to the comprehensive review of the Tasmania Electricity Code in preparation for NEM entry as an example of a highly complex or technical matter that may require additional time to analyse.</p> <p>Update the reference to the <i>Second State-wide Partnership Agreement between Government of Tasmania and Tasmanian Councils on Communication and Consultation (Revised December 2010)</i> and include a footnote as to the location of that document.</p>
2.6 Publication and consideration of submission	Insert clarification that a claim of confidentiality should be accompanied by reasons in support of that claim.
2.7 Confidentiality	<p>Insert draft introductory statement on confidentiality and the Regulator’s principals governing confidential submissions.</p> <p>Insert the Regulator’s confidentiality principals from the Confidentiality Policy, excluding principle 6, which relates to non-publication of material that the Regulator believes is, or could be derogatory or defamatory. An equivalent statement is included in clause 2.6.</p> <p>Introductory paragraphs from the Confidentiality Policy regarding the Regulator’s responsibilities with respect to consultation and specific legislative references have not been carried over to the Revised Guideline.</p>