



GUIDELINE

Consultation Policy and Procedures of the Tasmanian Economic Regulator

Version 7

26 February 2021

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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 7, became effective on 26 February 2021.

The Regulator¹ 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.

¹ Established under section 9 of the *Economic Regulator Act 2009*.

1 GENERAL CONSULTATION POLICY

1.1 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.

1.2 When the Regulator will consult

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

1.2.1 Industry guidelines and standards

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.

1.3 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**

For example, conducting consultation that is well planned, co-ordinated and targeted.

- **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.

- **Timely**

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

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. Other Bodies will be consulted as they are established in accordance with the provisions of the Water and Sewerage Industry Act²;

² 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.

- 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 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:

- direct email or postal correspondence;
- notice published on the website at 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). 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. Where written submissions are sought, the period during which submissions may be made will generally be 21 days. This may vary to some extent, but will be 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*³ 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 *State-wide Partnership Agreement between Government of Tasmania and Tasmanian Councils on Communication and Consultation*.

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

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.

³ The *Tasmanian Electricity Code* is issued by the Regulator pursuant to the *Electricity Supply Industry Act 1995*.

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 reason⁴. In respect of water and sewerage, 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 Act with the exception of several prescribed conditions under which confidential information may be disclosed. 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*).

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. The reasons for the Regulator's decisions⁵ 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 or relevant publications. Where the decision is published on the Regulator's website, hard copies will generally be made available upon request.

⁴ *Electricity Supply Industry Act 1995* section 16; *Gas Industry Act 2019* section 16; *Water and Sewerage Industry Act 2008* section 101.

⁵ 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.