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By online submission

Dear Ms Collyer

**Supplementary rule change proposal – Improving consultation procedures in the rules (ERC0323 and GRC 0060)**

This letter relates to AEMO’s pending rule change proposal, submitted in January 2021, to amend the rules consultation procedures in clause 8.9 of the National Electricity Rules and the extended consultative procedure in rule 9A of the National Gas Rules.

Following discussions between our organisations, AEMO is submitting the attached supplementary proposal in response to concerns raised by the AEMC prior to initiating consultation on the proposal. Except as otherwise specified, the supplementary proposal is to be read in conjunction with AEMO’s original proposal and does not replace it.

Should you have any further questions on our proposal please contact Kevin Ly, Group Manager Regulation at [kevin.ly@aemo.com.au](mailto:kevin.ly@aemo.com.au).

Yours sincerely



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Attachment: Supplementary electricity and gas rule change proposal – Rules consultation procedures



# SUPPLEMENTARY ELECTRICITY AND GAS RULE CHANGE PROPOSAL

RULES CONSULTATION PROCEDURES -  
ESB NATIONAL ELECTRICITY RULES SIMPLIFICATION  
PROJECT

**November 2021**



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## 1. SUMMARY

On 8 January 2021 AEMO submitted a rule change request to the AEMC to simplify, streamline, and improve the efficiency of the 'Rules consultation procedures' in rule 8.9 of the National Electricity Rules and the 'extended consultative procedure' in rule 9A of the National Gas Rules<sup>1</sup> (**original proposal**). The original proposal was formally supported by the AER.

For convenience, this proposal focuses on the rules consultation procedures in the NER, although the same observations apply to the extended consultative procedure in the NGR.

This document supplements AEMO's original proposal, and includes an updated version of NER 8.9 for the proposed draft rule (replacing section A.1 in the appendix to the original proposal). Otherwise, this document is to be read in conjunction with the original proposal.

The original proposal was, in short, to replace NER 8.9 with a consultation process aligned with the existing transmission and distribution consultation procedures set out in chapters 6 and 6A of the NER, with modifications to explicitly recognise the potential for additional consultation preceding the formal process, and to provide for transparency of minor or administrative rule changes.

Before initiating consultation on AEMO's proposed rule, the AEMC asked AEMO and the AER to consider additional draft rules to address AEMC concerns that the original proposal did not provide sufficient certainty on the extent of consultation to be consulted in any given instance. This supplementary proposal responds to those concerns by incorporating a set of consultation criteria to guide decision-makers in determining when they should extend consultation beyond the proposed mandatory 'minimum' requirements in the rules, and the potential forms for additional consultation. The revised draft of the proposed rule also includes a requirement for the decision-maker to develop, publish, and where necessary update a consultation plan based on the criteria.

AEMO has also suggested in this supplementary proposal that the AEMC consider the merits of aligning the Reliability Panel consultation procedures in NER 8.8.3 with the proposed revised rules consultation procedures.

## 2. THE NEED FOR CHANGE

The rules consultation procedures must support the efficient implementation of the many major rule change and reform initiatives under way that will require the market bodies to make new procedures and guidelines.

There is no doubt that Australia's energy markets and systems are undergoing a period of transformation that is unprecedented in its speed and complexity. It will be a challenge for regulatory instruments to catch up, and keep up, with the pace of this transition for several years to come. Complexity and variability in technologies, system needs, and business innovation means that:

- Detailed process methodologies and technical requirements will need to be specified in guidelines and procedures more often, in accordance with principles-based regulation and core requirements in the NER.
- Guidelines and procedures will need to be amended more frequently to cover issues that were previously unforeseen or unnecessary to regulate, and to address new or amended rules or other industry regulation or standards.

Rapid change requires agile regulation at this detailed level. An appropriate consultation process for procedures and guidelines must therefore be open and robust, and sufficiently adaptable to address the

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<sup>1</sup> Published on the AEMC's website at: <https://www.aemc.gov.au/rule-changes/improving-consultation-procedures-rules>



broad spectrum of documents and the diverse nature of matters for consultation under the rules. The complex and fast-changing landscape means that some regulatory issues may have relatively straightforward solutions with limited options, and need to be implemented quickly so the industry can get on with things; while others will have deeper and broader impacts or options that need to be understood and consulted on in more depth. Often it will be beneficial for a range of stakeholder groups to come together to promote mutual understanding of those impacts and jointly workshop solutions that best meet the ultimate common objective in the national electricity/gas objective.

The current rules consultation procedures do not facilitate fit-for-purpose consultation that can be tailored appropriately to these different circumstances. The inflexible rounds of consultation and mandatory steps prescribe minimum timeframes that are weighted towards the front end of the process<sup>2</sup>, and decision timeframes that do not readily support additional voluntary consultation. In some cases, the rules consultation procedures can act as a barrier to constructive and timely regulatory improvements, where all resources (of AEMO and relevant participants) are consumed in completing the mandatory process even where it is inefficient.

AEMO is cognisant of, and welcomes, all feedback on its stakeholder engagement performance and has launched a major program of positive and constructive improvement to the way we engage and consult – whether or not required by the rules.<sup>3</sup> AEMO emphasises that, in itself, a mandated consultation process is neither the cause of perceived ‘poor’ consultation, nor the solution to ‘good’ consultation. However, best practice, fit-for-purpose consultation needs to be supported by a flexible consultation framework in the rules.

## 3. ORIGINAL PROPOSAL AND DISCUSSION OF ISSUES

### 3.1 Overview of original proposal

The original proposal was to replace the current rules consultation procedures in rule 8.9 with a consultation process that already exists in two other NER rules<sup>4</sup>. The transmission/distribution consultation procedures currently apply to the development and amendment of economic regulatory guidelines made by the AER for transmission and distribution, as well as the AEMC’s compensation guidelines for administered pricing events under clause 3.14.6 of the NER.

In summary, AEMO considers that a process equivalent to the transmission/distribution consultation procedures will provide the flexibility to conduct fit-for-purpose consultation on any decision, while ensuring a robust minimum level of transparent public consultation. The procedures involve:

- A prescribed consultation involving written submissions on a draft determination or document, with a minimum 30-business day submission period. This is longer than the 25 business days under the initial (issues) stage of the current rules consultation procedures, which only provides for 10 business days on a draft decision or document.
- Publication of non-confidential written submissions, and a summary of responses to all material issues raised in them.

<sup>2</sup> Under rule 8.9 the minimum consultation period on an issues paper (first stage) is approximately 5 weeks, with extensions for stakeholder-requested meetings. The minimum period for submissions on a draft report and instrument is only 2 weeks.

<sup>3</sup> AEMO, *Reviewing AEMO’s Engagement Model*, January 2021. Available at: <https://aemo.com.au/en/consultations/current-and-closed-consultations/renewing-aemos-engagement-model>

<sup>4</sup> Transmission consultation procedures under rule 6A.20 and distribution consultation procedures in rule 6.16



- An overall maximum period of 80 business days in which to make a final determination, allowing for further consultation measures as appropriate, in addition to preparatory consultation that could be undertaken by the decision-maker to canvass issues and opinions before producing a draft.
- Ability to extend the overall time limit if necessary where the consultation involves issues of unusual complexity or difficulty, or due to a material change in circumstances.

The original proposal slightly enhanced the current transmission/distribution consultation procedures for the purposes of rule 8.9. Provisions were added expressly confirming that additional consultation steps may occur before or during the regulated consultation period, and to provide for transparency of minor or administrative amendments that can generally be made without consultation.

## 3.2 Issues raised and discussion

The AEMC asked AEMO and the AER to consider its concerns that the original proposal may not achieve an appropriate balance between flexibility and certainty for industry stakeholders about their opportunities to provide feedback on any given matter. A range of suggestions was discussed, focusing on two areas in particular:

- Principles to guide when additional consultation would be appropriate, and prescribing the form of that additional consultation.
- A requirement for the decision-maker to publish its intended consultation plan at the start of each consultation.

As previously noted, the original proposal effectively mirrors an existing consultation process established within the NER. However, AEMO has proposed further modifications to address the AEMC's concerns. A revised proposal for rule 8.9 is set out in Appendix A. AEMO's considerations in formulating those modifications are set out in this section.

### 3.2.1 The right amount and type of consultation

As the rules consultation procedures will continue to apply to a very broad range of instruments, reviews and decision types, there cannot be a 'one size fits all' consultation process. AEMO does not consider it would be practical or sensible for the rules to attempt to codify a consultation process (e.g., one round of written submissions or two) based on a grouping of decision types. If further guidance in the rules is considered necessary, it would be more useful to set out the type of factors and circumstances that a decision-maker should weigh up in determining its approach to consultation.

AEMO also observes that additional consultation need not take a similar form to the mandated round of written submissions on a draft document or decision. Further rounds of traditional 'propose-respond' consultation are not likely to reach different stakeholders, and are too resource-intensive for many. Consultation processes should facilitate better (not necessarily more or longer) consultation with all stakeholders whose interests and views are relevant to the issue and outcomes.

### 3.2.2 Best practice consultation

The Office of Best Practice Regulation (OBPR) guidance note on consultation<sup>5</sup> suggests that an appropriate consultation process will depend on the issues under consideration, the nature of the groups being consulted and the time available. Consultation should be timely, meaningful, not burdensome, and broadly accessible by the stakeholders most likely to be affected by the decision. 'Over-consultation' or consultation for consultation's sake should be limited.

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<sup>5</sup> Department of the Prime Minister and Cabinet, Office of Best Practice Regulation, *Best Practice Consultation*, March 2020. Available at: <https://obpr.pmc.gov.au/sites/default/files/2021-09/best-practice-consult.pdf>



The OPBR notes that consultation can take a variety of forms other than written consultation, such as stakeholder or public meetings, working groups, focus groups, surveys or web forums (such as blogs or wikis).

### 3.2.3 Comparative review

AEMO reviewed the consultation requirements in a number of energy industry acts, regulations and rules outside of the NER and NGR, in Australia and New Zealand. These cover decisions by system operators, regulators or administrative bodies on instruments such as industry codes, procedures and licences. This review is not intended to be comprehensive, but illustrates that energy industry decision-makers typically have relatively broad discretion to set their own consultation processes within a set of mandated minimum requirements. These may include minimum consultation timeframes, identified stakeholders, and requirements for the publication of reasons. Explicit requirements for multiple rounds of public consultation are rarely prescribed.

### 3.2.4 Proposed consultation criteria and plan

AEMO has drawn on elements of the OPBR guidance and the AER's and AEMO's own consultation experience to develop a set of criteria that could be included in the rules consultation procedures. These would require the decision-maker to:

- Consider whether, when and how additional consultation steps should be undertaken after assessing:
  - the nature of the proposal and its impact on persons likely to be affected by it;
  - the regulatory requirements and interdependencies applicable to the proposal;
  - the urgency of resolving the issues to be addressed by the proposal;
  - the extent of any prior consultation undertaken with affected persons by the consulting party or in another regulatory process (such as a Rule change); and
  - the complexity of the associated issues and the potential for alternative options to address them.
- At the outset of each consultation, determine, publish, and as necessary review a consultation plan using the consultation criteria. Possible additional consultation methods may include issues, consultation or discussion papers, working groups or advisory panels, conferences, meetings or information sessions.
- Publish summaries of the issues and outcomes from additional consultation steps.

## 3.3 Additional issue – Reliability Panel consultation procedures

As noted in the original proposal, the rules consultation procedures apply in a small minority of instances to decision-makers other than AEMO and the AER, and that is not intended to change. In the course of discussions with the AEMC before submitting this supplementary proposal, AEMO noted that the rules consultation procedures apply to two determinations by the Reliability Panel - the four-yearly reliability standard and settings review, and requests for protected event declarations. For other standards and guidelines, the Reliability Panel has its own consultation process under 8.8.3(d) to (l). AEMO suggests that the AEMC consider replacing the clause 8.8.3 consultation provisions with the proposed updated rules consultation procedures, noting that some modifications may be necessary to reflect AEMC involvement.



## 4. AMENDED RULE 8.9

AEMO has amended rule 8.9 of the proposed rule to include:

- A set of consultation criteria to be used by a decision-maker to determine whether additional consultation steps on a proposal are appropriate, and the timing and form of those additional consultation steps.
- A requirement for the decision maker to determine and publish a consultation plan at the outset based on the consultation criteria, and review it as needed.
- Consequential changes to the rule for minor or administrative amendments to existing documents.
- Additional drafting improvements for clarity and readability.

A proposed replacement for rule 8.9 is set out in Appendix A. In other respects, the rule drafting in the original proposal is unchanged.

### **National Gas Rules**

Corresponding changes would apply to the extended consultative procedures in the NGR, should the AEMC decide to amend them.<sup>6</sup> The original proposal canvassed two alternatives for NGR amendments – remove the extended consultative procedure altogether and replace it with the standard consultative procedure (this would be AEMO's preferred and least intrusive option), or replace both the standard and the extended consultative procedure with an equivalent to the amended NER rule 8.9.

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## APPENDIX A. UPDATED PROPOSED RULE

This replaces the proposed rule drafting in section A.1 of the original proposal. In other respects, the proposed rule remains unchanged from the original proposal and has not been replicated here. AEMO notes that some further consequential amendments will be needed to account for rule changes since the original proposal for example to remove further exceptions relating to minor or consequential amendments.

### A.1 Replaced rule 8.9

## 8.9 Rules Consultation Procedures

### 8.9.1 Application

- (a) This rule 8.9 applies wherever in the *Rules* any person (the *consulting party*) is required to comply with the *Rules consultation procedures*. For the avoidance of doubt, the *Rules consultation procedures* are separate from, and do not apply to, the process for changing the *Rules* under Part 7 of the *National Electricity Law*.
- (b) The *consulting party* must comply with the consultation procedures in clause 8.9.3 unless paragraph (c) applies.
- (c) If the *consulting party* is:
  - (1) the *AEMC*, *AEMO*, the *AER*, the *Reliability Panel* or the *Information Exchange Committee*; and
  - (2) proposing an amendment to an existing document that the *consulting party* considers to be of a minor or administrative nature, or to correct a manifest error in the document,

the *consulting party* need not comply with clause 8.9.3 but must comply with clause 8.9.4.

- (d) In this rule 8.9, a requirement for a *consulting party* to **publish** a document requires the *consulting party* to publish the document on its website, subject to paragraphs (e) to (g).
- (e) For a *consulting party* other than the *AEMC*, *AEMO*, the *AER*, the *Reliability Panel* or the *Information Exchange Committee*, a requirement under this rule 8.9 to publish a document is not met until the *consulting party* has published the document on its website and given a copy of the document to *AEMO*. *AEMO* must publish the notice within 3 *business days* of receipt.
- (f) If the *consulting party* is the *Reliability Panel*, a requirement under this rule 8.9 to publish a document is met by publication of that document on the *AEMC*'s website.
- (g) If the *consulting party* is the *Information Exchange Committee*, a requirement under this rule 8.9 to publish a document is met by publication of that document on *AEMO*'s website.

### 8.9.2 Consultation criteria

*[Note – definition of consultation criteria to be included in chapter 10]*

The criteria set out in this clause 8.9.2 (*consultation criteria*) apply to the *consulting party*.

- (a) A *consulting party* must determine whether additional consultation steps on a proposal are appropriate, and the timing and form of those additional consultation steps, having



regard to the *consulting party's* assessment of:

- (1) the nature of the proposal and its impact on persons likely to be affected by it;
  - (2) the regulatory requirements and interdependencies applicable to the proposal;
  - (3) the urgency of resolving the issues to be addressed by the proposal;
  - (4) the extent of any prior consultation undertaken with affected persons by the *consulting party* or in another regulatory process (such as a *Rule* change); and
  - (5) the complexity of the associated issues and the potential for alternative options to address them.
- (b) The form of any additional consultation steps may include the publication of issues, consultation and discussion papers, establishing or seeking input from working groups or advisory panels, and holding conferences, meetings or information sessions in relation to the draft determination or document.
- (c) The *consulting party* must provide transparency of such consultation to affected persons by publishing summaries of the material issues raised in, and any outcomes of, each additional consultation step.
- (d) The *consulting party* may review the need for, and the timing and form of, additional consultation steps when the *consulting party* becomes aware of material new information relevant to its decision or to its consideration of the criteria in paragraph (a).

### 8.9.3 Standard consultation procedures

(see clause 8.9.1(b))

- (a) In respect of a proposal to be consulted on under this clause 8.9.3, the *consulting party* must:
- (1) having regard to the *consultation criteria*, develop a consultation plan for the proposal; and
  - (2) publish the consultation plan (either before or at the time of initiating the first consultation step identified in the plan).
- (b) After conducting any initial consultation steps identified in the consultation plan under paragraph (a), the *consulting party* must publish a notice of consultation on its website with:
- (1) a draft of the proposed determination or document for consultation;
  - (2) an explanatory statement that sets out the provision of the *Rules* under which the determination or document is proposed to be made, produced or amended, and the *consulting party's* reasons for the draft determination or document; and
  - (3) an invitation for written submissions on the draft determination or document from all persons nominated by the relevant provision as those with whom consultation is required or, if no persons are nominated, from all interested persons.
- (c) The invitation must specify a period of no less than 30 *business days* for submissions, and the *consulting party* is not required to consider any submission made after the specified period has expired.
- (d) The *consulting party* must publish any submissions received within the specified period, other than *confidential information*.



- (e) The *consulting party* must, after considering submissions, review its consultation plan in accordance with the *consultation criteria* and may publish a revised consultation plan.
- (f) Within 80 *business days* of publishing the notice referred to in paragraph (b), the *consulting party* must publish:
  - (i) the final determination or document;
  - (ii) a summary of each issue raised in submissions made in accordance with paragraph (c) that the *consulting party* reasonably considers to be material, and its response to those issues; and
  - (iii) the reasons for its decision to make the final determination or document.
- (g) The *consulting party* may, by publishing a notice website, extend the time limit fixed in paragraph (f) if:
  - (1) the consultation involves issues of unusual complexity or difficulty; or
  - (2) the extension of time has become necessary because of a material change in circumstances.

#### **8.9.4 Minimum requirements for minor or administrative amendments and corrections**

(see clause 8.9.1(c))

If the *consulting party* decides to make an amendment of a minor or administrative nature to a document, or to correct a manifest error in the document, it must publish, on or before the effective date of the amended document:

- (a) a notice that sets out the provision of the *Rules* under which the relevant document is amended, the *consulting party's* reasons for making the amendments, and why it considers them to be minor or administrative in nature or (as applicable) to correct a manifest error in the document; and
- (b) the amendments made to the document and their effective date.



## APPENDIX B. JURISDICTIONAL CONSULTATION REQUIREMENTS

### B.1 Wholesale Electricity Market (WEM) Western Australia

The 'Procedure Change Process' in rule 2.10 of the WEM rules applies to the development and amendment of WEM procedures by AEMO, the WA Energy Coordinator, a Network Operator or the Economic Regulation Authority.

The WEM procedure change process involves the following steps:

- A procedure change proposal that includes a draft of the proposed procedure or amendment, and the reasons for the proposal, with a call for submissions within 20 business days.
- Ability to call for advice from the WEM market advisory committee prior to submissions closing.
- Preparation of a procedure change report including the procedure or amendment and reasons, a summary of submissions and responses, any advice from the committee, a date for commencement of the procedure or amendment (allowing sufficient time for participant implementation). This is the final report subject to any extension or review as described in the next two points.
- Provision for notified extension of timeframes (with reasons and a proposed work program) where, in the view of the consulting party issues of complexity or difficulty are identified, further public consultation is required or other special circumstances apply.
- Provision for procedural review by the electricity review board if a participant applies on the basis that the consulting party has not followed the consultation process.

### B.2 Jurisdictional energy industry legislative instruments

#### B.2.1 Essential Services Commission (Vic)

Under section 15 of the Essential Services Commission Act 2001, the ESC must develop and publish a Charter of Consultation and Regulatory Practice including guidelines relating to processes for making determinations and other regulatory decisions and conducting inquiries. It must include 'prescribed matters' and may include any other matters the ESC considers appropriate.

In relation to consultation specifically, the prescribed matters under regulation 6 of the Essential Services Commission Regulations 2011 are:

- the processes for public consultation that are to precede determinations and inquiries;
- the requirements in relation to public hearings by the Commission.

Section 35D of the ESC Act deals with the process for determinations relating to third party access regimes. Determinations are to be made within 6 months of receiving a proposal and sufficient supporting information. That period can be extended for specified reasons, including where further time is required to enable consultation with third parties and the public, but no consultation requirements are specified in the legislation.



The ESC's Charter of Consultation and Regulatory Practice is published on its website<sup>7</sup> and indicates that consultation is tailored to the complexity and potential impact of the issue being considered and the time available. It includes indicative examples of the likely elements of consultation for different types of decision-making.

### **B.2.2 Independent Pricing & Regulatory Tribunal (NSW)**

The Independent Pricing and Regulatory Tribunal Act 1992 does not prescribe any limitations on IPART's discretion to consult. Under sections 20 and 24GC, IPART may consult with any person it thinks fit in any investigation.

In the conduct of special reviews under section 43EE of the Electricity Supply Act 1995, IPART is permitted, but not required, hold hearings on reasonable notice, call for written submissions within a time specified by IPART (and extend that time).

### **B.2.3 Independent Competition & Regulatory Commission (ACT)**

Under section 36 of the Utilities Act 2000, the ICRC 'may' consult publicly on certain licence decisions. Any publish consultation must invite submissions from interested people, with a submission period of at least 28 days, allow the relevant utility a reasonable opportunity to examine submissions and make representations to ICRC about any matter raised in them, and consider the matters raised in all submissions and representations.

Under section 60, the ICRC is required to conduct public consultation before determining any code, by inviting interested people to make submissions within a period of at least 30 days and having 'due regard' to any submission made in accordance with the notice. Code amendments must follow the same process unless:

- each utility to which the code applies has agreed to the variation;
- ICRC is satisfied that the variation is necessary or convenient to give effect to a Ministerial direction, follows a licence review or change in legislation, or is unlikely to adversely affect anyone and would not materially alter the code.

### **B.2.4 Queensland Competition Authority**

Under the Queensland Competition Authority Act 1997, public consultation is not required in respect of any decision. Section 172 indicates that public consultation conducted by the QCA for an investigation may include public seminars, workshops, working groups and task forces.

Decisions delegated by the Minister to the QCA under the Electricity Act 1994 can be made with terms of reference specifying the consultation requirements QCA must comply with.

Under section 120H of the Electricity Act, QCA must engage in a prescribed consultation on a draft distribution network code, unless QCA considers the code is needed urgently, or will not be materially detrimental to anyone's interests. For code amendments, section 120PB(2) does not require consultation if QCA considers the amendment is needed urgently, does not materially detriment anyone's interests, is of an uncontroversial nature, or corrects an error (even if correction is materially detrimental to someone's interests).

The consultation requirements are set out in the Electricity Regulation 2006 (sections 222E to 222O), substantial compliance is sufficient:

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<sup>7</sup> Essential Services Commission 2018, Stakeholder Engagement Framework: Charter of Consultation and Regulatory Practice, 27 June. Available at: <https://www.esc.vic.gov.au/sites/default/files/documents/stakeholder-engagement-framework-charter-of-consultation-and-regulatory-practice-20180627.pdf>



- An interim consultation notice is required unless the QCA decides the code changes are minor, or reasonably considers that the consultation steps are unnecessary or inappropriate. The notice must be published on QCA's website and given to anyone it reasonably believes will be interested in the proposed code.
- Any interim consultation period must be reasonable, having regard to the complexity of the interim issues. After considering submissions on the interim notice, QCA must publish a draft report and a draft of the proposed code on its website.
- A final consultation notice is to be published on the draft report and code (If stage 1 is not required, QCA publishes a draft report and code for the final consultation notice). Again, the consultation period is to be reasonable, having regard to the complexity of the drafts.
- A final report and code are published after considering submissions on the final consultation notice.

### **B.2.5 Essential Services Commission of South Australia**

Section 9 of the Essential Services Commission Act 2002 provides for ESCOSA to develop a Charter of Consultation and Regulatory Practice, similar to the Victorian Act, but the contents are not prescribed in the regulations.

ESCOSA's Charter is published on its website<sup>8</sup>. It recognises the need for fit-for-purpose engagement, with a variety of flexible consultation approaches and modes of communication. Consultation timeframes are also tailored to the circumstances and not prescribed, although as a general guide a six-week consultation process is provided for where possible.

### **B.2.6 Office of the Tasmanian Economic Regulator**

The Economic Regulator Act 2009 does not prescribe any form of consultation. In conducting investigations and inquiries OTTER may receive written and oral submissions, consult with any person, hold hearings and seminars, and conduct workshops.

Consultation on proposed amendments to the Tasmanian Electricity Code are undertaken by OTTER under clause 12.3 of that code, generally in accordance with OTTER's own cross-sector guideline on its consultation policy and procedures<sup>9</sup>. While written submissions to an information paper or draft proposal will generally be invited, the guideline recognises that the regulator will adopt methods of consultation that are appropriate to the intended purpose of the consultation. This will consider factors such as complexity of subject matter, time constraints, nature of interests affected, nature and number of parties, and extent of public interest. Consultation timeframes are not prescribed, but the guideline indicates that where written submissions are sought, generally the submission period would be 21 days.

The Electricity Code itself also provides a fast track process for certain types of amendments, in which consultation is at the discretion of the regulator, with an opportunity for submissions within a period set by the regulator after publishing notice of the change.

### **B.2.7 Economic Regulation Authority (Western Australia)**

Under the Economic Regulation Authority Act 2003, a ministerial reference to the ERA to conduct and inquiry or report may specify the nature and extent of public consultation to be undertaken.

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<sup>8</sup> Essential Services Commission, Charter of Consultation and Regulatory Practice, November 2019. Available at: <https://www.escosa.sa.gov.au/ArticleDocuments/11387/20191112-Corporate-CharterOfConsultationRegulatoryPractice.pdf.aspx?Embed=Y>

<sup>9</sup> Office of the Tasmanian Economic Regulator, Guideline: Consultation Policy and Procedures of the Tasmanian Economic Regulator, 26 February 2021. Available at: <https://www.economicregulator.tas.gov.au/Documents/Consultation%20Policy%20and%20Procedures%20of%20the%20Tasmanian%20Economic%20Regulator%2C%20Version%207.PDF>



The Electricity Industry Act 2004 includes specific consultation requirements in respect of specific ERA reviews (sections 120ZH and 129). This requires:

- Publication of a notice describing the issue for consultation and inviting submissions to the ERA within a period of not less than 30 days.
- The ERA is to have regard to any submission made in accordance with the notice and may have regard to any other submission received on the issue.

### **B.2.8 Utilities Commission/Power & Water (Northern Territory)**

Under section 30 of the Utilities Act 2000, the Commission may include conditions on the system controller licence requiring it to consult with all electricity entities involved in the operation of the power system when establishing and varying the operating protocols and arrangements for dispatch and system security. The licence condition effectively mirrors the legislative requirement, without detailing any consultation process.

Under section 45, the Commission must develop forecasts of overall load and generation in consultation with the participants in the electricity supply industry.

Under section 111(2), regulations may prescribe consultation by a network provider on the making or amendment of network technical codes and planning criteria. The Electricity Reform (Administration) Regulations 2000 provide:

- (reg 5A) The Commission must not approve a technical code or code amendment prepared by the system controller unless satisfied that the system controller has consulted with all electricity entities engaged in the operation of the power system, suppliers and offtakers.
- (reg 25) Network providers in relation to material amendments to network technical codes must first publish a draft of the proposed amendment on its website, invite submissions from interested parties within a reasonable time specified by the network provider, and consider any submissions made.

## **B.3 NZ Grid Code instruments**

The New Zealand Grid Code is managed by the Electricity Authority, which is separate from the System Operator.

For several documents made (and amended) by the System Operator under the Grid Code, the System Operator is simply to consult in preparing those documents with 'persons that the system operator thinks are representative of the interests of persons likely to be substantially affected by them, and consider their submissions.

Where documents are subject to approval by the Authority, and the Authority proposes further changes, it is required to publish those changes and invite submissions within a period specified by the Authority. Minimum periods are provided for in some cases; where specified, this is generally 10 business days. In some instances the system operator is allowed an opportunity to respond to other parties' submissions.

Submissions must be published and considered by the Authority before making and publishing its decision.