



Tasmanian Council of Social Service

Review of the role of the Tasmanian Economic Regulator

TasCOSS submission

30 January 2015

About TasCOSS

TasCOSS is the peak body for the Tasmanian community services sector. Its membership comprises individuals and organisations active in the provision of community services to low-income, vulnerable and disadvantaged Tasmanians. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage and promote the adoption of effective solutions to address these issues.

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Introduction

The Tasmanian Council of Social Service (TasCOSS) welcomes the opportunity to participate in the Review of the role of the Tasmanian Economic Regulator (TER) by the Department of Treasury and Finance, and to comment on proposed options for changes to the TER's role detailed in the Department's *Issues Paper* of December 2014.

TasCOSS has had a long involvement with the TER and with its predecessors, the Tasmanian Electricity Regulator and the Government Prices Oversight Commission. Our involvement has included membership of the Tasmanian Electricity Regulator's Electricity Customer Consultative Committee since its inception, and later, membership of the Office of the TER's Customer Consultative Committee (CCC). TasCOSS has also participated in many consultations carried out by the Electricity Regulator, GPOC and the TER in our role of representing the interests of low-income, disadvantaged and vulnerable Tasmanians.

In this submission we address the proposals made in the *Issues Paper*; however, we begin with discussion of what we consider to be the key issue in this review, that is, ensuring the ongoing independence of the Regulator. This, in turn has implications for the appointment and structure of the Regulator.

Independence as a key attribute of the TER

TasCOSS believes that it is imperative that the TER is independent of government, the businesses that it regulates and of any other body or individual that has a financial or other direct interest in the role and functions of the TER. We believe that independence is fundamental to the authority of, and public confidence in, the TER and therefore to both its efficacy and legitimacy.

We believe it is therefore imperative for the Government to clearly and unequivocally state – and demonstrate – the independence of the Regulator.

While the *Economic Regulator Act 2009* states that the Regulator is not subject to Ministerial control,¹ the *Act* includes no explicit statement about the independence of the Regulator. TasCOSS believes it should, and recommends that the *Act* be amended to make explicit the requirement that the TER be independent.

Independence could be further ensured by amending the *Act* to prohibit the appointment to the Regulator of a person who is also in State Service employment.² In the view of TasCOSS, allowing concurrent membership of the Regulator with State Service employment, as the *Act* currently does, not only risks serious conflict of interest, but also endangers the independence of the TER.

¹ Tasmania, *Economic Regulator Act 2009*, Part 2, Div 1, s 14

² *Ibid*, Schedule 2, s 3(2)

The method of appointment of the Regulator is another opportunity to ensure independence – and to strengthen the perception of independence. Our view is that the Governor, rather than the Minister, should appoint the Regulator, thereby distancing the appointment from the government of the day.

The imminent move of the Office of the TER to the State Treasury office building is another significant factor that affects the perception of the Regulator's independence. We understand that this move is intended to achieve cost savings; however, it may also contribute to a public perception that the Regulator is part of – and not independent from – the Department of Treasury and Finance. In our view, this move makes it even more imperative that the independence of the Regulator is stated unequivocally in the *Act* and that State Service personnel are not permitted to fill this statutory position in any capacity (for instance, as board members or as temporary 'assistant Regulators').

Structure of the Regulator

The three models proposed in the *Issues Paper* for the future structure of the TER all have merit; however, as discussed above, TasCOSS holds strongly to the view that State Service officers should not serve as Regulator in any capacity (that is, as Acting Regulator, Assistant, or as a permanent or temporary member of a TER board).

In the view of TasCOSS, a single, full-time Regulator is preferable to a TER board comprised of part-time individuals, as this enhances both access and consistency. We would like to stress that this is not a criticism of the current TER Board which we believe has demonstrated its independence, experience, competence and skill.

However, as a single individual, a full-time Regulator is likely to be more accessible, easier to build and maintain a relationship with, and a consistent presence over time. Of course, this assumes that the person appointed as Regulator will be open and accessible to stakeholders. It also raises the issue of the importance of the skills and other attributes of the office-holder. We trust that the Governor, on advice, will appoint an appropriately skilled, experienced and receptive person to the post.

It would be useful, in our view, to also make provision for the appointment of an Acting or Assistant Regulator in times of the Regulator's absence and/or where workload demands are high.

Regardless of the structure decided upon through this review, TasCOSS believes it is imperative that the TER and its supporting office and secretariat be adequately funded to carry out the tasks required.

Proposals to change the Regulator's functions

Metro pricing investigations

TasCOSS believes that the TER should continue to undertake Metro pricing investigations. We disagree with the suggestion in the *Issues Paper* that "While Metro may have a monopoly for some public transport services, there are alternative transport options for many actual and potential customers." (p 10) In fact, Metro remains Tasmania's monopoly public transport provider and for most Metro customers, there are no alternative public – or other viable – transport options available.

The proposal that the Department of State Growth be responsible for prices oversight and for providing advice on Metro pricing to the Minister is unacceptable in the view of TasCOSS for the following reasons.

Firstly, TasCOSS believes that since Metro is a monopoly public transport provider, the setting of its prices should remain the responsibility of an independent regulator as is the intention of National Competition Policy. There has been no change in this regard to warrant a change in pricing oversight and advice on pricing to the Minister.

Secondly, TasCOSS is concerned that, given recent cuts to the public sector in Tasmania, the Department of State Growth may not have the capacity to adequately oversee the efficiency and pricing of Metro services.

Thirdly and finally, as Metro is a government-owned company as well as a monopoly business, TasCOSS believes it is appropriate that its prices are overseen by a body that is independent of government, and not by a government department whose personnel are responsible to a Minister who is also one of two shareholders of the business.

MAIB pricing investigations

TasCOSS agrees with the proposal that the Regulator continue to undertake MAIB pricing investigations.

Performance reporting on the electricity supply and the water & sewerage industries

TasCOSS sees this as a key issue and strongly holds that performance reporting on these essential service industries is a significant and central role for the independent Regulator and, as such, must be maintained.

The entities subject to performance reporting by the TER are publicly owned – by the State Government in the case of electricity supply companies, and by Tasmania's local government authorities in the case of the water and sewerage company. They

are also essential services. For these reasons TasCOSS believes there should be robust public accountability mechanisms in place, with regular monitoring and public reporting – including on safety, service and infrastructure quality and performance – being a key mechanism.

We contend that there is clear value in frequent and regular reporting to ensure the consistency and integrity of data over time – and to identify areas of concern so that these can be addressed before problems become too great and more difficult to rectify.

Furthermore we believe that it is important that performance reporting is carried out by an independent authority, such as the TER, to ensure probity and that there is no conflict of interest involved in reporting.

TasCOSS values highly the TER's performance reporting and in particular its provision of quarterly retail market activity indicator reports (also known as Aurora Performance Reports) to the Customer Consultative Committee (CCC). These reports include data on indicators of hardship, including disconnections, payment plans commenced and cancelled for non-payment, number of customers re-paying a debt, levels of customer debts and average debt, numbers of customers in Hardship Program, average level of debt when entering Hardship Program, number of customers successfully completing Hardship Program, and information on total number of concession customers, those in Hardship Program and those who have been disconnected.

These are important indicators that provide information on the degree of financial hardship being experienced by electricity consumers. These indicators have long been used to inform social policy and other responses to affordability issues and hardship. In the view of TasCOSS, it is vital that these continue to be provided on a regular basis.

While the Australian Energy Regulator (AER) also reports on these electricity indicators quarterly (and annually), the AER quarterly reports tend to be released later than the TER reports (for instance, the OTTER CCC received reports from the first quarter of 2014-15 in early December 2014, while the AER released the same data on its website more than a month later).

The TER's annual *Energy in Tasmania - Performance Report* is also valuable to TasCOSS (and others with an interest in energy and/or social policy) and in particular, for its reporting on indicators that identify gas customer hardship. This is important as the AER does not have a role in regulating (or reporting on) the Tasmanian natural gas market (due to the Tasmanian Government decision not to sign onto the National Energy Customer Framework for gas). *Energy in Tasmania* therefore is the only avenue through which residential (and business) gas disconnections, payment plans, and late payment fees – all indicators of hardship and capacity to pay – are publicly reported.

This is important information for public policy and needs to be monitored and reported on a regular basis. In fact, TasCOSS would argue that annual reporting of these gas indicators is too infrequent to allow for appropriate and timely policy responses to be identified, developed and delivered to assist customers experiencing hardship.

TasCOSS has consistently argued that in order to better protect vulnerable gas customers, the Tasmanian Government should sign on to the customer protection elements of the National Energy Customer Framework.³

Tasmanian Water & Sewerage: State of the Industry Report is an important report for TasCOSS for the similar reasons. It is also important for the Tasmanian public. Water and sewerage industry reform of recent years in Tasmania is significant, costly and large-scale reform to which Tasmanians households are contributing, directly or indirectly. The Tasmanian public therefore has a right to be regularly and frequently informed of the progress of the reform through water and sewerage industry performance reporting (which includes environmental and public health-related performance, as well as retail indicators).

The proposal that the *Tasmanian Water & Sewerage: State of the Industry Report* is developed only prior to every price determination period is unacceptable in our view. TasCOSS believes that such an outcome would seriously erode transparency, accountability and public confidence in the industry and in the reform process.

It is important to understand the value of the comprehensiveness of the performance reporting documents prepared annually by the TER and of the breadth and depth of the information provided. The annual *Energy in Tasmania – Performance Report* and *Tasmanian Water & Sewerage: State of the Industry Report* provide detailed information not only about the year's whole-of- industries performance, but also about the industry structure, regulatory arrangements, customer numbers and hardship indicators, and other significant issues.

The current Chair of the TER, Glenn Appleyard, appropriately describes the *Energy in Tasmania* report as "a comprehensive review of the performance and evolution of the Tasmanian energy supply industry."⁴

TasCOSS regularly refers to these documents for information about the industries and for data to include in submissions and other advocacy documents. We also use the reports to provide comprehensive overviews, as well as details, about the industries to new staff working on essential services policy.

³ For instance, in TasCOSS contributions to the development of the *State Energy Strategy* in 2014, and earlier in the review by DIER of the Tasmanian Gas Code (2013).

⁴ Glenn Appleyard (2015), Letter to TasCOSS, 15 January 2015.

While these reports may not be accessed directly by the public to any great extent, the TER issues media releases on their publication, and information from the reports is often picked up by the media and reported publicly along with comment and analysis by interested and affected groups and peak bodies (for instance, TasCOSS, Tasmanian Farmers & Graziers Association, and the Tasmanian Small Business Council).

The AER also produces a national annual performance report for the energy industries in states and territories that have signed onto the National Energy Customer Framework. This includes Tasmania for electricity but not for gas, as mentioned above. While the AER annual reports are useful, particularly for their comparison of performance across jurisdictions, they do not provide the level of analysis of and informed commentary on the Tasmanian industry as the TER's *Energy in Tasmania* provides.

In addition, the absence of a physical presence of the AER in Tasmania (that is, a staffed office), renders the AER more remote to Tasmanian consumers, decision-makers and consumer advocates. The TER is much more physically accessible and open to questions about the Tasmanian energy – and water and sewerage – industries.

The Tasmanian *Water & Sewerage: State of the Industry Report* has become an even more important document with the abolition, in the 2014-15 Federal Government Budget, of the National Water Commission and the consequent uncertainty about the future of the National Performance Reporting Framework and the National Performance Report (for urban water utilities). This could leave the annual performance report produced by the TER as the only source of current information on the state of the Tasmanian water and sewerage industry. To produce a report every three or five years, as proposed in this *Issues Paper* is clearly inadequate.

It might be argued that reporting to the TER is an additional impost on the regulated entities that could (or should) be avoided; however, TasCOSS contends that the entities are likely to already collect the data required by the TER, either for the purposes of reporting to their Boards, for their annual reports and/or for reporting to the AER and/or other regulatory bodies.

The cost to the TER of performance reporting, estimated in the *Issues Paper* at \$160,000, is not excessive in our view. In fact, if reporting was undertaken at irregular or infrequent intervals, as proposed in the *Issues Paper*, the costs may be higher, as the TER's reporting systems are well-established and it is likely that new reports can be generated, in some cases, by simply dropping updated data into place and by renewing or updating the analysis and commentary in established formats.

Finally, we concur with the statement in the *Issues Paper* that 'public reporting can be a powerful incentive for the industry to maintain and improve performance' (p 12), and suggest that this is a compelling argument in itself for the continued publication by the TER of performance reports on the energy and water and sewerage industries.

Interstate – and local – energy price comparisons

Again, TasCOSS sees this as an important function of the TER. In spite of national energy price information published by the AER, TasCOSS believes that the price comparison reports provided by the TER are more clearly focused on Tasmanian prices and, valuably, are developed using a methodology that demonstrates the impact of concessions on electricity prices and affordability.

Further, in spite of the difficulty of comparing prices across jurisdictions, the TER has an established methodology that provides useful results. TasCOSS contends that it is important to maintain this report to track and compare Tasmanian electricity prices over time, including the effect of concessions on affordability.

TasCOSS therefore recommends that this function of the TER continue.

Although not mentioned in the *Issues Paper*, we would like to state the value of the TER's annual comparison report on pre-payment meter (Aurora Pay As You Go - APAYG) prices with standard tariff prices (or standing offer prices).⁵ This price comparison is very difficult given the very different tariff structures (APAYG being a time-of-use tariff while the standard tariff is a two-part flat rate tariff); however, the TER has developed an excellent methodology that provides customers with the information they need to make an informed choice.

This is the only comparison document currently available to Tasmanian customers for electricity offers as the AER's *Energy Made Easy* website does not provide a comparison between these options. TasCOSS sees this as a failure of the AER to provide Tasmanian customers with an adequate level of assistance in this area, and maintains that it demonstrates the need for the TER to continue this role.

Network reliability reporting

TasCOSS believes that this role of the TER should also continue as the TER's network reliability reports are far more detailed and specific than the AER's reports, and provide community-level performance information.

The reports provide access to information about network reliability in specific geographical areas of the state, as well as in types of communities with differing

⁵ The current issue of this report is titled *2014 Aurora Pay As You Go price comparison report* and was published in September 2014.

performance standards (for instance, 'high density commercial', 'urban and regional centres', etc). This is valuable information for customers, government and for potential investors.

While the network business and the regulators (AER and TER) obviously keep a close eye on network reliability, it is important that this information is also made public at regular and frequent intervals to provide transparency, ensure accountability of the business which not only serves, but is also owned, as a state-owned company, by the Tasmanian public.

Newspaper notifications

While we understand that much news and public information is now found on the internet, TasCOSS believes that many Tasmanians, particularly older and low-income Tasmanians, continue to use local newspapers as their primary source of information. For this reason, and to maintain openness and transparency, the TER should continue to be required to advertise its activities in Tasmania's three local newspapers.

Compliance powers of the Regulator

TasCOSS agrees with the proposal to empower the Regulator to impose financial penalties in cases of material or sustained non-compliance by regulated entities in the electricity and gas industries.

We see this as particularly important in the gas industry as the AER (which has some compliance powers in regard to electricity supply companies) has no jurisdiction over Tasmanian gas retailers.

Extending the functions and powers of the Regulator

1. TasCOSS would like to see the TER report more frequently – at quarterly intervals – on retail gas activity in Tasmania. This would require a change to the Tasmanian Gas Retail Code.

As discussed above, the retail supply of gas in Tasmania is not currently regulated by the AER due to the Tasmanian Government decision not to adopt the gas provisions of the National Energy Customer Framework. This leaves Tasmanian gas customers with a lesser customer protection regime than that enjoyed by electricity customers, including, importantly no obligation on retailers to supply customers and no provision for mandatory assistance to customers experiencing hardship.

With the current requirement in the *Tasmanian Gas Retail Code* for annual reporting by gas retailers, it is only after 12 months that the Regulator, government and the public become aware of problems that gas customers are experiencing. This year is a case in point: in the *Energy in Tasmania - Performance Report 2013-14* it was

reported that disconnections from gas supply for residential customers in 2013-14 had almost doubled from the previous year. Reconnections remained low, payment plans had more than doubled, and the number of late payment fees paid had increased by 30%.⁶ These figures demonstrate that increasing numbers of gas customers are experiencing difficulty paying for their gas consumption. This information in turn should inform appropriate policy responses, for instance, the mandatory extension of hardship assistance to customers in need and the exemption of concession card holders from late payment fees.

More frequent reporting should facilitate more timely assistance to customers in need.

2. TasCOSS would also like to see the TER provide regular reports on residential gas prices, including a comparison of the retail prices on offer to Tasmanian residential customers.

Currently there are predictions of upward pressure on gas prices in Eastern Australia for a variety of reasons, and Tasmanian customers have seen small but steady increases in gas prices in recent years. At the moment there is no oversight of Tasmanian gas prices and no comparator of gas prices (also a result of the State Government's decision not to adopt the National Energy Customer Framework for gas).

TasCOSS therefore recommends that the Regulator maintain a watching brief on residential (and small business) gas prices in Tasmania – in the interests of transparency and customer protection – as it does with pre-payment meter / APAYG prices.

3. TasCOSS recommends that the State Government play no role in retail electricity price regulation and allow the TER to set the wholesale pricing mechanism – and price – within a market-based regulatory framework.

This would result in the Government having no role in influencing electricity pricing outcomes and it would not be subject to community concerns regarding its conflicting interests as owner-shareholder and price-setter.

In recent years it could be said that Tasmanian electricity prices increased not only due to increased network expenditure, but also due to the wholesale pricing methodology that the Tasmanian Government required the TER to employ in setting the regulated retail price. This methodology has since changed and has resulted in lower wholesale prices within the regulated retail price stack.

⁶ Tasmanian Economic Regulator (2015) *Energy in Tasmania - Performance Report 2013-14*, Hobart, p 170.

Conclusion

It should be clear from this submission that TasCOSS values both the independence of the Tasmanian Economic Regulator and the work that it carries out, particularly its reporting functions.

We hope that this review results in the continuation of that independence and those functions. These combine to provide the Tasmanian public with confidence that regulated entities and government-owned monopoly businesses are subject to independent oversight and pricing expertise, and that the activities and performance of the businesses are reported on regularly, frequently and publicly.

(See next page for a consolidated list of TasCOSS recommendations)

TasCOSS recommends that:

1. The *Economic Regulator Act 2009* be amended to make explicit the requirement that the Tasmanian Economic Regulator be independent from government and the entities under its regulatory jurisdiction.
2. The *Economic Regulator Act 2009* be amended to prohibit the appointment of State Service employees to the statutory position of Regulator in any capacity.
3. The Governor of Tasmania be responsible for appointing the Tasmanian Economic Regulator.
4. A single, full-time Regulator be appointed and provision is made for the appointment of an Acting or Assistant Regulator in the event of the Regulator's prolonged absence and/or where workload demands are high.
5. The TER and its supporting office be adequately funded to carry out the tasks required of it.
6. The TER continues to undertake Metro pricing investigations.
7. The TER continues to undertake MAIB pricing investigations.
8. The TER continues to publish performance reports for the electricity, gas and water and sewerage industries on a regular and frequent- at least annual – basis.
9. The TER continues to publish interstate energy price comparisons.
10. The TER continues to publish its annual *APAYG price comparison report*.
11. The TER continues to publish Tasmanian network reliability reports at least annually.
12. The TER continues to place notifications of its activities in the three regional newspapers.
13. The TER is empowered to impose financial penalties in cases of material or sustained non-compliance by regulated entities in the electricity and gas industries.
14. The Tasmanian Gas Retail Code is amended to allow the TER to report quarterly on retail gas activity in Tasmania.
15. The TER provide regular, annual reports on residential gas prices in Tasmania, including a comparison report of retail prices available to Tasmanian residential customers.
16. The TER be permitted to set the wholesale pricing mechanism used to determine the wholesale price to be included in the regulated retail price.