
**CHARTER OF
ENERGY AND WATER OMBUDSMAN
(WESTERN AUSTRALIA) LIMITED
ACN 109 054 426**

November 2013

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ENERGY AND WATER OMBUDSMAN (WESTERN AUSTRALIA)

CHARTER

A: INTRODUCTION

1 THE SCHEME

- 1.1 The *Energy Coordination Act 1994* requires each holder of a trading or distribution licence to enter a customer dispute resolution scheme approved by the Authority.

The *Electricity Industry Act 2004* effectively requires each holder of a retail, distribution or integrated regional licence who proposes to supply electricity to Customers to enter a customer dispute resolution scheme approved by the Authority.

The *Water Services Act 2012* requires each holder of a water service licence to enter a customer dispute resolution scheme approved by the Authority.

The Scheme is a customer dispute resolution scheme approved by the Authority.

Participation in the Scheme is intended to allow gas, and electricity, and water services licensees to satisfy their relevant licence conditions and legislative requirements.

- 1.2 The Scheme has been established by means of a company limited by guarantee, the Energy and Water Ombudsman (Western Australia) Limited, ACN 109 054 426 ("**the Company**"). Among other things, the constitution of the Company:

- establishes the Board, composed of directors appointed by the Members, directors appointed from groups representing Customers or raising public interest issues relevant to gas or electricity or water services, and one independent chairperson; and
- requires the appointment of an energy and water Ombudsman vested with authority under this Charter to receive, investigate and facilitate the resolution of complaints.

- 1.3 The objects of the Company are to:

- (a) establish the Schemes; and
- (b) appoint an Ombudsman with power under the Schemes to receive, investigate and deal with complaints and disputes as contemplated by Part 2D and Schedule 2B of the *Energy Coordination Act 1994* and Part 7 and Schedule 2 of the *Electricity Industry Act 2004* and Part 4 of the *Water Services Act 2012* (as the case may be).

- 1.4 The Company has overall responsibility for overseeing and administering the Scheme's operations.

2 MEMBERS

- 2.1 The Company will ensure that an accurate and up-to-date list of all Members is readily available to the Ombudsman, who will make that list available to the public upon request.

3. DEFINITIONS AND INTERPRETATION

3.1 Definitions

"Authority": - means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*.

"Board": - means the board of directors of the Company.

"Complainant": - means:

- (a) a person who has a complaint or dispute of the type described in section 4.1;
- (b) a Customer where the dispute has been referred to the Ombudsman by a Member or Energy Marketing Agent in accordance with section 5.1(b);
- (c) a person who is a party to a dispute that is prescribed for the purposes of section 92(1)(d) of the *Electricity Industry Act 2004* or section 11ZPZ(1)(d) of the *Energy Coordination Act 1994*; or
- (d) a person of a type set out in section 68(1) of the *Water Services Act 2012* who may have a decision or complaint reviewed under the Scheme.

"Customer": - in the context of –

- (a) a gas customer, has the same meaning as "customer" in section 11ZPX of the *Energy Coordination Act 1994*;
- (b) an electricity customer, has the same meaning as "customer" in section 90 of the *Electricity Industry Act 2004*; and
- (c) a water services customer has the same meaning as "customer" in section 3(1) of the *Water Services Act 2012*.

"EIO (WA) Scheme": - means the Electricity Industry Ombudsman (WA) Scheme.

"Electricity Marketing Agent": - has the meaning ascribed in section 78 of the *Electricity Industry Act 2004*.

"Energy Marketing Agent": - means either:

- (a) a Gas Marketing Agent; or
- (b) an Electricity Marketing Agent.

"Gas Marketing Agent": - has the meaning ascribed in section 11ZPX of the *Energy Coordination Act 1994*.

"GIO (WA) Scheme": - means the Gas Industry Ombudsman (WA) Scheme.

"Member": - has the meaning ascribed in the Constitution of the Company.

"Minister": - means:

- (a) in the context of the GIO (WA) Scheme, the Minister responsible for administration of the *Energy Coordination Act 1994*;
- (b) in the context of the EIO (WA) Scheme, the Minister responsible for the administration of the *Electricity Industry Act 2004*; and
- (c) in the context of the WSO (WA) Scheme, the Minister responsible for the administration of the *Water Services Act 2012*.

"Ombudsman":- means the Energy and Water Ombudsman appointed pursuant to clause 16 of the constitution of the Company.

"Scheme": - means the EIO (WA) Scheme, the GIO (WA) Scheme, or the WSO (WA) Scheme or any combination of these, as the context requires.

"WSO (WA) Scheme": - means the Water Services Ombudsman (WA) Scheme.

3.2 Construction

In this Charter, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have the corresponding meaning;
- (d) the word person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) a reference to writing includes typing, printing, lithography and any other mode of representing or reproducing words or figures in a visible form including words or figures displayed on an electronic screen;
- (f) a reference to legislation (including subordinate legislation) is to that legislation as amended, modified, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) a reference to anything (including a right, obligation or concept) includes each part of it;
- (h) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

- (i) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (j) the word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (k) a reference to a power is also a reference to authority or discretion;
- (l) a power to do something includes a power, exercisable in like circumstances, to revoke or undo it;
- (m) where a word (other than a word defined in section 3.1) is defined by the *Corporations Act 2001*, that word has the same meaning in this Constitution where it relates to the same matters for which it is defined in the *Corporations Act 2001*;
- (n) headings are for convenience only and do not affect interpretation; and
- (o) references to dollars or \$ are references to Australian dollars.

B: ENERGY AND WATER OMBUDSMAN

4 FUNCTIONS OF THE OMBUDSMAN

4.1 The functions of the Ombudsman are to investigate and deal with the resolution of complaints and disputes of the type described in section 92(1) of the *Electricity Industry Act 2004*, regulation 4 of the *Electricity Industry (Ombudsman Scheme) Regulations 2005*, section 11ZPZ(1) of the *Energy Coordination Act 1994*, regulation 4 of the *Energy Coordination (Ombudsman Scheme) Regulations 2004*, section 65(1) of the *Water Services Act 2012* and regulation 15(1)(b) of the *Water Services Regulations 2013*, including, without limitation, complaints as to:

- (a) The provision or supply of (or the failure to provide or supply) gas, or electricity or water services by a Member to a Customer as required by a licence or agreement or under legislation;
- (b) Billing;
- (c) The administration of credit and payment services in the circumstances of a particular Customer;
- (d) The recovery of debts owed or allegedly owed by Customers whether by Members, their agents or factors;
- (e) Disconnection and restriction of supply and refundable advances;
- (f) Payments to Customers for breaches of prescribed electricity or water service standards;
- (g) Marketing of gas, or electricity or water services (as the case may be) for sale;
- (h) The way in which a Member has exercised its statutory powers in relation to land or other property or in relation to neighbouring land or other property, that are made by the owners or occupiers of that land or other property;

- (i) A Member of the Scheme or an Energy Marketing Agent that, by agreement with the Ombudsman and the Complainant, are referred to the Ombudsman by a Member or an Energy Marketing Agent; and
- (j) Complaints about a Member by a person, other than a Customer, affected by the provision of a water service by the Member.

4.2 In addition to the functions set out in section 4.1, the Ombudsman has day to day responsibility for overseeing and administering the Scheme's operations including the provision of information to Complainants.

5 RECEIPT OF COMPLAINTS OR DISPUTES BY THE OMBUDSMAN

- 5.1
- (a) Complaints or disputes of the type described in section 4.1 may be made or referred to the Ombudsman by Complainants.
 - (b) A Member or Energy Marketing Agent may refer to the Ombudsman a dispute of the type described in section 4.1.
 - (c) Complaints or disputes may be made or referred to the Ombudsman on behalf of a Complainant by an authorised representative of the Complainant.
 - (d) The focus of the Scheme is on individual complaints or disputes which may be oral or in writing.
 - (e) A complaint or dispute must have arisen from events which became known to the Complainant less than one (1) year prior to the complaint or dispute being lodged. The Ombudsman has a discretion to investigate any complaint or dispute arising from events before these dates, provided that the dispute or complaint did not arise earlier than one (1) year before the commencement of the relevant Scheme.

6 JURISDICTION OF THE OMBUDSMAN

- 6.1 The jurisdiction of the Ombudsman extends to the functions enumerated in Section 4 and the receipt of complaints or disputes as provided for in Section 5.
- 6.2 Subject to section 6.4, the functions of the Ombudsman do not extend to:
- (a) the setting of prices or tariffs or determining price structures;
 - (b) complaints or disputes relating to commercial activities which are outside the scope of the Member's licence;
 - (c) the content of Government policies;
 - (d) complaints or disputes which are or have been specifically under consideration by any court or tribunal, or which the Ombudsman considers should be dealt with by any of those bodies. Participants are encouraged not to initiate legal proceedings whilst a matter is being actively considered by the Ombudsman; and
 - (e) any matter specifically required by legislation (including subordinate legislation, rules or, any matter authorised pursuant to an approved safety case), codes, licenses, and orders made in accordance with the law to only be handled by the Authority or another government authority as the case may be.

- 6.3 To avoid doubt, the Ombudsman has jurisdiction to investigate and determine complaints or disputes involving the conduct of Members' employees, servants, officers, contractors or agents, and may make a determination binding the Member in relation to such complaints or disputes and to deal with enquires related to such matters.
- 6.4 For the avoidance of doubt, nothing in section 6.2 is intended to limit or extend the functions of the Ombudsman set out in:
- (a) the *Energy Coordination Act 1994* or any subsidiary legislation made under that Act;
 - (b) the *Electricity Industry Act 2004* or any subsidiary legislation made under that Act; and
 - (c) the *Water Services Act 2012* or any subsidiary legislation made under that Act.

7 PROCEDURES OF THE OMBUDSMAN

- 7.1 The Ombudsman, in handling complaints and disputes, must pursue them in a fair, reasonable, just, informal and expeditious manner having regard to the law and licences, industry codes, deemed contracts and good industry practice applicable to the relevant Member. In consultation with the Board, the Ombudsman is responsible for developing procedures, which best achieve these objectives. However, these procedures must include the following:
- (a) The Ombudsman on receiving a complaint or dispute, will verify with an officer designated by the Member concerned whether the Member has had the opportunity to consider the complaint or dispute;
 - (b) The Ombudsman may proceed to investigate the complaint or dispute only after the Member has had this opportunity, subject to reasonable time limits which are not to exceed 10 business days unless otherwise agreed with the Ombudsman, and the Member has been notified that the Ombudsman intends to investigate the complaint or dispute;
 - (c) Within twenty-eight (28) days of receiving notification of an investigation by the Ombudsman, the Member concerned shall provide to the Ombudsman all documentation relevant to the complaint or dispute other than documentation containing confidential information of a third party, who despite the reasonable efforts of the Member, has refused to consent to disclosure of the information to the Ombudsman. If a dispute arises in relation to the provision of documents under this clause, except to the extent that the relevant documents contain confidential information of a third party, the Ombudsman in his or her absolute discretion is to determine whether the documents or any of them are to be produced;
 - (d) The Ombudsman must operate in accordance with the *Privacy Act 1988* (Cth.) as if the Ombudsman were an "organisation" as defined in Section 6C of the *Privacy Act 1988*. If the Ombudsman is also the Parliamentary Commissioner for Administrative Investigations (the Parliamentary Commissioner) the Parliamentary Commissioner will operate to the extent consistent with the duties and obligations of the Parliamentary Commissioner in respect to the relevant information;

- (e) In complying with any subpoena for production of documents, the Ombudsman must notify the person who has provided the information which is the subject of the subpoena so that the person concerned is afforded the opportunity to appear in court to oppose production of the documents; and
- (f) Fees for use of the Scheme will not be charged to, or costs be awarded against Complainants.

8 POWERS OF THE OMBUDSMAN

8.1 Binding Decisions and Directions

After completion of an investigation and in the absence of a conciliated settlement of a complaint or dispute, the Ombudsman shall resolve a complaint or dispute:

- (a) by:
 - (i) making a determination that the Member the subject of investigation pay compensation to a Complainant;
 - (ii) directing a Member to provide a gas, electricity or water service;
 - (iii) directing a Member to amend, or not to impose, a charge in relation to a service;
 - (iv) directing a Member to supply goods or services the subject of the complaint or undertake any necessary corrective or other work to resolve the complaint or dispute;
 - (v) directing a Member to make an appropriate correction, deletion or addition to a record;
 - (vi) directing a Member to attach to a record a statement provided by the Complainant of a correction, deletion or addition sought by the Complainant; and/or
 - (vii) by directing a Member to do, not to do, or to cease doing, an act

provided that, in relation to paragraphs (a)(i) to (a)(vii), the total of such determinations or directions in relation to an individual complaint or dispute, or in relation to claims against any one Member as a result of any one event or series of related contemporaneous events, does not:

- (i) exceed in value \$20,000; or
 - (ii) with the consent of all parties, exceed \$50,000; or
- (b) by dismissing the complaint or dispute.

All decisions and directions by the Ombudsman under this section 8.1 shall be automatically binding upon Members. However, the Complainant may elect whether or not to accept the decision or direction of the Ombudsman within twenty-one (21) days of the Ombudsman's decision or direction. If the Complainant accepts the decision or direction of the Ombudsman, the Complainant shall fully release the Member from all claims, actions etc in relation to the complaint or dispute. In the event that the Complainant does not accept the decision or direction of the Ombudsman, the Complainant may pursue his or her remedies in any other forum the Complainant may choose

and the Member is then fully released from the Ombudsman's decision or direction.

8.2 Reasons

The Ombudsman shall provide Complainants and Members with written reasons in support of a decision or direction under section 8.1. The Ombudsman shall publish binding decisions or directions, without identifying the parties to the complaint or dispute.

8.3 Discretion not to Investigate

The Ombudsman has the discretionary power to decline to investigate a complaint if in the opinion of the Ombudsman:

- (a) the complaint or dispute is frivolous or vexatious or was not made in good faith;
- (b) the Complainant does not have a sufficient interest in the subject matter of the complaint or dispute;
- (c) an investigation, or further investigation, is not warranted; or
- (d) the complaint or dispute is more appropriately or effectively dealt with by any other body.

8.4 Matters for the Ombudsman to take into account

In resolving a complaint or dispute, the Ombudsman shall take into account whether the complaint or dispute relates to:

- (a) events beyond the reasonable control of a Member and their consequences, bearing in mind current law and reasonable and relevant industry practice; and
- (b) actions taken by a Member and their consequences, in execution of a direction, notice or other like instrument received by the Member in relation to facilitating the reliability of the supply of gas, or electricity, or the provision of a water service, facilitating the security of a gas, electricity or water service system, a gas, electricity or water service emergency, or a matter of gas, electricity or water service safety and issued by a person or entity having regulatory or administrative power to issue the direction, notice or instrument.

9 OTHER POWERS AND RESPONSIBILITIES OF THE OMBUDSMAN

9.1 The Ombudsman is responsible for:

- (a) managing the day to day operations of the Scheme, including but not limited to, the appointment and termination of employment of staff;
- (b) attending, in a non-voting capacity, meetings of the Board at the invitation of the Board;
- (c) in consultation with the Board, developing procedures for the fair, just, informal and expeditious handling of complaints;
- (d) in consultation with the Board, promoting the Scheme and its complaint-handling procedures;
- (e) making recommendations to the Board on the Charter;

- (f) controlling and monitoring expenditure within the agreed budgets and for providing regular reports to the Board on expenditure;
- (g) preparing the annual report of the Ombudsman;
- (h) at the Ombudsman's discretion, providing confidential advice to Members, the Authority and the Board on the operation of the Scheme;
- (i) at the Ombudsman's discretion, making general observations about the operation of the Scheme in any public forum;
- (j) receiving and referring complaints from the public;
- (k) keeping adequate data on complaints or requests for information, both for reporting purposes and to identify the sources of practices giving rise to similar complaints;
- (l) making available to the public the accurate and up-to-date list of all Members in the Scheme obtained from the Company;
- (m) promoting the Scheme to the public;
- (n) providing input into annual business plans and proposed annual funding figures and budgets and submitting that input to the Board; and
- (o) raising with the Board issues of policy or practice which arise in relation to the Scheme.

9.2 The Ombudsman also has the power:

- (a) to delegate, in writing, such of the Ombudsman's functions as may be convenient for the efficient day-to-day operation of the Scheme, to persons employed within the Ombudsman's office and deemed by the Ombudsman to be suitably qualified to perform the functions to be delegated, other than the power:
 - (i) to make binding decisions under section 8.1; and
 - (ii) to provide written reasons under section 8.2;
- (b) to provide advice to a Member and to the Authority where, in the Ombudsman's opinion, the general gas, electricity or water service policy or commercial practices of a Member:
 - (i) have contributed to a complaint; or
 - (ii) have been identified as the source of a number of similar complaints; or
 - (iii) have impeded the investigation or handling of a particular complaint; and
- (c) to take appropriate action to ensure that the Ombudsman's determinations are implemented, or that requests for information are met by a Member. This action could include escalation of the matter to the CEO of the Member, referral to the Board, or referral to the Authority.

9.3 The Ombudsman must inform the Authority of any substantial breaches of:

- (a) any conditions of:
 - (i) a trading or distribution licence in force under the *Energy Coordination Act 1994*; or

- (ii) a transmission, distribution, retail or integrated regional licence in force under the *Electricity Industry Act 2004*; or
- (iii) a licence in force under the *Water Services Act 2012*; or
- (b) the code of conduct under Part 2C of the *Energy Coordination Act 1994*, Part 6 of the *Electricity Industry Act 2004* or Part 2 of the *Water Services Act 2012*

of which the Ombudsman becomes aware.

C: THE BOARD

10 ROLE AND RESPONSIBILITIES OF THE BOARD

10.1 The responsibilities of the Board include the oversight of the Scheme and maintenance of the independence of the Ombudsman. While the Ombudsman will have responsibility for the day to day operation of the Scheme, it is the function of the Board to provide advice to the Ombudsman on policy matters.

10.2 Specifically, the duties of the Board include:

- (a) The appointment and termination of appointment of the Ombudsman in accordance with the Constitution of the Company and the Ombudsman's contract of employment.
- (b) The appointment for a specific time of an acting Ombudsman as required.
- (c) Within the framework of the Charter, to determine policies relating to the administration of the Scheme.
- (d) To monitor the Charter and, from time to time, consider amendments to the Charter as the Board thinks fit.
- (e) To receive and consider recommendations from the Ombudsman for amendments to the Charter. It is the role of the Board, in consultation with the Ombudsman, to prepare recommendations for referral to the Authority in relation to the amendment of the Scheme and this Charter. After consultation with the Members, final authority for approval of amendments to the Scheme and this Charter rests with the Authority.
- (f) To provide advice to the Ombudsman on the budgets approved by the Board.
- (g) To produce proposed annual funding figures for each financial year of the Scheme and ensure the annual funding figures are put before the Members to be voted upon. Through the Budget Committee, to receive and consider proposed financial budgets and business plans (and any subsequent amendments thereto) prepared by the Ombudsman.
- (h) To provide advice to the Ombudsman on the promotion of the Scheme and the preparation of the Annual Report.
- (i) To seek to ensure sufficient funding for the operation of the Scheme. It is the joint responsibility of the Board and the Ombudsman to seek to ensure the Scheme is operated efficiently within budgets.

11 RELATIONSHIP BETWEEN THE BOARD AND THE OMBUDSMAN

- 11.1 The Board has responsibility for policy matters and oversight of the Scheme's operation. The Ombudsman has responsibility for the day to day operation of the Scheme and the resolution of individual complaints. These roles are complementary and, as a general rule, the Ombudsman may attend Board meetings as an observer.
- 11.2 The Board is responsible for the formal administration of the Company, and exercises final authority in relation to the financial affairs of the company (subject to the Constitution of the Company). These matters are most appropriately exercised by Directors. Responsibility for complaint handling and the day to day administration of the Scheme rests with the Ombudsman.

D: AMENDMENTS TO CHARTER**12 MECHANISMS FOR AMENDMENTS TO CHARTER**

- 12.1 Amendments to this Charter may be proposed, reviewed, and either accepted or rejected by the Members at a General Meeting.
- 12.2 The Board must submit any amendments to this Charter that are accepted by the Members to the Authority for approval.
- 12.3 As indicated in section 10.2(e), after consultation with the Members, final authority for approval of amendments to the Scheme and this Charter rests with the Authority.