
**CHARTER
of
GAS INDUSTRY OMBUDSMAN
(WESTERN AUSTRALIA) LIMITED**

March 2004

**GAS INDUSTRY OMBUDSMAN (WESTERN AUSTRALIA)
CHARTER**

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GAS INDUSTRY OMBUDSMAN (WESTERN AUSTRALIA)

CHARTER

A: INTRODUCTION

1 THE GIO(WA) SCHEME

1.1 The Western Australian gas retail licences issued under the *Energy Coordination Act 1994*, require each licensee to enter a customer dispute resolution scheme approved by the Authority.

The Gas Industry Ombudsman (Western Australia) (“GIO(WA)”) Scheme is a customer dispute resolution scheme approved by the Authority.

Participation in the GIO(WA) Scheme is intended to allow gas licensees to satisfy the relevant licence conditions and legislative requirements.

1.2 The GIO(WA) Scheme has been established by means of a company limited by guarantee, the Gas Industry Ombudsman (Western Australia) Limited (“**GIO(WA) Limited**”). The Constitution of the company establishes:

- a Board of Directors, composed of directors appointed by the members, directors appointed from groups representing customers of gas services or raising public interest issues relevant to gas services, and one independent Chairperson; and
- a Gas Industry Ombudsman vested with authority under this Charter to receive, investigate and facilitate the resolution of complaints.

1.3 The mission of the GIO(WA) Limited is to receive, investigate and facilitate the resolution of complaints and disputes between consumers of gas services in Western Australia and members of the GIO(WA) Scheme. The mission is founded on principles of independence, natural justice, access, equity, effectiveness and community awareness.

2 MEMBERS

2.1 The Ombudsman will ensure that an accurate and up-to-date list of all members is readily available to the public at all times.

3. DEFINITIONS

“**Customer**”: - includes customer or aggrieved person, and has the same meaning as small use customers pursuant to the *Energy Coordination Act 1994*.

“**Individual**”: - Subject to context, “individual” means a single event, single customer or single situation, and does not exclude corporate entities in any way from making complaints to the Ombudsman under this scheme.

“**Member**”: - has the meaning ascribed in the Constitution of the Gas Industry Ombudsman (Western Australia) Limited.

“**Authority**”: - means the Government body responsible, by law, for licensing gas retailers and network operators.

B: GAS INDUSTRY OMBUDSMAN**4 OBJECTIVES OF THE OMBUDSMAN**

The Objectives of the Ombudsman are as ascribed in Schedule 2B of the *Energy Coordination Act 1994*.

5 FUNCTIONS OF THE OMBUDSMAN

5.1 The functions of the Ombudsman are to receive, to investigate and to facilitate the resolution of:

- (a) complaints as to the provision or supply of (or the failure to provide or supply) gas services by a member to a customer as required by a licence or agreement or under legislation;
- (b) billing disputes;
- (c) the administration of credit and payment services in the circumstances of a particular customer;
- (d) disconnection, restriction and refundable advance complaints;
- (e) complaints from owners or occupiers of land or other property about the way in which a member has exercised its statutory powers in relation to that particular land or other property or in relation to neighbouring land or other property;
- (f) complaints referred by the Authority in relation to the conduct of a member under its gas distribution licence or its gas trading licence; and
- (g) such other complaints as may, by agreement with the Ombudsman and the complainant, be referred to the Ombudsman by a member.

5.2 (a) Complaints may be made to the Ombudsman by consumers of gas and by persons directly affected by the provision or supply of (or the failure to provide or supply) such a service provided by scheme members.

(b) Complaints may be made to the Ombudsman on behalf of a complainant by an authorised representative of the complainant.

(c) The focus of the GIO(WA) Scheme is on individual complaints which may be oral or in writing.

(d) A complaint must have arisen from events which became known to the complainant less than one (1) year prior to the complaint being lodged. The Ombudsman has a discretion to investigate any complaint arising from events before these dates.

5.3 To avoid doubt, the Ombudsman has jurisdiction to investigate and determine complaints involving the conduct of members' employees, servants, officers, contractors or agents, and may make a determination binding the member in relation to such complaints.

6 JURISDICTION OF THE OMBUDSMAN

6.1 The jurisdiction of the Ombudsman extends to the objectives enumerated in Section 4 and the functions enumerated in Section 5.

6.2 The functions of the Ombudsman do not extend to complaints relating to:

- (a) the setting of prices or tariffs or determining price structures;
- (b) commercial activities which are outside the scope of the member's licence;
- (c) the content of Government policies;
- (d) complaints which are specifically under consideration by any court or tribunal, or which have been considered by any of those bodies previously. Participants are encouraged not to initiate legal proceedings whilst a matter is being actively considered by the Ombudsman;
- (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, or any matter which, under an agreed working procedure with the Authority or another relevant government authority, is to be handled by the Authority or another government authority as the case may be;
- (f) events beyond the reasonable control of a member and their consequences, bearing in mind current law and reasonable and relevant industry practice; and
- (g) 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, facilitating the security of a gas system, a gas emergency or a matter of gas safety and issued by a person or entity having regulatory or administrative power to issue the direction, notice or instrument.

7 PROCEDURES OF THE OMBUDSMAN

7.1 The Ombudsman, in handling complaints, 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, will verify with an officer designated by the member concerned whether the member has had the opportunity to consider the complaint;
- (b) The Ombudsman may proceed to investigate the complaint 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;
- (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 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) With respect to all information concerning or relating to a complaint, the Ombudsman must act in accordance with accepted privacy principles;
- (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 GIO(WA) scheme will not be charged to, or costs be awarded against customers.

8 POWERS OF THE OMBUDSMAN

8.1 Binding Decisions

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

- (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 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,
 - (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 the total of such determinations or directions in relation to an individual complaint, or in relation to claims against any one member as a result of any one event or series of related contemporaneous events, does not exceed in value \$20,000; or
- (b) by dismissing the complaint.

In addition to the above, the Ombudsman, with the consent of all parties, may make a determination or direction the value of which exceeds \$20,000 but does not exceed \$50,000.

- (c) All decisions by the Ombudsman under this paragraph shall be automatically binding upon members. However, the complainant may elect whether or not to accept the decision of the Ombudsman within twenty-one (21) days of the Ombudsman's decision. If the complainant accepts the decision of the Ombudsman, the complainant shall fully release the member from all claims, actions etc in relation to the complaint. In the event that the complainant does not accept the decision 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.

8.2 Reasons

The Ombudsman shall provide complainants and members with written reasons in support of a decision under paragraph 8.1. The Ombudsman shall publish binding decisions, without identifying the parties to the decision.

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 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;
- (c) an investigation, or further investigation, is not warranted; or
- (d) the complaint is more appropriately or effectively dealt with by any other body.

9 OTHER POWERS AND RESPONSIBILITIES OF THE OMBUDSMAN

9.1 The Ombudsman is responsible for:

- (a) the overall performance of the GIO(WA) Scheme including, but not limited to, meeting such objectives as are determined by the Board from time to time;
- (b) managing the day to day operations of the GIO(WA) Scheme, including but not limited to, the appointment and termination of employment of staff;
- (c) attending, in a non-voting capacity, meetings of the Board at the invitation of the Board;
- (d) liaising with the Authority and other relevant government authorities and, in consultation with the Board, developing working procedures with these bodies where appropriate. The working procedures developed will, amongst other things, define the respective areas of responsibility of the Ombudsman and the other authorities concerned for the consideration of and investigation into complaints, having regard to the responsibilities of those authorities under applicable legislative and regulatory instruments;
- (e) in consultation with the Board, developing procedures for the fair, just, informal and expeditious handling of complaints;
- (f) in consultation with the Board, promoting the GIO(WA) Scheme and its complaint-handling procedures;
- (g) making recommendations to the Board on the Charter;
- (h) controlling and monitoring expenditure within the agreed budgets and for providing regular reports to the Board on expenditure;
- (i) preparing the annual report of the Ombudsman;
- (j) at the Ombudsman's discretion, making ad hoc confidential reports to members, the Authority and the Board;
- (k) at the Ombudsman's discretion, making general observations about the operation of the Ombudsman scheme in any public forum;

- (l) acting as an interface with the public for the receipt and referral of complaints;
- (m) 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;
- (n) ensuring that an accurate and up-to-date list of all members in the GIO(WA) Scheme is readily available to the public;
- (o) promoting the GIO(WA) Scheme to the public;
- (p) reporting to the Authority as and when required by the Authority under a licence or agreement;
- (q) preparing annual business plans and proposed annual funding figures and budgets and submitting them to the Board; and
- (r) raising with the Board issues of policy or practice which arise in relation to the GIO(WA) 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 GIO(WA) Scheme, other than the power:
 - (i) to make binding decisions under paragraph 8.1, and
 - (ii) to provide written reasons under paragraph 8.2, which powers may only be delegated to persons employed within the Ombudsman's office and deemed by the Ombudsman to be suitably qualified to perform this function;
- (b) to make a report to a member and to the Authority where, in the Ombudsman's opinion, the general gas 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;
- (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.

C: THE BOARD

10 ROLE AND RESPONSIBILITIES OF THE BOARD

- 10.1 The responsibilities of the Board include the oversight of the GIO(WA) 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 GIO(WA) Limited 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 GIO(WA) 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 GIO(WA) Scheme and this Charter. Final authority for approval of amendments to the GIO(WA) scheme and this Charter rests with the Authority, after consultation with the members.
- (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 GIO(WA) 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 consider the appropriateness, scope and effectiveness of the GIO(WA) Scheme, and, in particular, to review the scheme at least by the second anniversary of the inception of the scheme.
- (i) To provide advice to the Ombudsman on the promotion of the GIO(WA) Scheme and the preparation of the Annual Report.
- (j) To seek to ensure sufficient funding for the operation of the GIO(WA) Scheme. It is the joint responsibility of the Board and the Ombudsman to seek to ensure the GIO(WA) 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 GIO(WA) Scheme's operation. The Ombudsman has responsibility for the day to day operation of the GIO(WA) 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 GIO(WA) Limited, and exercises final authority in relation to the financial affairs of the company (subject to the Constitution of GIO(WA) Limited). These matters are most appropriately exercised by Directors. Responsibility for complaint handling and the day to day administration of the GIO(WA) 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 clause 10.2(e), final authority for approval of amendments to the GIO(WA) Scheme and this Charter rests with the Authority, after consultation with the members.