

CHARTER

OF

**ENERGY INDUSTRY
OMBUDSMAN (SA) LIMITED**

(ACN 089 791 604)

**A company limited by guarantee
Incorporated in South Australia**

Adopted by a Special Resolution passed on 24 November 2008

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CHARTER
OF
ENERGY INDUSTRY OMBUDSMAN (SA) LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Charter the following definitions apply unless the context requires otherwise:

"Annual Funding Figure" in respect of a Financial Year means the figure to be contributed by the Members toward the total funding of the Company for that Financial Year, approved by the Members in general meeting in accordance with Clause 10.4 of the Constitution or determined by the ESCOSAOSA in accordance with Clause 10.6 of the Constitution (as may have been varied under Clause 10.7).

"Annual Levy" means the annual levy payable by a Member to cover operating costs of the Scheme.

"Board" means the whole or any number of Directors assembled at a meeting of Directors not being less than a quorum.

"Budget" means the budget for each Financial Year set in accordance with the Charter.

"Charter" means this Charter, as amended from time to time.

"Company" means Energy Industry Ombudsman (SA) Limited (ACN 089 791 604).

"Constitution" means the Constitution of the Company as amended from time to time.

"Customer" means a customer of a Member for either an electricity or gas service and a customer of an entity with whom the Company contracts pursuant to Clause 2.1(b) of the Constitution and includes the owner and occupier of land or other property over which a Member is exercising statutory powers in relation to that land or other property or in relation to neighbouring land or other property. A retail gas customer shall be deemed to be a customer of the gas distributor.

"Director" means any Director of the Company for the time being.

"Electricity Act" means the *Electricity Act 1996 (SA)*.

"Electricity Member" is a Member who holds any licence under the Electricity Act.

"ESCOSA" means the Essential Services Commission established under the *Essential Services Commission Act 2002 (SA)*.

"Financial Year" means the financial year of the Company being the period from 1 July in each year to 30 June in the following year.

"Gas Act" means the Gas Act 1997 (SA).

"Gas Member" is a Member who holds any licence under the Gas Act.

"Member" means any person for the time being admitted to membership of the Company (as either an electricity or gas Member or both) and who contracts to be bound by and participate in the Scheme.

"Ombudsman" means the Energy Industry Ombudsman appointed pursuant to Clause 17 of the Constitution.

"Scheme" means the South Australian Energy Industry Ombudsman Scheme provided for in this Charter and the Constitution.

"Year" means a period of 12 consecutive months.

1.2 Interpretation

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 a corresponding meaning;
- (d) the word person includes a firm, body corporate, unincorporated association or authority;
- (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 a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) terms defined in the Corporations Act have the same meaning when used in this Charter; and
- (h) headings are for convenience only and do not affect interpretation.

2. THE SCHEME

2.1 The South Australian Energy Industry Ombudsman Scheme (the ***Scheme***) is established by a company limited by guarantee, the Energy Industry Ombudsman (SA) Limited (ACN 089 791 604) (the ***Company***).

2.2 The Constitution of the Company establishes:-

- (a) Membership of the Company and the Scheme;
- (b) a fully representative Board of Directors comprised of Directors elected by the Members, Directors appointed from groups representing customers of electricity and gas services or representing public interest issues relevant to such services and an independent Chair;
- (c) an Ombudsman vested with authority under the Constitution and this Charter to receive, investigate and facilitate the resolution of complaints by customers; and

(d) a framework for the adoption, maintenance and interpretation of this Charter.

2.3 The mission of the Company is to receive, investigate and facilitate the prompt resolution of complaints from customers and disputes between customers and Members by providing a free, independent, accessible, fair and informal service.

3. MEMBERS

3.1 Members of the Scheme are:

(a) holders of retail, distribution and transmission licences issued under the Electricity Act 1996, and

(b) holders of retail and distribution licences issued under the Gas Act,

who, in accordance with Clause 7 of the Constitution, have been accepted as Members.

3.2 The Ombudsman must ensure that an accurate and up-to-date list of all Members is available to the public.

4. FUNCTIONS OF THE OMBUDSMAN

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

4.1 complaints by customers regarding:

(a) the connection, supply or sale of (or the failure to connect, supply or sell) electricity or gas by a Member to a customer as required by a licence or agreement;

- (b) the connection, supply or sale of (or the failure to connect, supply or sell) electricity or gas by another entity which is exempt from the requirement to hold a licence under either the Electricity Act or the Gas Act on the condition that it agrees to participate in the Scheme to the extent required by the Ombudsman as if it were a Member;
 - (c) billing disputes;
 - (d) the administration of credit and payment services by a Member;
 - (e) disconnection and security deposit issues;
 - (f) the manner in which a Member has exercised its statutory powers in relation to land or other property owned or occupied by the Customer or in relation to neighbouring land or other property; and
- 4.2 Complaints referred by the ESCOSA in relation to the conduct of a Member's business.
- 4.3 such other complaints as may, by agreement with the Ombudsman (including agreement as to jurisdiction, powers, procedures and costs) and the complainant, be referred to the Ombudsman by a Member.
- 4.4 Complaints may be made to the Ombudsman by Customers of Members and by persons directly affected by the connection, supply and sale of electricity or gas by Members (to be referred to as **complainants**).

- 4.5 A complaint may be made on behalf of the complainant by a person who is, in the Ombudsman's opinion, a suitable representative of the complainant.
- 4.6 A complaint must have arisen from events which became known to the complainant no more than one (1) year prior to the complaint being lodged.
- 4.7 In relation to the electricity industry the events leading to the complaint must have occurred on or since 11 October 1999.
- 4.8 In relation to the gas industry the events leading to the complaint must have occurred since 1 November 2003.
- 4.9 Notwithstanding Clauses 4.6, 4.7 and 4.8 the Ombudsman has a discretion to investigate any complaint arising from events before those dates.
- 4.10 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 and in relation to such employees, servants, officers, contractors or agents.

5. JURISDICTION OF THE OMBUDSMAN

- 5.1 The jurisdiction of the Ombudsman extends to the functions in clause 4.
- 5.2 The jurisdiction of the Ombudsman does not extend to complaints relating to:-

- (a) the setting of prices or tariffs or determining price structures;
- (b) matters which are exclusively within the functions of the ESCOSA;
- (c) commercial activities which are outside the scope of the Member's licence and in the case of a Member which does not hold a licence, commercial activities which are not within or closely related to the core services provided by such member;
- (d) the content of Government policies, legislation, licences and codes;
- (e) complaints which are the subject of incomplete proceedings before any Court, tribunal or arbitrator, unless the Ombudsman and the parties to such proceedings have agreed to, or are with the consent of the Ombudsman required by the Court, tribunal or arbitrator to have some or all of the issues determined by the Ombudsman and then only on such terms and conditions as are agreed by the Ombudsman;
- (f) complaints which have previously been considered by a Court, tribunal or arbitrator;
- (g) any matter specifically required to be done by a Member under legislation (including subordinate legislation or rules), codes, licences, and orders made in accordance with the law;
- (h) customer contributions to the cost of capital works;
- (i) disputes between Members; or

- (j) 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 electricity or gas , facilitating the security of an electricity or gas supply system, an emergency or a matter of safety and issued by a person or entity having regulatory or administrative power to issue the direction, notice or instrument.

6. PROCEDURES OF THE OMBUDSMAN

- 6.1 The Ombudsman must handle complaints in a fair, just, informal and expeditious manner. The Ombudsman is responsible for developing and maintaining procedures in consultation with the Board that best achieve this objective
- 6.2 The procedures adopted by the Ombudsman to handle complaints 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; and
 - (b) subject to reasonable time limits to avoid undue delay in dealing with the complaint, the Ombudsman may proceed to investigate the complaint only after the Member has had this opportunity, and the Member has been notified that the Ombudsman intends to investigate the complaint;
 - (c) on receiving notification of an investigation by the Ombudsman, the Member concerned must provide to the Ombudsman within reasonable time limits 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 has the discretion to determine whether any or all of the documents are to be produced;

- (d) with respect to all information concerning or relating to a complaint, the Ombudsman must act in accordance with relevant privacy principles; and
- (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.

7. POWERS OF THE OMBUDSMAN

Binding Decisions

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

- (a) resolve a complaint by:-
 - (i) making a determination that the Member concerned pay compensation to the complainant; and/or

- (ii) directing a Member to provide an electricity or gas service; and/or
- (iii) directing a Member to amend, or not to impose, a charge in relation to an electricity or gas service; and/or
- (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; and/or
- (v) directing a Member to make an appropriate correction, deletion or addition to a record; and/or
- (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) directing a Member to do, not to do, or to cease doing an act;

provided that the total cost to a Member of such determination or direction in relation to an individual complaint, does not exceed in value \$20,000 (as determined to the satisfaction of the Ombudsman)

or

- (b) dismiss the complaint.

7.2 The Ombudsman may, with the consent of all parties, make a determination or direction the cost to a Member of which

exceeds \$20,000 but does not exceed \$50,000 (as determined to the satisfaction of the Ombudsman).

- 7.3 All decisions by the Ombudsman under clause 7.1 are binding upon Members. However, a complainant may within twenty-one (21) days of the Ombudsman's decision elect whether or not to accept the decision of the Ombudsman.

If the complainant accepts the decision of the Ombudsman, the complainant shall thereby fully release the Member from all claims, actions and demands in relation to the complaint.

If the complainant does not accept the decision of the Ombudsman:-

- (a) the complainant may pursue his or her remedies in any other forum; and
- (b) the Member is fully released from the Ombudsman's decision.

- 7.4 The Ombudsman must not make a determination or recommendation which, when given effect, would involve a Member contravening any code, licence, regulation or law of the Commonwealth or of a State.

- 7.5 Where there is a dispute between the Ombudsman and a Member about the effect of the law or of regulatory instruments, the Ombudsman may refer the matter to Senior Counsel or the Supreme Court for authoritative advice or determination, as the case may be, and if the Ombudsman so determines it is appropriate, such reference shall be at the Member's expense.

7.6 The Ombudsman can not provide legal advice.

Reasons

7.7 The Ombudsman must provide complainants and Members with written reasons in support of a decision under clause 7.1.

Discretion not to Investigate

7.8 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 and relevant 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.

7.9 The Ombudsman must inform the complainant in writing of a decision not to investigate (including the reasons for that decision) and if appropriate, direct the complainant to a more appropriate body.

Other Powers

7.10 The Ombudsman also has the power to:-

(a) delegate the Ombudsman's functions and powers for the efficient day-to-day operation of the Scheme, other than the power to:-

(i) make binding decisions under clause 6.1; and

(ii) provide written reasons under clause 6.5,

which functions and powers may only be delegated to persons employed in senior positions within the Ombudsman's office;

(b) make a report to a Member and the ESCOSA where, in the opinion of the Ombudsman, the operational or commercial practices of a Member have:-

(i) contributed to a complaint;

(ii) been identified as the source of a number of similar complaints; or

(iii) impeded the investigation or handling of a particular complaint;

(c) take appropriate action to ensure that the Ombudsman's determinations are implemented, and that a Member meets requests for information. This action may include referral of the matter to the Chief Executive Officer of the Member, the Board, the Minister for Consumer and Business Affairs, or the ESCOSA.

8. DUTIES OF THE OMBUDSMAN

9.1 The Ombudsman is responsible for:-

- (a) the overall performance of the Scheme including, but not limited to, meeting the objectives determined by the Board from time to time;
- (b) managing the day to day operations of the Scheme, including, but not limited to, the appointment and termination of staff;
- (c) attending, in a non-voting capacity, meetings of the Board at the invitation of the Board and general meetings of the Members of the Company;
- (d) liaising with Members and other electricity and gas service providers to assist them in developing better customer relations;
- (e) at his or her discretion, liaising with the Office of Consumer and Business Affairs and other relevant government authorities and, in consultation with the Board, developing working procedures with these bodies where appropriate;
- (f) in consultation with the Board, developing procedures for the fair, just, informal and expeditious handling of complaints;
- (g) in consultation with the Board, promoting the Scheme and its complaint handling procedures;
- (h) making recommendations to the Board on the Constitution and this Charter;

- (i) in consultation with the Budget Committee, preparing financial budgets and business plans and any subsequent amendments thereto;
- (j) submitting proposed financial budgets and business plans and any subsequent amendments to the Budget Committee for referral to the Board with recommendations and comments as the Budget Committee thinks fit;
- (k) controlling and monitoring expenditure within the agreed budget and providing regular reports to the Budget Committee and the Board on expenditure;
- (l) preparing the annual report of the Ombudsman;
- (m) at his or her discretion, making adhoc confidential reports to Members, the Minister for Consumer and Business Affairs, the ESCOSA and the Board;
- (n) at his or her discretion, making general observations about the operation of the Scheme in any public forum;
- (o) acting as an interface with the public for the receipt and referral of complaints;
- (p) 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;
- (q) ensuring that an accurate and up-to-date list of all Members in the Scheme is readily available to the public; and

- (r) raising issues of policy or practice which arise in relation to the Scheme with the Board.

9. ROLE AND RESPONSIBILITIES OF THE BOARD

9.1 The primary responsibilities of the Board are to oversee the Scheme and maintain 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 and procedural matters.

9.2 Specifically, the duties of the Board are:-

- (a) the appointment and termination of appointment of the Ombudsman in accordance with the Constitution and the Ombudsman's contract of employment;
- (b) appointment of an acting Ombudsman for a specific time, if required;
- (c) within the framework of the Constitution, to determine policies and practices relating to the administration of the Scheme;
- (d) to monitor the operation of the Constitution and this Charter and recommend amendments to the Constitution and this Charter as the Board thinks fit;

- (e) to receive and consider recommendations from the Ombudsman for amendments to the Constitution and this Charter.
- (f) to provide advice to the Ombudsman on the allocation of resources within 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 consider the appropriateness, scope and effectiveness of the Scheme, and, in particular, to review the Scheme at least by 30 June 2006 and at least every five years thereafter;
- (i) to provide advice to the Ombudsman on the promotion of the Scheme and the preparation of the Annual Report;
- (j) 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 and within budgets; and
- (k) to accept and resolve any complaints about the operation of the Scheme.

10. RELATIONSHIP BETWEEN THE BOARD AND THE OMBUDSMAN

- 10.1 The Board has primary 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, generally, the Ombudsman will attend Board meetings as an observer and an advisor as appropriate.
- 10.2 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). Responsibility for complaint handling, and the day to day administration of the Scheme rest with the Ombudsman.

11. AMENDMENTS TO CHARTER

This Charter may be amended by the Board at any time, with the prior approval of the ESCOSA.