

CHARTER
OF
ENERGY AND WATER
OMBUDSMAN (SA) LIMITED
(ACN 089 791 604)

A company limited by guarantee
Incorporated in South Australia

Adopted by Board Resolution passed on 23 February 2022

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CHARTER
OF
ENERGY AND WATER OMBUDSMAN (SA) LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Ad Hoc Committee” means a committee referred to in clause 16.1.1(b) of the Constitution.

“AER” means the Australian Energy Regulator, established under Part IIIAA of the *Competition and Consumer Act 2010*.

“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 11.4 of the Constitution or determined by the Commission in accordance with Clause 10.4 of the Constitution (as may have been varied under Clause 10.5).

“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.

“Commission” means the Essential Services Commission established under the *Essential Services Commission Act 2002 (SA)*.

“Committee” means an Ad Hoc or Standing Committee.

“Company” means Energy and Water Ombudsman (SA) Limited (ACN 089 791 604).

“Competition and Consumer Act” means the Competition and consumer Act 2010 as amended by the Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2021

“Notifiable Instrument” means the Competition and Consumer (Consumer Data Right – Recognised External Dispute Resolution Schemes) Instrument 2021

“Constitution” means the Constitution of the Company as amended from time to time.

“Consumer Data Rules” means the rules in force under section 56BA of the Competition and Consumer Act.

“Customer” means a customer of a Member for either an electricity or gas service, or a water service 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.

“Designated Committee” means the Standing Committee referred to in clause 16.2.3 of the Constitution operating under whatever name may be given to that Standing Committee by the Board.

“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 or an authorisation under the National Energy Retail Law, or any Member who is exempt from the requirement to hold a licence or authorisation and, as a condition of the exemption, is required to become a Member.

“Embedded Network” means a private network serving multiple premises and being connected to the grid at a ‘parent’ connection point.

“Energy Service” means the product or service provided to satisfy an energy demand or need, including the transmission, distribution and supply of electricity, or the distribution and supply of gas and associated energy services.

“Exempt Network Service Provider” means an operator of a private network who is exempted from the requirement to be a registered network service provider.

“Exempt Energy Seller” means a person, business or other entity holding or subject to an individual, registrable or deemed exemption under the National Energy Retail Law, in accordance with the AER (Retail) Exempt Selling Guideline.

“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 or an authorisation under the National Energy Retail Law.

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

“National Electricity Law” means the Schedule, National Electricity (South Australia) Act 1996.

“National Energy Retail Law” means the National Energy Retail Law (South Australia) Act 2011 and any other legislation in force that implement the National Energy Law in South Australia, and all statutory instruments made under, in accordance with, or for the purposes of that Act.

“OAIC” means the Office of the Australian Information Commissioner.

“Ombudsman” means the Energy and Water Ombudsman appointed pursuant to Clause 17 of the Constitution.

“Privacy Act” means the *Privacy Act 1988*.

“Scheme” means the South Australian Energy and Water Ombudsman Scheme provided for in this Charter and the Constitution.

“Standing Committee” means a committee referred to in clause 16.1.1(c) of the Constitution.

“Water Act” means *the Water Industry Act 2012*.

“Water Member” means:

- (a) South Australian Water Corporation established under the *South Australian Water Corporation Act 1994*; and
- (b) a Member who holds any licence under the Water Act.

“Water Service” means:

- a) a service constituted by the collection, storage, productions, treatment, conveyance, reticulation or supply of water; or any other service, or any service of a class, brought within the ambit of this definition by the regulation under the Water Act, or
- b) a service constituted by the collection, storage, treatment or conveyance of sewage through the use of a reticulated system, or

- c) any other service, or any service of a class, brought within the ambit of this definition by the regulations under the Water Act.

“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 Energy & Water Ombudsman SA (the **Scheme**) is established by a company limited by guarantee, the Energy and Water Ombudsman (SA) Limited (ACN 089 791 604) (the **Company**).

2.2 The Scheme is the approved dispute resolution scheme in South Australia under the National Energy Retail Law and the Water Act for electricity, gas and water services in South Australia.

2.3 The Scheme is recognised under the Privacy Act as an external dispute resolution scheme to handle privacy related complaints.

2.4 The Scheme is recognised as an external dispute resolution scheme under the Notifiable Instrument to handle complaints relating to the operation of the Consumer Data Rules.

2.5 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, gas and water 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.

2.6 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 providers of certain services, as set out in the Constitution of the Company, who must under their licence, authorisation, legislation or an industry code enter an external dispute resolution scheme such as the Scheme. They include:

- (a) holders of retail, distribution and transmission licences issued under the Electricity Act unless an exemption under that Act applies
- (b) holders of retail and distribution licences issued under the Gas Act
- (c) South Australian Water Corporation established under the South Australian Water Corporation Act 1994, and
- (d) holders of any licences issued under the Water Act,

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

3.2 Certain types of sellers and distributors of electricity to Embedded Networks may be required to join the Scheme, including:

- (a) an Exempt Energy Seller that sells electricity to customers within a site the seller owns, occupies or operates
- (b) a retirement village that sells electricity to residents of the retirement village, and
- (c) an Exempt Energy Seller that sells electricity in a caravan park, holiday park, residential land lease park, manufactured home estate or an apartment building.

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

3.4 The Scheme can only handle complaints about Members of the Scheme.

4. FUNCTIONS OF THE OMBUDSMAN

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

4.1.1 Complaints by customers regarding:

- (a) the connection, supply or sale of (or the failure to connect, supply or sell) electricity, gas or water 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, gas or water by another entity which is exempt from the requirement to hold a licence under either the Electricity Act, the Gas Act or the Water 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
- (g) privacy and credit reporting under the *Privacy Act 1988*, and
- (h) complaints relating to the operation of the Consumer Data Rules in relation to the energy sector under the *Competition and Consumer Act 2021*.

4.1.2 Complaints referred by the Commission or the AER in relation to the conduct of a Member's business.

4.1.3 Complaints referred by the OAIC in relation to acts or practices of a Member on privacy or credit reporting related matters.

4.1.4 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.

4.2 Complaints may be made to the Ombudsman by Customers of Members and by persons directly affected by the connection, supply and sale of electricity, gas or water by Members (to be referred to as *complainants*).

4.3 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.

- 4.4** 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.
- 4.5** In relation to the electricity industry the events leading to the complaint must have occurred on or since 11 October 1999.
- 4.6** In relation to the gas industry the events leading to the complaint must have occurred on or since 1 November 2003.
- 4.7** In relation to the water industry the events leading to the complaint must have occurred on or since 19 December 2011.
- 4.8** Notwithstanding Clauses 4.6, 4.7, 4.8 and 4.9 the Ombudsman has a discretion to investigate any complaint arising from events before those dates.
- 4.9** 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.
- 4.10** Further functions of the Ombudsman are:
- 4.10.1 to provide information to Members to assist them in the development and maintenance of good complaint-handling practices.
- 4.10.2 to identify and report on systemic issues as a means of preventing complaints and disputes.

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 Commission or the AER
 - (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, gas or water, facilitating the security of an electricity, gas or water 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, and
 - (c) the Ombudsman may investigate a complaint that the Member has not had to opportunity to consider first if it is deemed necessary to avoid undue delay in handling the complaint for example where a customer is identified as vulnerable, and
 - (d) 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, and

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

7.1 Binding Decisions

7.1.1 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, gas or water service, and/or
 - (iii) directing a Member to amend, or not to impose, a charge in relation to an electricity, gas or water 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 \$50,000 (as determined to the satisfaction of the Ombudsman), or

- (b) dismiss the complaint.

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

\$50,000 but does not exceed \$125,000 (as determined to the satisfaction of the Ombudsman).

- 7.1.3 All decisions by the Ombudsman under clause 7.1.1 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.

- 7.1.4 The Ombudsman may make determinations on relevant privacy-related complaints, including the ability to provide remedies that are generally consistent with the declarations available to the OAIC when making a determination under s.52 of the Privacy Act.

- 7.1.5 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.

- 7.1.6 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.

- 7.1.7 The Ombudsman cannot provide legal advice.

7.2 Reasons

The Ombudsman must provide complainants and Members with written reasons in support of a decision under clause 7.1.1.

7.2 Discretion not to Investigate

- 7.2.1 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.

7.2.2 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.

7.4 Other Powers

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 7.1.1, and
 - (ii) provide written reasons under clause 7.2,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 Commission 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, the Commission or the AER.

8. SYSTEMIC AND OTHER IMPORTANT ISSUES

- 8.1** The Ombudsman may identify potential systemic issues, whether systemic to a specific Member or systemic to a group or type of Members, and where appropriate, investigate the issues. Where the Ombudsman finds that a systemic issue has occurred, the Ombudsman shall refer the issue to the relevant Member's senior management for remedial action. The Ombudsman shall obtain a report from the Member as to the remedial action undertaken and continue to monitor the matter until a resolution that the Ombudsman considers to be a reasonable outcome for the customers involved has been achieved.
- 8.2** The Ombudsman may also refer to a Member's senior management the following important issues:
- (a) any opportunity that the Ombudsman identifies to improve the Member's policies or practices in the interests of reducing the incidence of complaints
 - (b) where the Ombudsman identifies that there have been a number of similar complaints to the Member or considers that a Member has impeded the Ombudsman's consideration or investigation of a complaint or has failed without reasonable excuse to comply with anything the Ombudsman has requested or required the Member to do.
- 8.3** The Ombudsman may also report systemic or other important issues to the relevant government Minister or to regulatory bodies.

9. DUTIES OF THE OMBUDSMAN

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, gas and water 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 Designated 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 Designated Committee for referral to the Board with recommendations and comments as the Designated Committee thinks fit
- (k) controlling and monitoring expenditure within the agreed budget and providing regular reports to the Designated Committee and the Board on expenditure
- (l) preparing the annual report of the Ombudsman
- (m) at his or her discretion, making ad hoc confidential reports to Members, the Minister for Consumer and Business Affairs, the Commission, the AER 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.

10. ROLE AND RESPONSIBILITIES OF THE BOARD

- 10.1 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.
- 10.2 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 Designated 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 operation of the Scheme.

11. RELATIONSHIP BETWEEN THE BOARD AND THE OMBUDSMAN

- 11.1 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.
- 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). Responsibility for complaint handling and the day to day administration of the Scheme rest with the Ombudsman.

12. AMENDMENTS TO CHARTER

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