



n Energy & Water
Ombudsman NSW



MEMORANDUM OF UNDERSTANDING

ENERGY & WATER OMBUDSMAN NSW (EWON)

and

AUSTRALIAN ENERGY REGULATOR

July 2009



1. PURPOSE

This memorandum of understanding (MOU) sets out arrangements to promote effective communication, cooperation and co-ordination between the Energy & Water Ombudsman NSW (EWON) and the Australian Energy Regulator (AER) in the performance of their different roles in the energy industry. These arrangements aim to enhance the understanding of consumer protection issues in relation to the national energy market, and the performance by EWON and AER (the Agencies) of their respective roles.

This MOU is a public document and communicates, in a transparent way to all stakeholders, the administrative arrangements that operate between the Agencies.

2. BACKGROUND

ENERGY & WATER OMBUDSMAN NSW (EWON)

The Energy & Water Ombudsman NSW (EWON) is the approved dispute resolution scheme for all New South Wales electricity and gas customers and some water customers. EWON's Constitution gives it the power to receive, investigate and facilitate the resolution of customer complaints about electricity and gas retailers and distributors that are members of the ombudsman scheme. EWON's jurisdiction also covers complaints by customers of electricity suppliers that are exempt from holding a retail licence, and complaints against marketers acting for energy licence holders.

All electricity and gas retailers and distributors who supply small retail customers in New South Wales are required to be members of the EWON scheme, as the approved energy ombudsman scheme for New South Wales.

AUSTRALIAN ENERGY REGULATOR (AER)

The AER is established under the *Trade Practices Act 1974* (Cth) and is administratively part of the Australian Competition and Consumer Commission (ACCC). The AER:

- monitors and ensures compliance with the *National Electricity Law* and *National Electricity Rules* and is responsible for the economic regulation of electricity transmission and distribution networks in the National Electricity Market; and
- monitors and enforces compliance with the *National Gas Law* and *National Gas Rules* and is responsible for the economic regulation of gas transmission and distribution networks in all jurisdictions except Western Australia.

Under the Australian Energy Market Agreement, as part of the transition to national energy regulation, the AER will also assume additional responsibility for regulation of electricity distribution networks and responsibility for electricity and natural gas retail markets (other than retail pricing) under the National Energy Customer



Framework and the new *National Energy Retail Law* and *National Energy Retail Rules*.

3. NOTIFICATION AND CONSULTATION

3.1 The Agencies recognise the importance of mutual consultation when their responsibilities overlap, but also recognise that decisions must be made independently. Where appropriate, the Agencies will endeavour to:

- (a) notify each other of any activities that may be relevant to the other Agency, and keep each other informed of the progress of those matters. This could include:
 - activities such as enforcement action, relevant to energy retail and distribution businesses or consumers in New South Wales;
 - distribution determinations and access arrangements for electricity and gas networks in New South Wales;
 - reports on the energy industry; or
 - changes to regulatory instruments such as guidelines;
- (b) provide each other with copies of publications that may be relevant to the other Agency. It may also be appropriate to provide an advance copy of, and briefing on, the publication, prior to its general release;
- (c) where a publication (such as a report or a webpage), refers to the other Agency, provide the Agency with an opportunity to comment on the reference prior to the finalisation and general release of the publication;
- (d) at the request of the other Agency, provide advice on issues that are within the Agency's responsibility – for example, an Agency may seek advice where the investigation of a complaint requires consideration of issues that are within the other Agency's responsibility; and
- (e) provide each other with updates and reports on emerging or systemic consumer complaints issues. This could include:
 - reports about disconnection of supply issues;
 - reports about interval electricity meter issues;
 - reports about energy marketing and transfer issues; and
 - quarterly information reports about EWON organisational issues, issues being raised by consumers and issues being discussed by EWON and the NSW Department of Water and Energy.

In the case of EWON reports provided to the AER, subject to clause 5 of this MOU, the AER may provide these reports to its Customer Consultative Group.



4. REFERRAL OF MATTERS

- 4.1 The Agencies recognise that once a complaint or enquiry is received or an initial investigation has been conducted by an Agency, it may become apparent that the matter more appropriately falls within the jurisdiction of the other Agency. In these circumstances, the Agencies recognise that it may be appropriate to refer the matter to the other Agency.
- 4.2 The Agencies will:
- (a) obtain the complainant or enquirer's consent before identifying the complainant or enquirer in the referral to the other Agency; and
 - (b) provide complainants and enquirers with general information about the other Agency (such as the nature of the EWON scheme or the role of the AER).
- 4.3 If appropriate, the Agencies will develop more detailed arrangements for the referral of matters, including the process of consultation about a potential referral, the form and process for the making of a referral, the method and timing of the acceptance or refusal of a referral, the provision of ongoing assistance in relation to a referral and any other matter that may assist in the performance of the Agencies' respective roles.

5. EXCHANGE OF INFORMATION

- 5.1 The Agencies recognise the value of sharing information. The Agencies also recognise that they each have obligations in relation to the protection of information.
- 5.2 Where appropriate, the Agencies will facilitate the exchange of information. Where this information is confidential:
- (a) the Agency providing the information will identify the relevant part of the information that is confidential; and
 - (b) the receiving Agency will only use or disclose that information to the extent permitted by law.
- 5.3 EWON acknowledges that information may be shared between the AER and ACCC under sections 44AAF and 157A of the *Trade Practices Act 1974* (Cth). As set out in the ACCC/AER's Information Policy (October 2008), if the ACCC/AER has obtained information in the course of one matter which is relevant to another matter, the ACCC/AER will, in general, use that information in the context of the other matter subject to any specific legal requirement to the contrary.



6. LIAISON OFFICERS

- 6.1 Each Agency will ensure that it has a designated liaison officer, known to the other Agency, to act as a direct point of contact in relation to matters arising under this MOU.
- 6.2 The designated liaison officers from the commencement of this MOU are set out in the Appendix to this MOU. An Agency may change its liaison officer by providing written notice to the other Agency.

7. REGULAR MEETINGS

- 7.1 The liaison officers will meet at least every three months or as otherwise agreed, to discuss matters of common interest, including to:
- inform each other about any existing or proposed activities that may be of interest to the other Agency;
 - review the referral of complaints or inquiries;
 - identify opportunities for joint activities or the sharing of information; and
 - report on any other developments that may impact on the other Agency.
- 7.2 The Energy & Water Ombudsman NSW and the Chief Executive Officer of the AER will meet as necessary to assess the operation of this MOU and to discuss the ongoing relationship between the Agencies.
- 7.3 Contact between the Agencies will also be maintained through meetings of the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWON).

8. INFORMATION FOR STAFF

- 8.1 Where appropriate, each Agency will provide information forums for staff of the other Agency covering topics such as roles and responsibilities.

9. MANAGEMENT OF THE MOU

- 9.1 In the event of any disagreement between the Agencies, the liaison officers will seek to resolve the matter in accordance with the purposes of this MOU.
- 9.2 The Agencies will review this MOU within 12 months of its commencement and at subsequent intervals of no more than two years.
- 9.3 Each Agency will publish this MOU on its website.



n Energy & Water
Ombudsman NSW



Dated this *8th* day of *JULY* 2009

Clare Petre

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Signed on behalf of the
Energy & Water Ombudsman NSW
Clare Petre
Energy & Water Ombudsman NSW

Steve Edwell

.....
Signed on behalf of the
Australian Energy Regulator
Steve Edwell
Chairman



Energy & Water
Ombudsman NSW



APPENDIX 1 – Nomination of Liaison Officers

1. EWON nominates the following liaison officers in accordance with clause 6 of this MOU:

Linda Brown
Manager Service Development, EWON

Emma Keen
Manager Policy and Projects, EWON

2. The AER nominates the following liaison officer in accordance with clause 6 of this MOU:

Lynley Jorgensen
Director – Markets Branch, AER

Susan Faulbaum
Director – Markets Branch, AER