

**MEMORANDUM OF
UNDERSTANDING**

NSW FAIR TRADING

and

ENERGY & WATER OMBUDSMAN NSW

July 2016

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1. Objectives

- 1.1 This memorandum of understanding (“**MOU**”) sets out arrangements to promote effective communication, cooperation and coordination between the Energy & Water Ombudsman NSW (“**EWON**”) and New South Wales Fair Trading (“**NSWFT**”) in performing their respective roles and functions.
- 1.2 These arrangements aim to enhance the parties’ understanding of energy and water related industry, and consumer issues, and enhance the performance of their respective roles.
- 1.3 This MOU is a public document and communicates in a transparent way to all stakeholders the administrative arrangements that operate between EWON and NSWFT.

2. Parties to the Understanding

Energy & Water Ombudsman NSW (EWON)

- 2.1. EWON has the authority to facilitate dispute resolution 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 against electricity, gas and water providers which are members of the EWON scheme. EWON’s jurisdiction also covers suppliers that are exempt from holding a retail authorisation, including Residential Park Operators, and complaints against marketers acting for energy retailer authorisation holders.

Members of the EWON scheme include all electricity and gas retailers and distributors who supply small retail customers; public water authorities in particular Water NSW, the Sydney Water Corporation, and the Hunter Water Corporation; and all private water utilities operating in NSW covered by the *Water Industry Competition Act 2006* (“**the 2006 Act**”) including licensed retail suppliers and network operators whose memberships are required under section 50 of the 2006 Act.

NSW Fair Trading (NSWFT)

- 2.2 NSWFT’s role is to safeguard consumer rights and to advise business and traders on fair, ethical practice regarding various consumer goods and services which include rental accommodation, sale or purchase of property, motor vehicles, and residential building work.

NSWFT’s activities include answering enquiries from consumers and traders on their rights and obligations; compliance monitoring and enforcement; complaint handling and dispute resolution; and licensing, registration and certification services. NSWFT is involved in the NSW

energy licensing framework through its consumer protection functions and enforcement of fair trading laws.

3. Notification and Consultation

3.1. While each party must make independent decisions relating to matters within its jurisdiction, EWON and NSWFT recognise the importance of mutual consultation when their responsibilities overlap. Subject to the arrangement on exchanging information (see clause 6 below), EWON and NSWFT will:

a) notify each other of matters which relate to specific areas of interest and/or jurisdiction of the other party, and keep the other party informed of the progress of those matters. This could include the following matters relevant to NSW businesses and/or consumers involving the supply and/or services of energy, water, LPG and solar energy:

i.compliance and enforcement activities;

ii.systemic compliance issues arising from complaints;

iii.scams;

iv.changes to regulatory instruments; and

v.outreach, awareness raising and media activities

b) provide each other with copies of publications relating to the matters set out in clause 3.1(a) above including, if appropriate, the provision of an advance copy of, and briefing on, such publications prior to their general release;

c) where a publication (such as a report or web page) by one party refers to the other, provide that party with an opportunity to comment on the reference prior to the finalisation and general release of the publication.

3.2. EWON and NSWFT will consider inviting staff from the other party to participate in consumer and industry education and outreach activities where appropriate.

3.3. In developing education and guidance materials, EWON and NSWFT will endeavor to ensure the materials are consistent with each party's respective publications.

3.4. EWON and NSWFT will each provide information forums for staff of the other party where appropriate, covering topics such as roles and responsibilities, to support the operation of this MOU.

4. Liaison

4.1 A committee of officers of EWON and NSWFT will meet bi-annually, or as otherwise agreed, to:

- (a) discuss matters of common interest to both parties;
- (b) provide each other with updates and reports on consumer complaints that may indicate systemic issues or emerging trends;
- (c) inform each other about any existing or proposed activities which relate to the matters set out in clause 3.1(a) above;
- (d) review the referral of complaints or inquiries between the parties;
- (e) identify opportunities for joint activities or the sharing of information;
- (f) report on any other developments that may impact on other parties.

4.2 Reports may be provided in writing at any time or at the scheduled regular meetings, as agreed between the parties.

5 Referral arrangements

Notification of Matters

- 5.1 NSWFT and EWON will notify each other of matters which come to their attention and which relate to specific areas of interest and/or jurisdiction of the other.
- 5.2 Such matters including complaints received by NSWFT will be emailed to EWON at: omb@ewon.com.au
- 5.3 Such matters including complaints received by EWON will be emailed to NSWFT at: Qualityimprovement@finance.nsw.gov.au

Circumstances in which a complaint may be referred

- 5.4 A complaint may be referred by one party to be dealt with by the other party, if it appears to the referring party that the complaint:
- (i) is within, or partly within, the receiving party's jurisdiction;
 - (ii) requires action, the nature of which the receiving party has special interest in; and
 - (iii) is best dealt with by the receiving party.

Information to Accompany a Referred Complaint

- 5.5 Subject to the arrangement on exchanging information (see clause 6 below), the information to accompany a referred complaint is to include:
- (i) advice on whether the full, or only part of a, complaint is referred to the receiving party;
 - (ii) if only a part of the complaint, advice on whether the referring party or another agency is dealing with the other part/s of the complaint;
 - (iii) copies of all documents held by the referring party that relates to the complaint, or part of the complaint, being referred to the receiving party;
 - (iv) any other information which may be relevant to the complainant held by the referring party.
- 5.6 Documents or information obtained during the course of formal conciliation or mediation proceedings shall not be released except upon prior written consent of the party providing such documents or information.

Agreement to Accept and Deal with the Referred Complaint

5.7 At or about the time a complaint is to be referred, the referring party must send to the complainant, in writing, the following information:

- (i) the name and contact details of the receiving party;
- (ii) advice whether the full, or part of the, complaint is referred to the receiving party; and
- (iii) if only a part of the complaint, whether the other part is being dealt with by the referring party or any other agency.

5.8 the receiving party is to give the complainant, in writing, the following information:

- (i) acknowledgement of receipt of the referred complaint, or part thereof;
- (ii) its relevant contact details.

6 Exchanging Information

6.1 The parties recognise the value of sharing information and agree to disclose information (subject to legal constraints) where it is reasonably necessary to enable both parties to carry out their respective functions in a proper and efficient manner. The information the subject of this arrangement is limited to the following:

- (a) information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters,
- (b) probity assessments and reference checks concerning persons who provide, or propose to provide, goods or services to consumers,
- (c) any other information affecting the interests of consumers,
- (d) any other information of a type prescribed by the legislation.

6.2 EWON and NSWFT agree to give each other reasonable notice when seeking information from the other party.

Confidentiality of Information Provided

- 6.3 The parties shall maintain any personal or commercial confidentiality within the statutory framework, and take reasonable steps to protect any confidential information from unauthorised use or disclosure.
- 6.4 The parties will comply with their respective privacy policies and applicable legislation and the Privacy Code of Practice, made under the *Privacy and Personal Information Protection Act 1998*.

7 Management of the MOU

- 7.1 EWON and NSWFT will each nominate a liaison officer to be responsible for matters arising under this MOU and for cooperation arrangements between the parties.
- 7.2 The Ombudsman and the NSWFT Commissioner or their delegates will meet as necessary to assess the operation of this MOU and to discuss the ongoing relationship between EWON and NSWFT.
- 7.3 In the event of any disagreement between the parties as to the implementation of this MOU or the performance of their respective functions, powers and duties, the Ombudsman and NSWFT Commissioner (or their delegates) will seek to resolve the matter in accordance with the objectives of this MOU.
- 7.4 This MOU will continue in force until such time as another MOU is agreed and signed between the parties. Either EWON or NSWFT may initiate a review of this MOU where necessary.
- 7.5 This MOU is not intended to be legally binding on the agencies.

8 Termination

- 8.1 This MoU may be terminated:
- (a) By either party given written notice to the other party of the date on which the termination takes effect; or
 - (b) By written agreement signed by both parties that specifies a date on which the termination takes effect.

9 Publication

9.1 This MOU may be published by EWON and NSWFT on their respective websites.

Dated this *14th* day of *July* 2016



Janine Young
Energy & Water
Ombudsman NSW



Rod Stowe
Commissioner
NSW Fair Trading

CONTACTS

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