

## ENERGY AND WATER OMBUDSMAN CHARTER

### A: INTRODUCTION

#### 1 THE EWOV SCHEME

- 1.1 The Victorian electricity distribution, transmission and retail licences issued under the Electricity Industry Act 2000 and Victorian gas retail and distribution licences issued under the Gas Industry Act 2001, require each licensee to enter a customer dispute resolution scheme approved by the Essential Services Commission (ESC). Certain Victorian water retailers are, under the Water Industry Act 1994, subject to similar licence conditions. Certain other Victorian water authorities and Melbourne Water Corporation are required, under legislative changes effected by the Essential Services Legislation (Dispute Resolution) Act 2000, to establish or provide for a dispute resolution scheme approved by the Essential Services Commission for persons to whom they provide certain services or works. Certain Victorian LPG retailers are required under the Victorian LPG Retail Code to participate in the dispute resolution scheme administered by the Energy and Water Ombudsman (Victoria) (“**EWOV**”).

The EWOV scheme is a customer dispute resolution scheme approved by the Essential Services Commission.

Participation in the EWOV scheme is intended to allow electricity, gas and water licensees, other water authorities and LPG retailers to satisfy the relevant licence conditions, legislative requirements or industry code requirements.

EWOV may also agree with entities participating in the electricity, gas or water industries that they may participate in the EWOV scheme through executing an agreement with EWOV under which they agree to comply with the scheme in relation to some or all (as agreed) of the electricity, gas or water services they provide (“**Contracting Participants**”).

- 1.2 The EWOV scheme has been established by means of a company limited by guarantee, Energy and Water Ombudsman (Victoria) Limited (“**EWOV 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 electricity, gas or water services or raising public interest issues relevant to electricity, gas or water services, and one independent Chairperson; and
  - an Energy and Water Ombudsman vested with authority under this Charter to receive, investigate and facilitate the resolution of complaints.

- 1.3 The mission of EWOV Limited is to receive, investigate and facilitate the resolution of complaints and disputes between consumers of electricity, gas and water services in Victoria and entities participating in the EWOV scheme. The mission is founded on principles of independence, natural justice, access, equity, effectiveness and community awareness.

## **2 PARTICIPANTS**

- 2.1 The Contracting Participants, together with the members of EWOV Limited, are the entities participating in the EWOV scheme (the “**Participants**”).
- 2.2 The Ombudsman will ensure that an accurate and up-to-date list of all Participants is readily available to the public at all times.
- 2.3 A member of EWOV Limited may, in relation to electricity, gas or water services it provides and which would otherwise be outside the jurisdiction of the EWOV scheme, become a Contracting Participant in relation to those services (subject to EWOV Limited’s agreement). References to members, Contracting Participants and Participants in this Charter will apply to such a member in its capacity as a member and/or in its capacity as a Contracting Participant, as applicable.

## **B: ENERGY AND WATER OMBUDSMAN**

### **3 FUNCTIONS OF THE OMBUDSMAN**

- 3.1 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) electricity, gas or water services by a Participant to a customer as required by a licence or agreement, under legislation or under an applicable industry code;
  - (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 Participant 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 Essential Services Commission in relation to the conduct of a Participant's electricity, gas or water services business; and
  - (g) such other complaints as may, by agreement with the Ombudsman and the complainant, be referred to the Ombudsman by a Participant.
- 3.2
- (a) Complaints may be made to the Ombudsman by consumers of electricity, gas or water services and by persons directly affected by the provision or supply of (or the failure to provide or supply) such services provided by Participants.
  - (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 EWOV 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 events leading to the complaint must have occurred on or since 3 October 1994 (in the case of electricity complaints), on or since 11 December 1997 (in the case of gas complaints other than complaints against LPG retailers), on or since 2 November 2000 (in the case of water services complaints), on or since 1 April 2005 (in the case of complaints against LPG retailers who are members of EWOV Limited) or on or after the date one (1) year prior to the date a Contracting Participant commences participation in the EWOV scheme (in the case of complaints against Contracting Participants). However, the Ombudsman has a discretion to investigate any complaint arising from events before these dates.
- 3.3 To avoid doubt, the Ombudsman has jurisdiction to investigate and determine complaints involving the conduct of Participants' employees, servants, officers,

contractors or agents, and may make a determination binding the Participant in relation to such complaints.

#### **4 JURISDICTION OF THE OMBUDSMAN**

4.1 The jurisdiction of the Ombudsman extends to the functions enumerated in Section 3.

4.2 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 of a Participant which are:
  - (i) (in the case of a Participant which holds one or more licences in relation to its water, electricity or gas services and is not a Contracting Participant) outside the scope of the Participant's licence(s);
  - (ii) (in the case of a Participant which does not hold any licence in relation to its water, electricity or gas services), commercial activities which are not within or closely related to the core water, electricity or gas services provided by that Participant; or
  - (iii) (in the case of a Participant which both holds one or more licences in relation to its water, electricity or gas services and is, in relation to other water, electricity or gas services provided by it, a Contracting Participant) outside the scope of the Participant's licence(s) and not within or closely related to the water, electricity or gas services in relation to which that Participant is a Contracting Participant;
- (c) the content of Government policies (as opposed to commercial policies of government-owned or government-controlled members), legislation, licences and codes;
- (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, in the case of a gas company, any matter authorised pursuant to an approved safety case), codes (but for the avoidance of doubt, the Ombudsman may investigate complaints about non-compliance with the Victorian LPG Retail Code by LPG retailers who are members of EWOV Limited, if those complaints are otherwise within the jurisdiction of the EWOV scheme), licences, and orders made in accordance with the law, or any matter which, under an agreed working procedure with the Essential Services Commission or another relevant government authority, is to be handled by the Essential Services Commission or another government authority as the case may be;
- (f) customer contributions to the cost of capital works;
- (g) events beyond the reasonable control of a Participant and their consequences, bearing in mind current law and reasonable and relevant industry practice; and

- (h) actions taken by a Participant and their consequences, in execution of a direction, notice or other like instrument received by the Participant in relation to facilitating the reliability of the supply of water services, gas or electricity, facilitating the security of a water services, gas or electricity system, a water services, gas or electricity emergency or a matter of water services, gas or electricity safety and issued by a person or entity having regulatory or administrative power to issue the direction, notice or instrument.

## **5 PROCEDURES OF THE OMBUDSMAN**

5.1 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 Participant. 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 Participant concerned whether the Participant has had the opportunity to consider the complaint;
- (b) The Ombudsman may proceed to investigate the complaint only after the Participant has had this opportunity, subject to reasonable time limits to avoid undue delay in dealing with the complaint, and the Participant 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 Participant 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 Participant, 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 EWOV scheme will not be charged to, or costs be awarded against, residential and small business customers and the EWOV scheme will present no cost barriers to other customers.

## **6 POWERS OF THE OMBUDSMAN**

### **6.1 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) (i) by making a determination that the Participant the subject of investigation pay compensation to a complainant,
- (ii) by directing a Participant to provide an electricity, gas or water service,
- (iii) by directing a Participant to amend, or not to impose, a charge in relation to a service,
- (iv) by directing a Participant to supply goods or services the subject of the complaint or undertake any necessary corrective or other work to resolve the complaint,
- (v) by directing a Participant to make an appropriate correction, deletion or addition to a record,
- (vi) by directing a Participant 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 Participant 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 Participant 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.

All decisions by the Ombudsman under paragraph 6.1 shall be automatically binding upon Participants. 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 Participant 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 Participant is then fully released from the Ombudsman's decision.

### **6.2 Reasons**

The Ombudsman shall provide complainants and Participants with written reasons in support of a decision under paragraph 6.1. The Ombudsman shall publish binding decisions, without identifying the parties to the decision.

### **6.3 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.

6.4 In exercising the powers of determination or recommendation under paragraph 6.1 respectively, the Ombudsman shall not make a determination or recommendation which, when given effect, would involve a Participant contravening any code, licence, regulation or law of the Commonwealth or of a State. Where there is a dispute between the Ombudsman and a Participant about the effect of the law or of regulatory instruments, the Ombudsman may refer the matter to the Essential Services Commission, Senior Counsel or the courts for determination or authoritative advice, as the case may be, at the Participant's expense.

## **7 OTHER POWERS AND RESPONSIBILITIES OF THE OMBUDSMAN**

7.1 The Ombudsman is responsible for:

- (a) the overall performance of the EWOV 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 EWOV 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 Essential Services Commission 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 EWOV 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 Participants, the Essential Services Commission 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 Participants in the EWOV scheme is readily available to the public;
- (o) promoting the EWOV scheme to the public;
- (p) reporting to the Essential Services Commission as and when required 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 EWOV scheme.

7.2 The Ombudsman also has the power:

- (a) to delegate such of the Ombudsman's functions as may be convenient for the efficient day-to-day operation of the EWOV scheme, other than the power:
  - (i) to make binding decisions under paragraph 6.1, and
  - (ii) to provide written reasons under paragraph 6.2,

which powers may only be delegated to persons employed in senior positions within the Ombudsman's office;
- (b) to make a report to a Participant and to the Essential Services Commission where, in the Ombudsman's opinion, the general electricity policy, water services policy or gas policy or commercial practices of a Participant:
  - (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 Participant. This

action could include escalation of the matter to the CEO of the Participant, referral to the Board, or referral to the Essential Services Commission.

## **8 BUSINESS PLANS, ANNUAL FUNDING FIGURES AND BUDGETS**

- 8.1 For each successive financial year, the Board will require the Ombudsman to prepare a business plan for EWOV Limited and to submit it to the Board at least 90 days before the commencement of that financial year. The Board will require the Ombudsman to submit with the business plan a proposed annual funding figure and a proposed budget for the relevant financial year. Because the Ombudsman has responsibility for managing the day to day operations of the EWOV scheme, the Ombudsman is responsible for the preparation of financial budgets and business plans and any subsequent amendments, subject to the approval of the Board. The Ombudsman must submit proposed budgets, plans and/or amendments to the Board. The Ombudsman is responsible for controlling and monitoring expenditure within the approved budget and for providing regular reports to the Board on expenditure.
- 8.2 The Board will, from time to time, appoint a committee to be known as the Budget Committee, comprising an equal number of Directors appointed by the members of EWOV Limited (not being the Chairperson of the Board) and Directors appointed from groups representing customers of electricity, gas or water services or raising public interest issues relevant to electricity, gas or water services.
- 8.3 The Budget Committee will, for each financial year, formulate a proposed annual funding figure for EWOV Limited and a proposed budget in consultation with the Ombudsman, and submit them to the Board at least 60 days before the commencement of that financial year.
- 8.4 The Board will, for each financial year, produce a proposed annual funding figure for EWOV Limited and a proposed budget, taking into consideration the proposed annual funding figure and proposed budget formulated by the Budget Committee, and will ensure that the Board's proposed annual funding figure is put before a general meeting of EWOV Limited to be voted upon at least 30 days before the commencement of that financial year. In producing proposed annual funding figures the Board will seek to ensure that the level of funding is such that the Ombudsman is able to carry out his or her functions under the Charter.
- 8.5 If EWOV Limited in general meeting does not, at least 30 days before the commencement of a financial year, approve the annual funding figure proposed by the Board for that financial year, the Board may refer the setting of the annual funding figure for that financial year to the Essential Services Commission for determination.
- 8.6 Variations to annual funding figures of EWOV Limited may be proposed by the Board but will only be effective once passed by EWOV Limited in general meeting, except that if a motion to accept such a variation is not passed when put to a general meeting of EWOV Limited, the Board may refer the proposed variation to the Essential Services Commission for determination.
- 8.7 If the annual funding figure put by the Board to a general meeting of EWOV Limited in accordance with the above procedure is passed by the meeting or if referred to the Essential Services Commission under the above procedure is approved by the Essential Services Commission, the Board's proposed budget will become the budget for the relevant financial year. If the Essential Services Commission determines an

annual funding figure other than the one proposed by the Board, or if the annual funding figure is varied in accordance with the above procedure, the Board shall as soon as possible refer the matter to the Budget Committee for discussion with the Ombudsman. The Budget Committee shall then, as soon as possible, propose a new budget and submit it to the Board. The Board shall then, as soon as possible, approve a new budget, taking into account the new budget proposed by the Budget Committee.

8.8 EWOV Limited must not make any expenditure in excess of a current budget. The Board may vary a current budget but before doing so must consider the views of the Budget Committee.

8.9 Before:

- (a) the budget for a particular financial year is implemented; or
- (b) any additional expenditure to that set out in a budget approved by the Board is incurred;

the prior approval of the Board must be obtained. In deciding whether or not to approve any proposed budget the Board must consider the views of the Budget Committee.

## **C: THE BOARD**

### **9 MEMBERSHIP OF THE BOARD**

The members of EWOV Limited are required to appoint three Directors to the Board (or a greater number not exceeding five if determined by the Board), and to appoint in addition an independent Chairperson of the Board (nominated by the Board), according to a procedure set out in the Constitution of EWOV Limited. The Essential Services Commission is responsible for appointing further Directors to the Board (in a number equal to the number of Directors appointed by the members, excluding the Chairperson), after consultation with the Essential Services Commission's Customer Consultative Committee, from groups representing customers of electricity, gas or water services or raising public interest issues relevant to electricity, gas or water services.

### **10 ROLE AND RESPONSIBILITIES OF THE BOARD**

10.1 The responsibilities of the Board include the oversight of the EWOV 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 and procedural 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 EWOV 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 and practices relating to the administration of the EWOV 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, and with the Essential Services Commission, to prepare recommendations for amendments to the Charter, to be voted upon by the members at a General Meeting.
- (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 EWOV scheme and ensure the annual funding figures are put before the members of EWOV Limited 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 EWOV scheme, and, in particular, to review the Scheme at least by the fifth anniversary of the inception of the Scheme.
- (i) To provide advice to the Ombudsman on the promotion of the EWOV scheme and the preparation of the Annual Report.

## **11 RELATIONSHIP BETWEEN THE BOARD AND THE OMBUDSMAN**

- 11.1 The Board has responsibility for policy matter and oversight of the EWOV scheme's operation. The Ombudsman has responsibility for the day to day operation of the EWOV scheme and the resolution of individual complaints. These roles are complementary and, as a general rule, the Ombudsman would attend Board meetings as an observer.
- 11.2 The Board is responsible for the formal administration of EWOV Limited, and exercises final authority in relation to the financial affairs of the company (subject to the Constitution of EWOV Limited). These matters are most appropriately exercised by Directors. Responsibility for complaint handling and the day to day administration of the EWOV scheme rests with the Ombudsman.

**D: AMENDMENTS TO CHARTER**

**12 MECHANISM FOR AMENDMENTS TO CHARTER**

This Charter may be amended by the members of EWOV Limited at a General Meeting. The Board must submit to the Essential Services Commission a copy of any proposed resolution to be considered by the members in General Meeting to vary the EWOV Scheme.

**E: DEFINITIONS**

- “customer”**: - includes customer or aggrieved person.
- “gas”**: - includes (without limitation) where the context permits, LPG
- “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.
- “LPG”**: - means liquefied petroleum gas.
- “water services”** or  
a **“water service”**: - includes (without limitation) sewerage and drainage services.