

This is a Memorandum of Understanding between the Economic Regulation Authority and the Energy Ombudsman Western Australia.

PARTIES:

ECONOMIC REGULATION AUTHORITY (the "Authority")

and the

ENERGY OMBUDSMAN (WESTERN AUSTRALIA) ("EOWA")

BACKGROUND:

- a. EOWA operates dispute resolution schemes approved by the Authority under the *Energy Coordination Act 1994* and under the *Electricity Industry Act 2004* (Regulated Schemes).
- b. Legislation requires certain participants in the electricity industry and the gas industry in Western Australia to be members of the Regulated Schemes (Regulated Scheme Members).
- c. The parties have entered into this Memorandum of Understanding (MoU) to provide for consultation between them, and the integration and co-ordination of their regular activities, which are relevant to the Regulated Schemes.
- d. This memorandum does not deal with constitutional, governance or scheme operational issues for which the Authority has regulatory responsibility.

OPERATIVE PROVISIONS:

1. Definitions

In this memorandum:

ERA Act means the *Economic Regulation Authority Act 2003 (WA)*;

Regulated industry means the electricity industry and/or the gas industry;
and

Systemic refers to issues relating to a pattern of conduct, regular behaviour by a Regulated Scheme Member or a consistent series of complaints.

Member and Regulated Scheme Member means any person for the time being admitted to membership of the Energy Industry Ombudsman

(Western Australia) Limited (the Company) whose name is entered into the Company's register of Members and includes the Company's Founding Members and Founding Electricity Members.

2. Objectives and Purpose of this Memorandum

This memorandum seeks to:

- (a) ensure that the decision making and advisory processes of the parties in relation to the regulated industry are appropriately integrated and better informed;
- (b) provide for sharing information between the parties in the context of their respective roles in relation to the regulated industry;
- (c) promote the adoption of a best practice approach to regulation and customer dispute resolution process;
- (d) assist in ensuring that the Authority is in a position to have regard to the incidence of disputes and the outcomes of dispute resolution in its decision making, in relation to the regulated industry; and
- (e) ensure that the Authority is informed of binding decisions and directions made by the EOWA to enable the Authority to monitor licensee compliance.

3. The Role of the Authority

- 3.1 The Authority has the functions conferred under the ERA Act, *the Energy Coordination Act 1994* and the *Electricity Industry Act 2004*.

4. The Role of EOWA

- 4.1 The functions of the Ombudsman are to investigate and deal with the resolution of complaints and disputes of the type described in section 92(1) of the *Electricity Industry Act 2004*, regulation 4 of the *Electricity Industry (Ombudsman Scheme) Regulations 2005*, section 11ZPZ(1) of the *Energy Coordination Act 1994* and regulation 4 of the *Energy Coordination (Ombudsman Scheme) Regulations 2004*, including, without limitation, complaints and disputes relating to:
 - (a) the provision or supply of (or the failure to provide or supply) gas or electricity services by a Member to a customer as required by a licence or agreement or under legislation;
 - (b) billing;
 - (c) the administration of credit and payment services in the circumstances of a particular customer;

- (d) the recovery of debts owed or allegedly owed by customers whether by Members, their agents or factors;
- (e) disconnection and restriction of supply and refundable advances;
- (f) payments to customers for breaches of prescribed electricity service standards;
- (g) the marketing of gas or electricity for sale;
- (h) the way in which a Member has exercised its statutory powers in relation to land or other property, or in relation to neighbouring land or other property, that are made by the owners or occupiers of that land or other property; and
- (i) a Regulated Scheme Member of the Scheme or an Energy Marketing Agent that, by agreement with the Ombudsman and the complainant, are referred to the Ombudsman by a Member or an Energy Marketing Agent.

4.2 In addition to the functions set out in section 4.1, the Ombudsman has day to day responsibility for overseeing and administering the Scheme's operations including the provision of information to complainants.

5. How the Parties Will Consult

5.1 The Authority will notify EOWA, as soon as practicable, of complaints received under the auspices of the Regulated Scheme to the extent allowed by the legislation and subject to any applicable privacy laws.

5.2 By way of specific commitment:

- (a) senior representatives of the Authority and EOWA will meet quarterly to discuss matters of mutual interest and, in particular, the regulatory or systemic issues related to EOWA complaints;
- (b) to enable the Authority to monitor licensee compliance with EOWA directions or decisions or to consider any systemic complaints, or other matters that may need to be addressed by way of a licence, code or guideline amendment or by way of action under the ERA Act, *Electricity Industry Act 2004*, *Energy Co-ordination Act 1994*, EOWA will advise the Authority as soon as practicable about EOWA binding directions or decisions or emerging, systemic or regulatory complaint issues and provide the Authority with quarterly reports identifying any EOWA binding directions or decisions made, the number of complaints received and the most common complaint issues by category during the reporting period;

- (c) the Authority and EOWA will co-operate in relation to the preparation and distribution of material for the guidance of the Regulated Scheme Members and their customers:
- such material prepared by the Authority which has implications for the EOWA will, subject to confidentiality requirements, be referred to EOWA for consideration and comment prior to its publication;
 - the EOWA will likewise, subject to confidentiality requirements, refer to the Authority for its consideration and comment any such material to be published by the EOWA; and
 - the EOWA to send to the Authority copies of all public reports, including binding decisions or directions at the time of publication.

5.3 Without limiting clause 5.2, each party having regard to their respective roles in relation to the Regulated industry will:

- (a) consult with and on request involve the other in the performance of any function that has or is likely to have material implications for the other to the extent that either party is able, recognising the terms of any service agreements, confidentiality arrangements or limitations imposed by law;
- (b) ensure that such consultation occurs as early as practicable in the parties' processes;
- (c) promptly inform the other of any material changes to its role or to the arrangements it administers;
- (d) identify opportunities to coordinate strategic planning and undertake knowledge sharing initiatives to optimise mutual understanding of roles and strategic directions; and
- (e) publish this MoU on its web site.

6. How the Parties Will Manage Their Relationship and Resolve Disputes

6.1 Each party will ensure that, at all times while this MoU is in force, one of its staff members is designated and known to the other as its contact officer for the purposes of this MoU.

6.2 At the date of this MoU, the contact officer for the Authority is the Manager, Customer Protection, Ms Lanie Chopping and the contact officer for the EOWA is the Director, Energy Ombudsman, Mr Wayne Mann.

Each party will give notice of any change to its contact officer to the other, as soon as practicable.

- 6.3 If there is a dispute between the parties as to the terms or operation of this MoU, each party will ensure that its contact officer endeavours in good faith to resolve that dispute with the other's contact officer.

7. Use and Disclosure of Information

- 7.1 The capacity of a party to use or disclose information, or take information into account, is or may be (depending on the nature or source of the information) restricted by law or by the EOWA's agreement with the Energy Industry Ombudsman (Western Australia) Ltd.

8. Honour Clause

- 8.1 This MoU is an expression of the objectives and principles of the parties, which is binding in honour only. It does not give effect to any legal relationship or obligation other than those already in existence under any written law.

- 8.2 This MoU is not intended to subjugate the rights, duties or responsibilities of the parties.

9. Amendment and Termination

- 9.1 This MoU can be amended or varied following written notification of both parties or can be terminated at any time by written notification by either party.

10. Date of Effect

- 10.1 This MoU comes into effect on the date on which the MoU is signed by both the Chairman and General Manager of the Authority and EOWA.

LYNDON ROWE
CHAIRMAN ECONOMIC REGULATION AUTHORITY

Date 28/10/08

K PETER KOLF
GENERAL MANAGER ECONOMIC REGULATION AUTHORITY

Date 27 October 2008

CHRIS FIELD
ENERGY OMBUDSMAN
(WESTERN AUSTRALIA)

Date 30.10.2008