

MEMORANDUM OF UNDERSTANDING

AUSTRALIAN ENERGY REGULATOR

and

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

and

ENERGY & WATER OMBUDSMAN (NSW)

December 2011

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), the Australian Energy Regulator (AER) and the Australian Competition and Consumer Commission (ACCC) in performing their roles and functions in Australia's energy industry. These arrangements aim to enhance the understanding of industry and consumer issues in relation to the national energy market, and the performance by EWON, the AER and the ACCC of their respective roles.
- 1.2. This MOU is a public document and communicates, in a transparent way to all stakeholders, the administrative arrangements that operate between the AER, ACCC and EWON.

2. Parties to the Understanding

Australian Energy Regulator (AER)

- 2.1. The AER is Australia's national energy market regulator and an independent statutory authority established under the Competition and Consumer Act 2010 (Cth) (CCA). The AER is funded by the Commonwealth, with staff, resources and facilities, provided from the Australian Competition and Consumer Commission. The AER is responsible for monitoring and ensuring compliance with national energy laws.¹ From 1 July 2012, the AER's role will extend to energy retail markets with the commencement of the National Energy Retail Law.

Australian Competition and Consumer Commission (ACCC)

- 2.2. The ACCC is responsible for enforcing consumer protection and fair trading laws and promoting competition in the market place. It does this by promoting compliance with and enforcing the provisions of the CCA. The role of the ACCC is to facilitate and encourage compliance with the laws it enforces, to take appropriate action in response to contraventions of those laws, to determine certain competition and access issues and to educate the community in relation to such matters.

Energy & Water Ombudsman NSW (EWON)

- 2.3. 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.

¹ *National Electricity Law, National Electricity Rules, National Gas Law and National Gas Rules.*

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.

3. Notification and Consultation

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

- (a) notify each other of any activities that may be relevant to the other parties, and keep each other informed of the progress of those matters. This could include:
 - (i) compliance and enforcement activities relevant to energy retail, distribution and transmission businesses or consumers in New South Wales;
 - (ii) transmission and distribution determinations and access arrangements for electricity and gas networks in New South Wales;
 - (iii) reports on the energy industry; or
 - (iv) changes to regulatory instruments such as guidelines.
- (b) provide each other with copies of publications that may be relevant to the other agencies. 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) by one party refers to another, provide that party with an opportunity to comment on the reference prior to the finalisation and general release of the publication;

3.2. Where appropriate, the AER/ACCC and EWON will consider inviting staff from participating agencies to participate in consumer and industry education and outreach activities.

3.3. In developing education and guidance materials, the AER/ACCC and EWON will, to the extent possible develop consistent materials.

3.4. Where appropriate, the AER, ACCC and EWON will each provide information forums for staff of the other agency covering topics such as roles and responsibilities, to support the operation of this MOU.

4. Activities reports

4.1. The liaison officers nominated under clause 7.1 of this MOU will meet quarterly or as otherwise agreed to discuss matters of common interest, including to:

- (a) provide each other with updates and reports on consumer complaints that may demonstrate systemic issues or emerging trends
- (b) inform each other about any existing or proposed activities that may be of interest to the other parties;
- (c) review the referral of complaints or inquiries between the parties;
- (d) identify opportunities for joint activities or the sharing of information; and
- (e) report on any other developments that may impact on other parties.

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

ANZEWON

4.3. Contact between the AER/ACCC and EWON will also be maintained through meetings of the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWON).

5. Special requests and referrals

5.1. The liaison officers may contact each other outside the scheduled regular meetings to:

- (a) request advice on issues that are within the responsibility of their agencies – for example, EWON may seek advice where the investigation of a complaint requires consideration of issues that are within the responsibility of the AER or ACCC
- (b) request additional information outside of the scheduled reporting times.

When such a request is made, the party that receives the request will respond as soon as possible.

5.2. The liaison officers nominated under clause 7.1 of this MOU will develop protocols for the referral of matters.

6. Information management

6.1. The parties recognise the value of sharing information. The parties also recognise that they each have obligations in relation to the protection of information and will take reasonable steps to protect any confidential information from any unauthorised use or disclosure.

6.2. Where appropriate, the AER, ACCC and EWON 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;
- (b) the receiving agency or agencies will only use or disclose that information to the extent permitted by law, for example, an FOI request or where required by a court; and
- (c) the receiving agency or agencies will use its best endeavours to inform the agency that provided the information prior to disclosing confidential information to third parties under clause 6.2(b).

6.3. EWON acknowledges that information may be shared between the AER and ACCC as provided by the CCA. As set out in the ACCC/AER's Information Policy, 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.

6.4. With respect to all information concerning or relating to a complaint, EWON will act in accordance with privacy laws and the EWON's Privacy Policy.

7. Management of the MOU

7.1. The AER, ACCC and EWON will each nominate a liaison officer to serve as a point of contact in relation to matters arising under this MOU and to be responsible for general liaison under this MOU and subsequent co-operation arrangements between the parties.

7.2. The Ombudsman and the respective Chief Executive Officers of the AER and ACCC will meet as necessary to assess the operation of this MOU and to discuss the ongoing relationship between the AER, ACCC and EWON.

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 CEOs of the parties (or their delegates) will seek to resolve the matter in accordance with the objectives of this MOU.

7.4. The AER, ACCC and EWON will initiate a review of this MOU no later than 30 June 2013.

7.5. This MOU is not intended to be legally binding on the agencies.


Publication

7.6. This MOU may be published by the AER, ACCC and EWON on their respective web sites.

Dated this 24th **day of** January 20 12



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Ombudsman
Energy & Water
Ombudsman NSW



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Andrew Reeves
Chair
Australian Energy Regulator



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Rod Sims
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