



Energy & Water  
Ombudsman NSW  
Free, fair and independent

**Energy & Water  
Ombudsman NSW**

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# 1. Definitions and Interpretation

1.1 In this document, unless the context otherwise requires, the following expressions have the following meanings:

“Charter” means this document as amended from time to time in accordance with the Constitution.

“Complaint” means an expression of dissatisfaction by a Complainant about Energy or Water Services and includes:

- a) complaints by consumers of Energy or Water Services about issues relating to marketing, sales, contracts, billing, credit and payment services, disconnection, service restrictions and customer service issues; and
- b) complaints by other persons directly affected by the provision or supply of Energy or Water Services or the manner in which the Member has carried on its business of providing Energy or Water Services;

“Complainant” means a person, club, incorporated body or other entity making a Complaint to the Scheme;

“Constitution” means the Constitution of EWON;

“Energy or Water Services” means:

- a) the product or service provided to satisfy an energy demand or need in New South Wales and includes the transmission, distribution, connection, supply and retailing of the energy source; and/or
- b) the supply in New South Wales of water, sewerage or stormwater services to supply a demand or need of customers and includes distribution, connection to a water supply system, sewerage system or stormwater system, but does not include the discharge of trade wastewater to a sewer, and

commercial arrangements associated with these activities;

“EWON” means Energy & Water Ombudsman (NSW) Limited;

“Ombudsman” means the Energy & Water Ombudsman appointed in accordance with Clause 19 of the Constitution;

“Member” means each individual, company or organisation which becomes a Member in EWON in accordance with Clause 4 of the Constitution;

“Monetary Limit” has the meaning given to that expression in the Constitution;<sup>1</sup>

“National Energy Retail Law” means National Energy Retail Law set out in the Schedule to the National Energy Retail Law (South Australia) Act 2011.

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<sup>1</sup> The Constitution defines Monetary Limit as the maximum amount that EWON is able to award where an EWON Binding Decision is made, this maximum amount being equal to the relevant monetary limit applicable to the NCAT (plus GST, if GST applies).



“Small Business” means a business that either has less than 20 full time equivalent employees or an aggregated annual turnover of less than \$2 million.

1.2 For the purpose of this Charter:

- a) a Member is responsible for the conduct of its employees, contractors and agents as if the Member carried out that conduct itself;
- b) reference to the provision of Energy and Water Services includes reference to their non-provision; and
- c) a reference to a statute includes regulations and other statutory instruments under it and amendments or replacements of any of them.

1.3 This Charter applies to a Complaint made or referred to EWON on or after 1 July 2012. Where a Complaint was made or referred to EWON before 1 July 2012, EWON will consider and resolve the Complaint in accordance with the framework and procedures that applied at the time the Complaint was made or referred to EWON.

## 2. Responsibilities of EWON

2.1 EWON’s principal responsibilities are:

- a) to handle Complaints about the conduct of providers of Energy or Water Services fairly, informally and expeditiously, without charge to the person making the enquiry or Complaint;
- b) to promote EWON to consumers and small businesses; and
- c) to encourage and provide advice to Members on the development and maintenance of good complaint-handling practices to assist in the reduction and avoidance of Complaints.

2.2 Further guidance as to EWON’s procedures will be published on EWON’s website.

## 3. Delegation Powers

3.1 EWON authorises:

- a) the Ombudsman to exercise all powers and discretions conferred on EWON by these Terms of Reference; and
- b) the Board to approve the delegation by the Ombudsman of any of those powers and discretions (other than the power to make binding decisions in accordance with paragraph 11 and its powers under paragraph 13) to any employee or contractor engaged by EWON.

## 4. Enquiries and Complaints

4.1 An enquiry or Complaint about the conduct of a provider of Energy or Water Services can be directed to EWON by telephone, email, online, fax, in person or other means.



- 4.2 EWON may handle an enquiry as it considers appropriate in the circumstances including by providing information or by referring the person to a Member's customer service contact point, another scheme or agency.
- 4.3 A Complaint must be made or referred to EWON within 12 months of the date the Complainant first became aware of the events giving rise to the Complaint, unless EWON considers it is reasonable to accept the Complaint after that time.
- 4.4 A Complaint may by agreement with EWON and the Complainant be referred to EWON by a Member. EWON will not, however, consider a Complaint by one Member against another Member.

## 5. Complaints Excluded from Jurisdiction

- 5.1 EWON will not consider a Complaint, or the parts of a Complaint, that in the opinion of EWON:
- a) would be more appropriately dealt with by another forum, for example, another independent or statutory complaints or conciliation procedure;
  - b) was considered by EWON in a previous Complaint by the same Complainant against the same Member, unless new circumstances apply or relevant new information is available;
  - c) has been, or is, the subject of any proceedings in or before any court, tribunal, mediator, arbitrator, ombudsman, or any other body involved in dispute resolution;
  - d) is lacking in substance, has not been made in good faith or, for other reason, does not warrant investigation;
  - e) relates to the setting of prices or tariffs or determining price structures;
  - f) is not sufficiently related to the provision of Energy or Water Services and instead relates to other commercial activities of the Member;
  - g) is about the content of Government policies, legislation, licences and codes (but this does not prevent EWON considering a Complaint that relates to a commercial policy of a Member that is owned or controlled by the Crown);
  - h) relates to customer contribution to the cost of capital works where those works are subject to a contestable or tender process; or
  - i) is made by a Complainant that carries on a business, unless the business is:
    - i. a small business (unless the complexity of the issue would absorb a disproportionate amount of EWON resources to address, relative to the resources available to the customer) ; or
    - ii. a small customer for the purposes of the National Energy Retail Law.

## 6. Jurisdictional Disputes

- 6.1 In the event of a jurisdictional dispute, EWON is responsible for deciding whether a Complaint should be excluded under paragraph 5 of this Charter.
- 6.2 If EWON decides that a Complaint should be excluded under paragraph 5 of this Charter, EWON must advise the Complainant of the reasons for this.



## 7. Complaint Investigation Procedures

- 7.1 Unless unusual circumstances apply, EWON must not begin investigating a Complaint until the Member has had reasonable opportunity to resolve the Complaint through its internal dispute resolution processes.
- 7.2 Where EWON decides to investigate a Complaint, EWON must inform the Member about the Complaint. Within the timeframe specified by EWON, the Member must provide EWON with a response to the Complaint. If EWON so requests, this must be in writing together with any relevant information held by the Member.
- 7.3 Subject to the other provisions of this Charter, EWON may consider any information and make such enquiries and take such steps as it thinks is fair and reasonable in the circumstances.
- a) EWON is not obliged to consider any information provided by either party that, in EWON's opinion, has not been obtained, or is not relied upon, in good faith.
  - b) EWON may obtain expert advice, including from a legal expert or technical expert appointed by EWON, where EWON considers that this is appropriate in order to resolve a Complaint or number of similar Complaints. If so, EWON may require the Member the subject of the Complaint or Complaints to pay the costs associated with this advice up to the amount of \$50,000 (or such larger amount agreed to by the Member) per Complaint.
- 7.4 EWON must provide the Complainant and the Member with a reasonable opportunity to put their views to EWON and must take these into account when making any decisions about the Complaint.

## 8. Confidentiality

- 8.1 Notwithstanding paragraph 7.2, the Member does not have to provide information to EWON where it satisfies EWON that to do so would breach a duty of confidentiality to a third party and, despite its best endeavours, the third party's consent to disclosure of the information has not been able to be obtained.
- 8.2 EWON, its officers and employees must not disclose to any person:
- a) any information concerning a Complaint made or referred to EWON that would make it possible to identify the Complainant or the Member; or
  - b) any other information or matter of a confidential nature, except:
  - c) to carry out its responsibilities under this Charter;
  - d) as required or permitted by law; or
  - e) as properly and reasonably required in connection with any legal proceedings instituted by or against EWON or any of its officers or employees.
- 8.3 When complying with any subpoena for production of documents, EWON must notify the person who has provided the information that is the subject of the subpoena so that the person concerned is afforded the opportunity to oppose production of the documents.



## 9. Resolution Methods

- 9.1 EWON may decide the method and process to be used to resolve the Complaint. This may include negotiation, conciliation mediation, deciding that the Complaint does not warrant further investigation, or making a binding decision about the Complaint in accordance with the process set out in paragraph 11.
- 9.2 Where EWON engages an external mediator to assist with the resolution of a Complaint, EWON may require the Member to meet the cost of engaging the mediator.
- 9.3 If EWON decides a Complaint does not warrant further investigation, EWON must provide reasons to the Complainant for this.

## 10. Decision Making Criteria

- 10.1 When making a binding decision about a Complaint in accordance with paragraph 11, EWON must do so by reference to what is, in its opinion, fair and reasonable in all the circumstances. In determining what is fair and reasonable, EWON may consider:
- a) the personal circumstances of the Complainant as are relevant to the Complaint;
  - b) the background or history of the Complaint before EWON's involvement;
  - c) the degree to which the Member was in control of the systems and procedures which are the subject of the Complaint; and
  - d) any other matter EWON considers relevant.
- 10.2 While EWON is not bound by its previous decisions, EWON must have regard to:
- a) any applicable rule of law (but not the rules of evidence);
  - b) the rules of natural justice, insofar as they apply to the procedure adopted by EWON in relation to the Complaint;
  - c) good industry practice; and
  - d) any Codes applicable to the subject matter of the Complaint.

## 11. Binding Decisions

- 11.1 Where EWON decides a Complaint by way of binding decision, EWON must provide the parties with written reasons for its decision setting out its findings and the action (if any) required of the Member.
- 11.2 Where EWON decides to uphold a Complaint, it may find that the Member should undertake remedial action including:
- a) the payment of compensation to the Complainant;
  - b) the provision of a customer goodwill payment, for example, where:
    - i. the Complainant has incurred significant inconvenience, frustration or upset as a result of repeated but unsuccessful attempts to resolve the Complaint directly with the Member; or
    - ii. the Member's incorrect advice to the Complainant caused them to take unnecessary action or incur unnecessary costs;



- c) the provision of Energy or Water Services;
- d) the supply of other services or goods to resolve the Complaint including undertaking corrective work;
- e) refraining from imposing a charge or amending a charge for Energy or Water Services;
- f) amending, adding to or deleting from its records; and
- g) doing or refraining from doing any other act,
- h) provided that:
  - i) the remedial action does not involve a breach by the Member of any of its obligations under the law or an industry code; and
  - j) the aggregate cost to the Member in relation to the Complaint does not exceed the Monetary Limit.

11.3 A decision of EWON made in accordance with this paragraph 11 is binding on both the Complainant and the Member if, within 21 days after it is made, the Complainant agrees to accept the decision in full and final settlement of the subject matter of the Complaint.

11.4 A decision of EWON made in accordance with this paragraph 11 is not capable of review or appeal in any form, to any other person, court, tribunal, statutory complaints authority, or other body.

## 12. Rights of Parties to Institute Legal Proceedings

12.1 At any stage after making a Complaint to EWON, the Complainant may commence legal proceedings against the Member in relation to the matters raised in the Complaint, including if the Complainant rejects a decision in relation to the Complaint made by EWON pursuant to paragraph 11. If so, paragraph 5.1c) of this Charter will apply.

12.2 During the period beginning when a Complainant makes a Complaint to EWON and ending on the earlier of:

- a) 90 days later; and
- b) the date that EWON closes or resolves the Complaint in accordance with paragraph 5 or 9 of this Charter,

the Member must not commence legal proceedings against the Complainant in relation to the matters raised in the Complaint.

## 13. Systemic and Other Important Issues

13.1 EWON must identify possible systemic issues, whether systemic to a particular Member or systemic to a group or type of Members, and where appropriate investigate these. Where EWON finds that a systemic issue has occurred, EWON must refer this to the relevant Members' Senior Management for remedial action. In each case, EWON must obtain a report from the Member as to the remedial action undertaken and continue to monitor the matter until a resolution has been achieved that is considered by EWON to be a reasonable outcome for the customers involved.

13.2 EWON may also refer to a Member's Senior Management, the following important issues:





- a) any opportunity that EWON identifies to improve the Member's policies or practices in the interests of reducing the incidence of Complaints;
- b) where EWON identifies that there have been a number of similar Complaints in relation to the Member; or
- c) where EWON considers that a Member has impeded EWON's consideration or investigation of a Complaint or has failed without reasonable excuse to comply with anything EWON has requested or required the Member to do.

13.3 EWON may also report an issue of the kind referred to in paragraph 13.1 or 13.2 to the relevant government Minister or regulatory authority.

## 14. Other Powers and Duties of EWON

14.1 To inform the community of its activities, EWON must publish an annual report and may publish other material from time to time.

14.2 EWON may also undertake community and Member liaison and educational initiatives with the aim of avoiding or reducing the incidence of Complaints.



## Table of Amendments to Charter

Date	Amendment	Clause
17 November 2016	Replace references to Consumer Trader and Tenancy Tribunal (CTTT) with NSW Civil and Administrative Tribunal (NCAT)	Footnote to clause 1.1