

**MEMORANDUM OF UNDERSTANDING
("Memorandum")**

Between

**STATE OF QUEENSLAND ACTING THROUGH THE DEPARTMENT
OF NATURAL RESOURCES, MINES AND ENERGY
("the Department")**

and

**OFFICE OF THE ENERGY AND WATER OMBUDSMAN
QUEENSLAND
("the Ombudsman")**

This MEMORANDUM OF UNDERSTANDING

BETWEEN THE STATE OF QUEENSLAND ACTING THROUGH THE DEPARTMENT OF NATURAL RESOURCES, MINES AND ENERGY
of Level 8, 1 William Street, Brisbane in the State of Queensland (“the Department”)

AND OFFICE OF THE ENERGY AND WATER OMBUDSMAN
of Level 16, 53 Albert Street, Brisbane in the State of Queensland (“the Ombudsman”)

BACKGROUND

Energy

The Ombudsman’s responsibilities are defined under the *Energy and Water Ombudsman Act 2006* (the Act). The Act provides that the Ombudsman has the authority to receive, investigate and facilitate the resolution of complaints and disputes between small electricity customers (as defined under the Act) and energy utilities, or water and wastewater dispute resolution services for small customers in South East Queensland (SEQ).

In 2014, Queensland adopted the National Energy Customer Framework (NECF) that regulates the connection, supply and sale of energy (electricity and gas) to grid-connected residential and small business energy customers.

The NECF is comprised of the *National Energy Retail Law (Queensland) 2014*, the National Energy Retail Regulations and the National Energy Retail Rules, with the Australian Energy Regulator being responsible for monitoring and enforcement of NECF.

The NECF provides energy-specific consumer protections and operates alongside the Australian Consumer Law, which applies in all states and territories and applies to all Australian businesses. It provides consumer protections in areas such as unfair contract terms, product safety, misleading information, marketing, quality guarantees and product liability.

The Electricity Distribution Network Code (the Network Code) made under the *Electricity Act 1994* provides for rights and obligations of energy entities and customers as defined within the Network Code.

Water

In August 2007, SEQ water sector reforms involved separating the distribution and retail functions from the ten SEQ local governments and the establishment of three separate vertically integrated distribution-retail businesses (distributor-retailers) under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

In 2010, the SEQ Customer Water and Wastewater Code (the Customer Code) was developed that outlines the rights and responsibilities of small customers and service providers under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

In 2011 the Gold Coast, Logan and Redland City Councils chose to withdraw from distributor-retailer Allconnex Water and re-establish their water businesses with direct council operations. The *South East Queensland (Distribution and Retail Restructuring) Act 2009* was amended to provide for the dissolution of Allconnex Water and the re-establishment of these council water businesses from 1 July 2012, resulting in five SEQ water entities / service providers.

The Department and the Ombudsman identify and record in this Memorandum the responsibilities of each party in regard to the provision of information to assist in the resolution of complaints and disputes between utility entities and small customers.

The Department is responsible for administration of Energy and Water Legislation, and policy advice to the Minister for Natural Resources, Mines and Energy on certain energy and water matters.

The parties have entered into this Memorandum to support and promote best practice dispute resolution services and a continued focus on improving customer service in the SEQ water sector and Queensland energy industry.

INTERPRETATION

In this Memorandum of Understanding (Memorandum):

- **the Act** - means the *Energy and Water Ombudsman Act 2006*.
- **the Code Administrator** - means, for the purposes of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, the Minister who has the right to amend the Code.
- **the Department** - means the State of Queensland acting through the Department of Natural Resources, Mines and Energy, or any successor agencies of the Queensland Government that is responsible for administration of Energy and Water Legislation.
- **Energy Entity** - means an entity as defined under section 7 of the Act.
- **Energy Legislation** - means the following legislative instruments:
 - *Electricity – National Scheme (Queensland) Act 1997*;
 - *Electricity Act 1994*;
 - Electricity Distribution Network Code;
 - *Electricity Regulation 2006*;
 - *National Electricity (Queensland) Law 2015*;
 - *National Energy Retail Law (Queensland) Act 2014*;
 - *Gas Supply Act 2003*;
 - *Gas Supply Regulation 2007*;
 - *National Gas (Queensland) Act 2008*; and
 - *National Gas (Queensland) Law 2008*.
- **Energy and Water Ombudsman legislation** - means the Act and any subordinate legislation made under the Act.
- **Information Privacy Legislation** - means the *Information Privacy Act 2009* and any regulation, order, statutory instrument or guideline made under that Act.
- **South-East Queensland or SEQ** - means the region declared as the SEQ region under section 341 of the *Water Act 2000*.
- **Small customers** – means for the purposes of EWOQ services, a domestic or small business customer whose annual electricity consumption is under 160 megawatt hours, or annual gas consumption is under one terajoule, or a SEQ water customer whose annual consumption is under 100 kilolitres.
- **the Customer Code** - means the SEQ Customer Water and Wastewater Code.
- **the Energy and Water Ombudsman Scheme** - means the scheme referred to in the Act.
- **the Minister** - means the Minister whose portfolio is responsible for Energy and Water Legislation.
- **The Network Code** – means the Electricity Distribution Network Code which provides for rights and obligations of energy entities and customers.
- **the Ombudsman** - means the Office of the Energy and Water Ombudsman Queensland established pursuant to the Act.
- **the Regulator** - means for the purposes of the *Electricity Act 1994* and the *Gas Supply Act 2003* and subordinate legislation, the Director-General of the Department.
- **Water Entity** - means a water entity as defined under section 7A of the Act.
- **Water Legislation:**
 - *South East Queensland (Water Distribution and Retail Restructuring) Act 2009*;
 - *Water Act 2000*; and
 - *Water Supply (Safety and Reliability) Act 2008*.

In this Memorandum the singular includes the plural and vice versa.

OBJECTIVES

1. This Memorandum seeks to:
 - a) ensure that the regulatory, advisory and decision making practices of the Ombudsman and the Department in relation to the Queensland energy and water market are closely integrated and well informed;
 - b) avoid overlap or conflict between regulatory responsibilities affecting consumers in the Queensland energy and water markets;
 - c) provide for sharing of information between the parties in the context of their respective roles in relation to assisting in the resolution of complaints and disputes between energy and water entities and small customers;
 - d) promote the adoption of best practice approach to regulation; and
 - e) assist the Ombudsman and the Department in performing respective functions under their relevant legislation.
2. The Ombudsman is responsible under the *Energy and Water Ombudsman Act 2006* (the Act) to receive, consider and investigate and facilitate the resolution of disputes referred to it under the Act.
3. The parties have entered into this Memorandum to provide for consultation and the integration and coordination of their responsibilities under the Act and other Acts and associated regulations falling within the jurisdiction of each party including but not limited to:
 - a) the conduct of any enquiry or investigation;
 - b) the making or amending of the Customer Code or the Network Code; and
 - c) investigating a possible contravention of an Act or codes, where relevant.

TERM

4. This Memorandum will commence on the day it is signed by the last party to do so and will continue in force until terminated by any party through the provision of seven (7) days written notice to the other party.

AMENDMENT

5. This Memorandum may be amended at any time, by agreement in writing signed by both parties.

STATUS

6. This Memorandum is not intended to impose legally binding obligations on any party.

THE ROLE OF THE DEPARTMENT

7. The Department is responsible for administering the Energy Legislation and monitoring the energy sector, to ensure the interests of consumers are protected.
8. The relevant conditions for a distribution authority under the *Electricity Act 1994* and the *Gas Supply Act 2003* include compliance with:
 - a) the Energy and Water Ombudsman Scheme; and
 - b) all relevant laws including National Energy Legislation and Rules.
9. The Regulator may take action against holders of a Distribution Authority for failure to comply with Energy Legislation, including the requirements of the Energy and Water Ombudsman Scheme.
10. The Department is responsible for administering the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, and providing advice to the Minister about the Customer Code.
11. While the Department is unable to take any action against a Water Entity for failing to comply with a requirement of the Energy and Water Ombudsman Scheme, in some cases issues giving rise to a breach of the Customer Code may also be found as an offence under the customer protection

- provisions or other provisions of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* for which the Department has administrative responsibility.
12. Where complaints are made by a small water customer the Department's role in customer protection will be limited to matters under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* where the complaint also raises systemic issues across the SEQ water sector or where significant public interest questions arise for SEQ customers.
 13. Where a complaint is made by a person other than a small customer (water) i.e. a large customer, the Department's role in customer protection is limited to matters provided for in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.
 14. The *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* also contains provisions to enable a regulation to be made to allow the Department to seek reports from water entities about complaints made by their customers, whether or not those complaints have progressed to the Ombudsman.
 15. The Ombudsman has an independent role and reports through the Minister. Whilst the Department and the Ombudsman are independent of each other, the Department may have an administrative role in facilitating the flow of information between the Minister and the Ombudsman.

THE ROLE OF THE OMBUDSMAN

16. The Ombudsman under the Act has responsibility to:
 - a) receive, investigate and facilitate resolution of disputes referred under the Act;
 - b) resolve disputes and make orders, if they cannot be resolved by agreement, negotiation or mediation;
 - c) promote the operation of the Act to eligible customers and relevant occupiers of land;
 - d) identify systemic issues arising out of complaints anyone makes to the Ombudsman;
 - e) subject to the Act, and to recognition given by a notice under the *Information Privacy Act 2009* section 35A, to receive, investigate, facilitate the resolution of, and report on complaints about acts or practices of scheme participants that may be an interference with the privacy of an individual within the meaning of section 13(1) or (2) of that Act; and
 - f) other functions conferred on the energy and water Ombudsman under any Act.

HOW THE PARTIES WILL CONSULT

17. Each party having regard to their respective roles will:
 - a) Consult with and involve the other in the performance of any investigation that has or is likely to have material implications for the other;
 - b) ensure that such consultation occurs as early as practicable in the parties' regulatory, advisory or decision making processes;
 - c) on written request, provide the other with timely advice on regulatory matters for which it is responsible;
 - d) provide the other with timely relevant information on industry issues for which both parties have some responsibility;
 - e) promptly inform the other of any material changes to its role or to the regulatory arrangements it administers;
 - f) exchange details of annual work programs to the extent that they are relevant to the role of the other;
 - g) provide the other with advance notice of its intention to undertake a major review or activity that will or may have material implications for the other;
 - h) identify opportunities to coordinate strategic planning and undertake knowledge sharing initiatives to optimise material understanding of roles and strategic directions; and
 - i) identify relevant project officers to allow for the coordination of particular regulatory projects.
18. Each party having regard to their respective roles must maintain information and records and provide

copies of the records, where appropriate, to the other party's designated officer at stated times or when requested.

OPERATIONAL RELATIONSHIP

19. Each party will ensure that, at all times while this Memorandum is in force, one or more of its staff members is designated and known to the other as its contact officer for the purposes of this Memorandum.
20. At the date of this Memorandum, the contact officers are:
 - a) the Department is the Executive Director, Consumer Strategy and Innovation; and
 - b) the Ombudsman is the General Manager, Assessment, Investigation and Resolution.Each party will give notice of any change to its contact officer to the other, promptly after the change is made.
21. Each party will ensure that its contact officer:
 - c) Makes themselves (or a nominated officer/s) available at all relevant times to address any questions, concerns or disputes arising out of the operation of this Memorandum which are raised by either party;
 - d) Instigates periodic (and in any event not less than three years) reviews of this Memorandum directed, in particular, to the potential for improvement in its terms or operation and to the effect (if any) of regulatory change on its terms, operation or utility; and
 - e) Arranges (in conjunction with the other's contact officer) such meetings of appropriate staff of the parties as and when necessary or desirable to facilitate the efficient and effective operation of this Memorandum.
22. In the event that an investigation or resolution of a dispute is submitted to each of the Ombudsman and the Department to avoid overlap or conflict of reporting the parties will agree to, where practicable, align reporting requirements to reduce duplication of reporting.

DISPUTES

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

USE AND DISCLOSURE OF INFORMATION

24. Each party will use and disclose to the other party information arising from the obligations established by the legislation listed in this Memorandum.
25. Each party will treat all confidential information of the other party as confidential and will not, without the prior written consent of the other party, disclose or permit it to be disclosed to any other person.
26. In the event a complaint is to be referred to the other party's agency for investigation, the referring party's agency must seek approval of the other party's agency to refer the matter for investigation, before it is referred.
27. In the event that prosecution action is to be commenced by the Department prior to the commencement of proceedings, consult with the Ombudsman where possible breaches of the Acts listed of this Memorandum may have also occurred.
28. Each party will only use and disclose information provided by another party pursuant to this Memorandum:
 - a) in accordance with the obligations and requirements set out in the *National Energy Retail Law (Queensland) 2014* and other Energy Legislation, the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and the Energy and Water Ombudsman legislation; and
 - b) in compliance with Information Standard 42, Information Privacy Guidelines, if applicable, or any other legislative or legal requirements relating to the confidentiality of such information.

29. All information provided in accordance with this Memorandum will only be used or disclosed for the purposes for which it was provided unless otherwise authorised by the person or entity who provided it or is required by law to disclose.

COST

30. Each party will bear its own costs:
- a) in providing information or assistance to another party in accordance with this Memorandum; and
 - b) in the preparation and negotiation of this Memorandum.

EXECUTED AS A MEMORANDUM OF UNDERSTANDING BY:

Signed for the **STATE OF QUEENSLAND ACTING THROUGH THE DEPARTMENT OF NATURAL RESOURCES, MINES AND ENERGY** by:

James Purtill
Director-General
Authorised signatory

Maryanne Munro
Witness

Date: 21/01/2020

Signed for the **ENERGY AND WATER OMBUDSMAN QUEENSLAND** by:

Jane Pires
The Energy and Water Ombudsman

Jacqui Nelson
Witness

Date: 02/01/2020