

TASMANIA

**ELECTRICITY OMBUDSMAN AMENDMENT
BILL 2004**

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ELECTRICITY OMBUDSMAN AMENDMENT BILL 2004

*(Brought in by the Minister for Infrastructure, Energy and
Resources, the Honourable Bryan Alexander Green)*

A BILL FOR

An Act to amend the *Electricity Ombudsman Act 1998*

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

Short title

1. This Act may be cited as the *Electricity Ombudsman
Amendment Act 2004*.

Commencement

2. This Act commences on 1 January 2005.

Principal Act

3. In this Act, the *Electricity Ombudsman Act 1998** is
referred to as the Principal Act.

*No. 20 of 1998

Long title amended

4. The long title of the Principal Act is amended by omitting “**electricity**” and substituting “**energy**”.

Section 1 amended (Short title)

5. Section 1 of the Principal Act is amended by omitting “*Electricity*” and substituting “*Energy*”.

Section 3 amended (Interpretation)

6. Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “award”:

“**budget guidelines**” means the guidelines prepared and published under section 39, as varied or substituted from time to time;

- (b) by omitting the definition of “electricity entity” and substituting the following definitions:

“**Director of Gas**” has the same meaning as in the *Gas Act 2000*;

“**energy entity**” means –

- (a) an electricity entity within the meaning of the *Electricity Supply Industry Act 1995*; or
- (b) a gas entity within the meaning of the *Gas Act 2000*;

Section 5 amended (Functions and powers of Ombudsman)

7. Section 5(1)(d) of the Principal Act is amended by omitting “electricity” and substituting “energy”.

Section 6 amended (Who may complain)

8. Section 6 of the Principal Act is amended as follows:

- (a) by inserting “gas or” after “supply of”;
- (b) by omitting “electricity entity” and substituting “energy entity”.

Section 9A inserted

9. After section 9 of the Principal Act, the following section is inserted in Part 2:

Referral of matter to Ombudsman as complaint

9A. (1) The Regulator or Director of Gas may refer to the Ombudsman, in writing, a matter that is the subject of a dispute in which the Regulator or Director of Gas has been asked to mediate under section 45 of the *Electricity Supply Industry Act 1995* or section 49 of the *Gas Act 2000* if the Ombudsman and all parties to the dispute consent to the referral.

(2) A matter referred to the Ombudsman under this section is taken to be a complaint made under this Act.

(3) The Regulator or Director of Gas is to take no further action in respect of a matter that has

been referred to the Ombudsman under this section unless the Ombudsman refers the matter back to the Regulator or Director of Gas under section 19.

Section 10 amended (Determining whether to investigate complaint, &c.)

10. Section 10 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “Regulator” first occurring and substituting “Regulator, the Director of Gas,”;
- (b) by inserting in subsection (1)(b) “or the Director of Gas” after “by the Regulator”;
- (c) by inserting in subsection (1)(c)(vii) “or the Director of Gas” after “Regulator”;
- (d) by omitting from subsection (5)(b) “electricity entity” and substituting “energy entity”;
- (e) by omitting from subsection (5)(b) “Regulator” and substituting “Regulator, the Director of Gas”.

Section 11 amended (Splitting of complaints)

11. Section 11(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “electricity entity” and substituting “energy entity”;
- (b) by omitting from paragraph (d) “electricity entity” and substituting “energy entity”.

Section 12 amended (Limitation on commencing proceedings)

12. Section 12 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “electricity entity” and substituting “energy entity”;
- (b) by omitting from subsection (2) “electricity entity” and substituting “energy entity”.

Section 19 amended (Reference to another authority for investigation)

13. Section 19(1) of the Principal Act is amended by omitting “Regulator” twice occurring and substituting “Regulator, the Director of Gas”.

Section 20 amended (Matters concerning reference to another authority)

14. Section 20 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Regulator” twice occurring and substituting “Regulator, the Director of Gas”;
- (b) by omitting from subsection (2) “Regulator” first occurring and substituting “Regulator, the Director of Gas”;
- (c) by omitting from subsection (2) “Regulator” second occurring and substituting “Regulator, Director of Gas”;
- (d) by omitting from subsection (4) “Regulator” and substituting “Regulator, the Director of Gas”.

Section 21 amended (Action by Ombudsman after investigation)

15. Section 21(b) of the Principal Act is amended by omitting “electricity entity” and substituting “energy entity”.

Section 22 amended (Action if complaint dismissed)

16. Section 22(1) of the Principal Act is amended by omitting “electricity entity” and substituting “energy entity”.

Section 23 amended (Awards)

17. Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “electricity entity” first occurring and substituting “energy entity”;
- (b) by omitting from subsection (1)(e) “electricity entity” and substituting “energy entity”;
- (c) by omitting from subsection (2)(a) “electricity entity” and substituting “energy entity”;
- (d) by omitting from subsection (2)(b) “electricity entity” and substituting “energy entity”;
- (e) by omitting from subsection (3) “electricity entity” and substituting “energy entity”;
- (f) by omitting from subsection (5) “electricity entity” and substituting “energy entity”.

Section 24 amended (Costs)

18. Section 24 of the Principal Act is amended by omitting “electricity entity” and substituting “energy entity”.

Section 25 amended (Acceptance of award by complainant)

19. Section 25(7) of the Principal Act is amended as follows:

- (a) by omitting “electricity entity” first occurring and substituting “energy entity”;
- (b) by omitting from paragraph (b) “electricity entity” and substituting “energy entity”.

Section 26 amended (Effect of award)

20. Section 26 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “electricity entity” and substituting “energy entity”;
- (b) by omitting from subsection (2) “electricity entity” and substituting “energy entity”.

Section 27 amended (Enforcement of order)

21. Section 27(1) of the Principal Act is amended by omitting “Regulator” and substituting “Regulator or Director of Gas”.

Section 28 amended (Duty of complainant to allow compliance with award)

22. Section 28 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “electricity entity” and substituting “energy entity”;
- (b) by omitting from subsection (2) “electricity entity” and substituting “energy entity”;
- (c) by omitting from subsection (3) “electricity entity” and substituting “energy entity”;
- (d) by omitting from subsection (5) “electricity entity” twice occurring and substituting “energy entity”.

Section 29 amended (Reports)

23. Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “electricity entity” and substituting “energy entity”;
- (b) by inserting in subsection (3)(d) “or Director of Gas” after “Regulator”.

Section 32 amended (Exchange of information)

24. Section 32 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “Regulator” and substituting “Regulator, the Director of Gas”;

- (b) by omitting from paragraph (b) “Regulator” and substituting “Regulator, the Director of Gas”.

Section 39 substituted

25. Section 39 of the Principal Act is repealed and the following sections are substituted:

Budget guidelines

39. (1) The Ombudsman is to prepare guidelines relating to the processes to be followed in preparing a budget in respect of the costs of administering this Act.

(2) At any time, the Ombudsman may vary the guidelines or revoke the guidelines and substitute new guidelines.

(3) In preparing, varying or revoking and substituting guidelines, the Ombudsman is to consult with the following persons:

- (a) the Regulator;
- (b) the Director of Gas;
- (c) all energy entities;
- (d) any other person the Ombudsman considers appropriate to consult.

(4) The Ombudsman is to issue the guidelines, any variations to the guidelines and any revocation and substitution of the guidelines by –

- (a) providing a copy of the guidelines, variation or revocation and substituted guidelines to each of the persons

mentioned in subsection (3)(a), (b) and (c); and

- (b) publishing the guidelines, variation or revocation and substituted guidelines in the *Gazette*.

(5) The guidelines –

- (a) are not statutory rules for the purposes of the *Rules Publication Act 1953*; and
- (b) do not constitute an instrument of legislative character for the purposes of the *Subordinate Legislation Act 1992*.

Preparation and publication of annual budget

39A. (1) Before 31 March in each calendar year, the Ombudsman is to prepare and publish a budget in respect of the costs of administering this Act for the financial year commencing on the next following 1 July.

(2) The budget is to be prepared by the Ombudsman –

- (a) in accordance with the budget guidelines; and
- (b) in consultation with all energy entities.

(3) The budget is to specify –

- (a) the portion of the costs of administering this Act to be borne by each energy entity; and
- (b) the period within which, or the times at which, each energy entity is to pay that portion of the costs; and

- (c) the manner in which each energy entity is to pay that portion of the costs.

(4) For the purposes of subsection (1), the Ombudsman is to publish the budget by –

- (a) providing a copy of the budget to the Regulator, the Director of Gas and each energy entity; and
- (b) publishing the budget in the *Gazette*.

Review of apportionment in budget

39B. (1) If an energy entity disagrees with the apportionment of costs to be borne by the energy entities specified in the budget, it may apply for a review of that apportionment within 14 days after receiving a copy of the budget.

(2) An application is to be made in writing to the Ombudsman.

(3) As soon as practicable after the end of the 14 day period in which applications for a review of the apportionment of costs may be made under subsection (1), the Ombudsman is to provide each energy entity with a copy of all applications made under that subsection.

(4) Within 14 days after receiving a copy of an application, an energy entity may make written submissions in respect of the application to the Ombudsman.

(5) As soon as practicable after the end of the period within which energy entities may make submissions in respect of an application, the Ombudsman is to provide copies of the following documents to the Regulator and Director of Gas:

- (a) all applications to review the apportionment of costs made under subsection (1);
- (b) all submissions received by the Ombudsman in respect of those applications;
- (c) the Ombudsman's written submissions in respect of those applications.

(6) On receiving the documents referred to in subsection (5), the Regulator and Director of Gas, jointly, may determine the applications by –

- (a) confirming the apportionment of costs specified in the budget; or
- (b) varying the apportionment of costs specified in the budget.

(7) In determining applications, the Regulator and Director of Gas –

- (a) are to consider all the submissions made in respect of the applications; and
- (b) may inform themselves in any manner they consider appropriate.

(8) On the making of a determination under subsection (6), the Regulator is to –

- (a) provide to the Ombudsman and all energy entities a copy of the determination and, if the apportionment of costs is varied, a copy of the budget as amended by the variation of the apportionment of costs; and

- (b) publish in the *Gazette* the determination and, if the apportionment of costs is varied, the budget as amended by the variation of the apportionment of costs.

Energy entities to pay costs of administering Act

39C. (1) The costs of administering this Act are to be met by all energy entities in such portions as are specified in the budget, or the budget as amended, published in the *Gazette* under section 39A(4) or 39B(8).

(2) The portion of costs to be met by an energy entity must be paid to the Ombudsman within the period or at the times, and in the manner, specified in the budget or budget as amended.

(3) If the whole or any part of an amount payable under this section by an energy entity to the Ombudsman is due and unpaid, that whole or part amount may be recovered as a debt due to the Ombudsman in a court of competent jurisdiction.

Section 40 amended (Regulations)

26. Section 40(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “electricity entity” and substituting “energy entity”;
- (b) by omitting from paragraph (c) “electricity entity” and substituting “energy entity”.

Section 41 substituted

27. Section 41 of the Principal Act is repealed and the following section is substituted:

Transitional matters

41. (1) In this section –

“**electricity entity**” has the same meaning as in the *Electricity Supply Industry Act 1995*.

(2) Despite the amendments to this Act effected by the *Electricity Ombudsman Amendment Act 2004*, this Act as in force immediately before the commencement of that Act continues to apply in respect of –

- (a) the financial year ending on 30 June 2005; and
- (b) the functions and powers of the Ombudsman and Regulator under this Act during and in respect of that financial year; and
- (c) the making and investigation of complaints, the action taken following such an investigation, including the making of awards, and the reporting of such an investigation; and
- (d) the costs of administering this Act during that financial year; and
- (e) the obligations and powers of each electricity entity under this Act, including the obligation to pay the portion of the costs of administering this Act during that financial year as determined by the Regulator.