

Western Australia

**Energy Coordination (Ombudsman Scheme)
Regulations 2004**

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Energy Coordination (Ombudsman Scheme) Regulations 2004

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Energy Coordination (Ombudsman Scheme) Regulations 2004

1. Citation

These regulations may be cited as the *Energy Coordination (Ombudsman Scheme) Regulations 2004*.

2. Definitions

In these regulations —

complainant includes a person who is in dispute with a member of an approved scheme or a gas marketing agent;

complaint includes a dispute with a member of an approved scheme or a gas marketing agent;

GIO has the meaning given to the term “gas industry ombudsman” in section 11ZPZ of the Act;

the Act means the *Energy Coordination Act 1994*.

3. Scheme to have a governing body

In order to receive approval under section 11ZPZ of the Act a scheme must provide for there to be a governing body of the scheme that has overall responsibility for overseeing and administering the scheme’s operations, and in particular for —

- (a) maintaining the independence of the GIO;
- (b) providing advice to the GIO on policy matters;
- (c) appointing, and terminating the appointment of, the GIO, and appointing an acting GIO as and for so long as may be required;
- (d) determining policies relating to the administration of the scheme;

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- (e) approving GIO budgets, in consultation with the GIO, and ensuring that the scheme has sufficient funding for its operations;
- (f) considering the appropriateness, scope, and effectiveness of the scheme, and in particular, reviewing the scheme in accordance with regulation 8; and
- (g) providing advice to the GIO on the promotion of the scheme and the preparation of an annual report,

and must provide —

- (h) for there to be equal representation on the governing body of —
 - (i) members of the scheme; and
 - (ii) customers of gas services and the public;
- and
- (i) for the governing body to have an independent chairperson.

[Regulation 3 amended in Gazette 13 May 2005 p. 2076.]

4. Additional jurisdiction of GIO

For the purposes of section 11ZPZ(1)(d) of the Act, the following kinds of complaint may be investigated and dealt with by the GIO under an approved scheme —

- (a) complaints from owners or occupiers of land or other property about the way in which a member of the scheme has exercised its statutory powers in relation to that particular land or other property or in relation to neighbouring land or other property;
- (b) complaints relating to a member of the scheme or a gas marketing agent that are referred to the GIO by the member or agent with the agreement of the GIO and the complainant.

5. Functions of GIO

- (1) The functions of the GIO under an approved scheme are —
 - (a) to have day to day responsibility for overseeing and administering the scheme's operations; and
 - (b) to investigate and deal with a complaint referred to in section 11ZPZ(1)(a), (b) or (c) of the Act or regulation 4 to the extent that it relates to commercial activities of a member of the scheme that are within the scope of the licence held by the member.
- (2) It is not a function of the GIO to set prices or tariffs or determine price structures.

6. Powers of GIO

Without limiting the things that the GIO under an approved scheme may do for the purpose of dealing with a complaint, but subject to any limitations set out in the scheme, the GIO may give a member of the scheme one or more of the following directions —

- (a) a direction to pay compensation to a complainant;
- (b) a direction to provide a gas service;
- (c) a direction to amend, or not to impose, a charge in relation to a service;
- (d) a direction to supply goods or services the subject of the complaint or undertake any necessary corrective or other work to resolve the complaint;
- (e) a direction to make an appropriate correction, deletion or addition to a record;
- (f) a direction to attach to a record a statement provided by the complainant of a correction, deletion or addition sought by the complainant;
- (g) a direction to do, not do or cease doing an act,

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and may give a gas marketing agent a direction to provide a gas service.

6A. Reasons for decisions

For the purposes of section 11ZQ of the Act, the scheme will provide for the giving of reasons for decisions made in dealing with a dispute or complaint that the GIO has had to investigate, to the parties to the dispute or complaint.

[Regulation 6A inserted in Gazette 13 May 2005 p. 2077.]

7. Enforcement against gas marketing agents

A gas marketing agent must comply with a direction given to that gas marketing agent by the GIO under an approved scheme.

Penalty: A fine of —

- (a) \$2 000 in the case of an individual; or
- (b) \$8 000 in the case of a body corporate.

8. Review of schemes

- (1) The governing body of a scheme must review the scheme before 30 September 2013 and at least once in every 5 years thereafter.
- (2) In reviewing the scheme, the governing body must consult with all, or as many as is practicable, of the persons and bodies the governing body considers have an interest in the scheme.
- (3) The governing body must give a report on the review to the Authority.

[Regulation 8 inserted in Gazette 13 May 2005 p. 2077; amended in Gazette 8 Feb 2011 p. 416.]

9. Revocation of a scheme's approval

- (1) Before exercising the power of revocation in section 11ZQA of the Act, the Authority must comply with subregulations (2) to (5).

- (2) The Authority must notify —
- (a) the Minister;
 - (b) the Minister to whom the administration of the *Consumer Affairs Act 1971* is committed; and
 - (c) the public,
- of its intention to exercise the power of revocation.
- (3) The notification must —
- (a) set out the reasons for, and invite submissions on, the proposed exercise of the power of revocation;
 - (b) specify the last day on which submissions will be received by the Authority (at least 30 days after the day of the notification); and
 - (c) specify the formats in which submissions will be received by the Authority.
- (4) To comply with subregulation (2)(c), the notification must be published —
- (a) in the *Gazette*;
 - (b) in a newspaper circulating in Western Australia;
 - (c) on an internet website maintained by the Authority; and
 - (d) by sending it (electronically or otherwise) to persons listed on the Authority's mailing list as interested in receiving notices from the Authority.
- (5) The Authority must take into account all submissions received on or before the last day for receiving submissions.
- (6) A copy of each submission received by the Authority on or before the last day for receiving submissions must, unless the person making the submission has specified that it is confidential —
- (a) be displayed on an internet website maintained by the Authority; and
 - (b) be available on request.

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- (7) Once the Authority has decided whether or not it will exercise the power of revocation, it must notify the Ministers referred to in subregulation (2) and the public of its decision, in the same way it notified them of its intention to exercise that power.

[Regulation 9 inserted in Gazette 13 May 2005 p. 2077-8.]

Notes

- ¹ This is a compilation of the *Energy Coordination (Ombudsman Scheme) Regulations 2004* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

| Citation | Gazettal | Commencement |
|--|--------------------------|--|
| <i>Energy Coordination (Ombudsman Scheme) Regulations 2004</i> | 28 May 2004 p. 1833-5 | 28 May 2004 |
| <i>Energy Coordination (Ombudsman Scheme) Amendment Regulations 2005</i> | 13 May 2005 p. 2076-8 | 13 May 2005 (see r. 2) |
| <i>Energy Coordination (Ombudsman Scheme) Amendment Regulations 2011</i> | 8 Feb 2011 p. 416 | r. 1 and 2: 8 Feb 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 9 Feb 2011 (see r. 2(b)) |