

I certify that this is a copy of the authorised version of this Act as at 3 February 2021, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 3 February 2021.

Robyn Webb  
Chief Parliamentary Counsel  
Dated 15 February 2021



TASMANIA

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## **ENERGY OMBUDSMAN ACT 1998**

**No. 20 of 1998**

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**SCHEDULE 1 – . . . . .**





## **ENERGY OMBUDSMAN ACT 1998**

**No. 20 of 1998**

**An Act to provide for the making, investigation and resolution of complaints against energy entities and for related purposes**

**[Royal Assent 19 June 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:

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Energy Ombudsman Act 1998*.

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## 2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

## 3. Interpretation

In this Act, unless the contrary intention appears –

*award* means an award made under section 21(c) or an agreement registered as an award under section 21(b);

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

*complainant* means a person who makes a complaint;

*complaint* means a complaint made under section 7;

*comply with* includes not contravene;

*confidential information* includes –

- (a) information about the identity, occupation or whereabouts of the complainant or of any person who assists an investigation; and
- (b) information disclosed by a complaint; and

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- (c) information of personal concern to an individual; and
  - (d) information that, if disclosed, may cause detriment to a person;

***energy entity*** means –

- (a) an electricity entity within the meaning of the *Electricity Supply Industry Act 1995*; or
- (ab) a retailer within the meaning of the National Energy Retail Law (Tasmania); or
- (ac) an exempt seller within the meaning of the National Energy Retail Law (Tasmania); or
- (ad) a person to whom, or a person who sells electricity to which, section 23 of the *National Energy Retail Law (Tasmania) Act 2012* applies;
- (b) a licensee within the meaning of the *Gas Industry Act 2019*;

***Energy Minister*** means the Minister to whom the administration of the *Electricity Supply Industry Act 1995* is assigned from time to time;

***exempt information*** means information of a kind that is prescribed to be exempt information;

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***function*** includes duty;

***gas*** means natural gas or any other gaseous fuel other than –

- (a) liquified petroleum gas; and
- (b) a gas, within the meaning of the *Gas Industry Act 2019*, other than liquefied petroleum gas;

***investigation*** means an investigation undertaken by the Ombudsman in respect of a matter referred to in section 10;

***officer*** means –

- (a) a person appointed or employed under section 9(1) of the *Ombudsman Act 1978*; and
- (b) a person made available under section 9(2) of that Act;

***Ombudsman*** has the same meaning as in the *Ombudsman Act 1978*;

***Regulator*** means the Tasmanian Economic Regulator appointed under section 9 of the *Economic Regulator Act 2009*.

#### **4. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

## **5. Functions and powers of Ombudsman**

- (1) The Ombudsman has the following functions:
  - (a) to receive, investigate and resolve complaints;
  - (b) to make awards and register agreements as awards under Part 4;
  - (c) to identify and review issues arising out of complaints;
  - (d) to assist energy entities to develop procedures to resolve complaints;
  - (e) to perform any other functions imposed on the Ombudsman by this Act;
  - (f) to perform any other prescribed functions.
- (2) The Ombudsman has power to do all things necessary or convenient to be done in connection with the performance and exercise of his or her functions and powers under this Act.
- (3) In performing and exercising his or her functions and powers, the Ombudsman must act independently, impartially and in the public interest.

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**PART 2 – COMPLAINTS**

**6. Who may complain**

A person may make a complaint if the person has a grievance concerning any service of, or relating to the sale and supply of gas or electricity by, an energy entity.

**7. Making a complaint**

- (1) Subject to this section, a complaint is to –
  - (a) be made to the Ombudsman; and
  - (b) be in writing; and
  - (c) be signed by the complainant; and
  - (d) disclose the name and address of the complainant; and
  - (e) contain the details of the grievance.
- (2) A complaint for and on behalf of a complainant may be made by a person authorised by the complainant.
- (3) The Ombudsman may accept a complaint that does not comply with subsection (1).

**8. Further information may be required**

- (1) The Ombudsman may, at any time, require a complainant –

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- (a) to provide further information or documents; or
  - (b) to verify all or any part of the complaint by statutory declaration.
- (2) When making a requirement under subsection (1), the Ombudsman must specify a reasonable period of time within which the requirement is to be satisfied.
  - (3) The Ombudsman may extend the period specified under subsection (2), whether before or after its expiry.

**9. Withdrawal of complaint**

A complainant may withdraw a complaint at any time by notifying the Ombudsman in writing of the withdrawal or, if the Ombudsman agrees, by oral or other notice.

**9A. Referral of matter to Ombudsman as complaint**

- (1) The Regulator may refer to the Ombudsman, in writing, a matter that is the subject of a dispute in which the Regulator 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.

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- (3) The Regulator 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 under section 19.

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**PART 3 – INVESTIGATION OF COMPLAINT**

*Division 1 – Preliminary matters*

**10. Determining whether to investigate complaint, &c.**

- (1) On receipt of a complaint, the Ombudsman –
- (a) may dismiss the complaint and recommend that proceedings be commenced in a court of competent jurisdiction if satisfied that the matters raised by the complaint are of such nature or complexity that they would be more appropriately dealt with by that court; or
  - (b) may refer the complaint to the Regulator or a tribunal, a board or another person if the complaint concerns matters which should be investigated by the Regulator or that tribunal, board or other person under any other law of Tasmania, the Commonwealth, a Territory of the Commonwealth or another State; or
  - (c) must dismiss the complaint if satisfied that –
    - (i) the complaint lacks substance; or
    - (ii) the complaint is frivolous, vexatious or was not made in good faith; or
    - (iii) the complainant became aware of the circumstances that gave rise

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- to the complaint more than 2 years before the complaint was made; or
- (iv) the complainant has been given reasonable explanations and information and there would be no benefit in further entertaining the complaint; or
  - (v) the complaint has been resolved; or
  - (vi) court proceedings which relate to the subject matter of the complaint have been commenced; or
  - (vii) all the issues arising out of the subject matter of the complaint have been adjudicated upon or otherwise dealt with by the Regulator or a court, a tribunal, a board or another person under a law of Tasmania, the Commonwealth, a Territory of the Commonwealth or another State; or
- (d) must investigate the complaint in any other case.
- (2) Subsection (1)(c) does not apply if the Ombudsman is satisfied that the complainant had good reason for not making the complaint within 2 years of becoming aware of the circumstances that gave rise to it.

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- (3) Before determining the course of action to be taken under subsection (1), the Ombudsman may make enquiries and obtain information that the Ombudsman considers necessary or appropriate.
- (4) Subsection (3) does not authorise the exercise of a power under Division 2.
- (5) Within 14 days after making a determination under subsection (1), the Ombudsman must provide written notice of the determination –
  - (a) to the complainant; and
  - (b) to the energy entity if the Ombudsman has determined to investigate the complaint or refer the complaint to the Regulator or a tribunal, a board or another person.

**11. Splitting of complaints**

- (1) This section applies to a complaint that –
  - (a) deals with more than one subject matter; or
  - (b) deals with more than one set of circumstances; or
  - (c) makes allegations against more than one energy entity; or
  - (d) makes more than one allegation against an energy entity; or

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(e) for any other reason is susceptible to being dealt with in separate parts.

(2) If it is administratively or otherwise convenient to do so, the Ombudsman may determine that a complaint to which this section applies be treated as 2 or more complaints.

**12. Limitation on commencing proceedings**

(1) If the Ombudsman has commenced an investigation on receipt of a complaint, the energy entity is not entitled to commence proceedings in any court in respect of a matter raised by, or likely to be raised by, the complaint or the investigation.

(2) A court must dismiss proceedings commenced in contravention of subsection (1) and award costs in the matter against the energy entity.

*Division 2 – Conduct of investigations*

**13. Limitation of powers**

The powers conferred by this Division may be exercised only for the purposes of an investigation.

**14. Conduct of investigation**

An investigation is to be conducted in such manner as the Ombudsman considers appropriate.

## **15. Representation**

A person required to appear or to produce documents under this Division may be assisted or represented by another person.

## **16. Obtaining and use of information**

- (1) If the Ombudsman has reason to believe that a person is capable of providing information or producing a document relevant to an investigation, the Ombudsman may, by notice in writing provided to the person, require the person to do one or more of the following:
  - (a) to provide that information to the Ombudsman in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
  - (b) to produce that document to the Ombudsman;
  - (c) to attend before the Ombudsman or an officer as specified in the notice and provide information by answering questions relevant to the investigation.
- (2) A notice referred to in subsection (1) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document or attend to answer questions.

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- (3) Nothing in subsection (1) authorises the Ombudsman to require the provision of exempt information or that part of a document containing exempt information.
- (4) Where a document is produced in accordance with a requirement under this section, the Ombudsman may take possession of, make copies of, or take extracts from, the document.
- (5) A person must comply with a requirement under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

**17. Power to examine witnesses, &c.**

- (1) The Ombudsman, or an officer who is to receive information under section 16(1), may administer an oath or affirmation to a person required to attend before him or her under this Division and may examine the person on oath or affirmation.
- (2) The Ombudsman may require a person to verify by statutory declaration –
  - (a) any information or document produced under this Division; or
  - (b) a statement that the person has no relevant information or documents or no further relevant information or documents.
- (3) A person must comply with a requirement under subsection (2).

Penalty: Fine not exceeding 50 penalty units.

### **18. Reimbursement of expenses**

A person required to attend before the Ombudsman or another person under this Division is entitled to be paid the expenses and allowances –

- (a) that are prescribed; or
- (b) if none are prescribed, that the Ombudsman determines.

### **19. Reference to another authority for investigation**

- (1) If the Ombudsman considers that a matter raised by, or during the course of, an investigation should be investigated by the Regulator or a tribunal, a board or another person under a law of Tasmania, the Commonwealth, a Territory of the Commonwealth or another State, the Ombudsman may refer the matter to the Regulator or that tribunal, board or other person for investigation.
- (2) If the Ombudsman considers that a matter raised by, or during the course of, an investigation is of such nature or complexity that it would be more appropriately dealt with by a court of competent jurisdiction, the Ombudsman may recommend that proceedings be commenced in that court.

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*Division 3 – Miscellaneous*

**20. Matters concerning reference to another authority**

- (1) The Ombudsman must not refer a matter to the Regulator or a tribunal, a board or another person without first consulting the Regulator or that tribunal, board or other person.
- (2) Where the Ombudsman has referred a complaint to the Regulator or a tribunal, a board or another person under section 10(1)(b) or section 19(1), the Ombudsman must give to the Regulator or tribunal, board or other person all documents and information in the possession of the Ombudsman that relate to the complaint.
- (3) The Ombudsman may –
  - (a) make and retain a record of information referred to in subsection (2); and
  - (b) make copies of, or take extracts from, a document referred to in that subsection and retain those copies or extracts.
- (4) The Ombudsman's powers to investigate a matter cease when the matter is referred under section 10(1)(b) or section 19(1) to the Regulator or a tribunal, a board or another person for investigation or the Ombudsman recommends under section 10(1)(a) or section 19(2) that proceedings be commenced in a court of competent jurisdiction in respect of the matter.

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**PART 4 – ACTION FOLLOWING INVESTIGATION**

*Division 1 – Action by Ombudsman*

**21. Action by Ombudsman after investigation**

After investigating a complaint, the Ombudsman may –

- (a) dismiss the complaint; or
- (b) register an agreement between the complainant and the energy entity as an award; or
- (c) make an award; or
- (d) refer the complaint to another body detailed in section 19(1); or
- (e) recommend that proceedings be commenced in a court.

**22. Action if complaint dismissed**

- (1) If the complaint is dismissed, the Ombudsman must provide written notice to the energy entity and complainant stating that fact and specifying the reasons for dismissing the complaint.
- (2) The fact that a complaint has been dismissed does not prejudice the right of the complainant to commence proceedings in any court in respect of any matter raised by the complaint or investigation.

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***Division 2 – Awards***

**23. Awards**

- (1) An award may require the energy entity to do one or more of the following:
  - (a) pay compensation in the amount determined by, or determined in the manner specified by, the Ombudsman;
  - (b) provide goods or services to the complainant;
  - (c) amend or waive a charge for a service provided to the complainant;
  - (d) undertake corrective work;
  - (e) correct, delete from or add to any record kept in respect of the complainant by the energy entity;
  - (f) do or refrain from or stop doing any other act.
  
- (2) The total value of an award must not exceed the prescribed amount or, if no amount is prescribed –
  - (a) \$20 000 except where the energy entity otherwise agrees; or
  - (b) \$50 000 if the energy entity has agreed to the total value exceeding \$20 000.

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- (3) In determining the total value of an award, any costs awarded against the energy entity are not to be taken into account.
- (4) To the extent that the total value of an award exceeds the total value permissible under this Act the award is of no effect.
- (5) The Ombudsman must provide a copy of an award to the energy entity and the complainant.

**24. Costs**

The Ombudsman must not award costs against the complainant but may award costs against the energy entity.

**25. Acceptance of award by complainant**

- (1) The complainant may decide whether or not to accept an award made under section 21(c).
- (2) Within 21 days after receiving the copy of the award, the complainant must notify the Ombudsman, in writing, whether or not the complainant accepts the award.
- (3) If the Ombudsman does not receive the notice referred to in subsection (2) within the time specified in that subsection, the Ombudsman must require the complainant to provide that notice to the Ombudsman within 14 days after receiving the requirement.
- (4) The requirement is to –

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- (a) be in writing; and
  - (b) advise the complainant that if the complainant fails to comply with the requirement –
    - (i) the award is taken to have been accepted; and
    - (ii) the complainant may not then commence proceedings in any court in respect of any matter raised by the investigation of the complaint.
- (5) If the complainant fails to comply with a requirement within the period specified in subsection (3), the complainant is taken to have accepted the award.
- (6) If the Ombudsman registers an agreement as an award under section 21(b), the award is accepted by the complainant.
- (7) On the acceptance by the complainant of an award, the Ombudsman must provide to the energy entity and the complainant written notice of –
- (a) the fact that the award has been accepted; and
  - (b) the day on which the award takes effect, being a day not earlier than the day on which the notice is provided to the energy entity.

**26. Effect of award**

- (1) An award that has been accepted by the complainant is binding on the energy entity.
- (2) An energy entity may not appeal against an award that has been accepted by the complainant except on a matter of law.
- (3) Once an award is accepted, the complainant is not entitled to commence proceedings in any court in respect of any matter raised by the investigation of the complaint.
- (4) A court must dismiss proceedings commenced in contravention of subsection (3).

**27. Enforcement of order**

- (1) The complainant, or the Regulator on behalf of the complainant, may file an award that has been accepted by the complainant with a court of competent jurisdiction.
- (2) An award filed with a court under subsection (1) is taken to be an order of that court and may be enforced as such.

**28. Duty of complainant to allow compliance with award**

- (1) The complainant must do anything that is both reasonable and necessary to allow the energy entity to comply with an award that has been accepted by the complainant.

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- (2) If the complainant fails to comply with subsection (1), the energy entity may report the matter to the Ombudsman.
- (3) On receipt of a report under subsection (2), the Ombudsman may inquire into the matter and give directions to the energy entity and the complainant as the Ombudsman considers appropriate.
- (4) Division 2 of Part 3 applies, with necessary modifications, to an inquiry under subsection (3) as if the inquiry were an investigation.
- (5) If the complainant fails to comply with a written direction given by the Ombudsman under subsection (3), the Ombudsman may declare by notice provided to the energy entity and the complainant that the energy entity has satisfied the award.
- (6) A declaration under subsection (5) is binding on the complainant.

## **PART 5 – REPORTS**

### **29. Reports**

- (1) The Ombudsman –
  - (a) may prepare a report of his or her findings and conclusions at any time during an investigation; and
  - (b) must prepare such a report at the conclusion of an investigation.
- (2) A copy of each report must be provided to –
  - (a) any energy entity mentioned in the report; and
  - (b) the complainant.
- (3) A copy of each report may be provided to –
  - (a) any person who, under a law of Tasmania, another State, a Territory or the Commonwealth, has a function exercisable in relation to a matter raised in the report; and
  - (b) the Minister; and
  - (c) the Energy Minister; and
  - (d) the Regulator; and
  - (e) any other person the Ombudsman considers appropriate.

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- (4) Subject to section 30, a report may contain information, comments, opinions and recommendations for action.

**30. Adverse comment in reports**

- (1) The Ombudsman must not include in a report under this Act a comment adverse to a person identifiable from the report except where the person has been given a reasonable opportunity –
- (a) to make a submission to the Ombudsman in relation to the proposed comment; and
  - (b) to provide to the Ombudsman a written statement in relation to it.
- (2) If a person referred to in subsection (1) so requests, the Ombudsman must include in the report the statement given under subsection (1)(b) or a fair summary of it.
- (3) The Ombudsman is not required to provide to a person the opportunity referred to in subsection (1) if the Ombudsman believes, on reasonable grounds, that awareness of the proposed comment by any person would be likely to result in action that would prejudice an investigation.

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**PART 6 – MISCELLANEOUS**

**31. Preservation of confidentiality**

- (1) A person must not record, disclose or use confidential information gained by the person through involvement in the administration of this Act, unless the person does so –
- (a) when necessary for the purposes of this Act; or
  - (b) when expressly authorised or required under this or another Act; or
  - (c) when expressly authorised or required under the regulations; or
  - (d) when expressly authorised, in writing, by the person to whom it relates.

Penalty: Fine not exceeding 50 penalty units.

- (2) Except where it is necessary to do so for the purposes of this Act, a person is not required –
- (a) to disclose confidential information gained by the person through involvement in the administration of this Act to a court or tribunal; or
  - (b) to produce that part of a document that contains confidential information gained by the person through involvement in the administration of this Act to a court or tribunal.

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- (3) For the purposes of this section, a person gains information through involvement in the administration of this Act if the person gains the information –
- (a) in the course of the involvement; or
  - (b) because of opportunity provided by the involvement.
- (4) This section does not apply to the recording, disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of any person.

**32. Exchange of information**

For the purposes of this Act –

- (a) the Ombudsman may disclose information to the Regulator and any tribunal, board and other person to whom the Ombudsman may refer a matter under section 10(1)(b) or section 19(1); and
- (b) the Regulator and any such tribunal, board and other person may disclose information to the Ombudsman.

**33. Offences relating to obstruction, &c.**

Without reasonable excuse, a person must not obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or

improperly influence, the Ombudsman or an officer in the performance or exercise of a function or power under this Act.

Penalty: Fine not exceeding 50 penalty units.

**34. Offences relating to provision of information, &c.**

- (1) Without reasonable excuse, a person who is required to do so under this Act must not refuse or fail –
  - (a) to attend before a person for the purpose of providing information; or
  - (b) to be sworn or make an affirmation; or
  - (c) to provide information by answering a question or otherwise; or
  - (d) to produce a document.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person must not –
  - (a) provide to the Ombudsman or an officer who is performing or exercising a function or power under this Act information that the person knows is false or misleading in a material particular; or
  - (b) refuse or fail to include in information provided to the Ombudsman or an officer who is performing or exercising a function or power under this Act other

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information without which the information provided is, to the knowledge of the person, false or misleading in a material particular.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person must not provide to the Ombudsman or an officer performing or exercising a function or power under this Act a document containing information that the person knows is false or misleading in a material particular without –
- (a) indicating that the document is false or misleading and the manner in which it is false or misleading; and
  - (b) giving correct information if the person has, or can reasonably obtain, the correct information.

Penalty: Fine not exceeding 50 penalty units.

- (4) Without limiting subsection (1), it is a reasonable excuse to refuse or fail to provide information by answering a question or otherwise or to produce the whole or part of a document if to do so would disclose or provide exempt information.
- (5) A person is not liable to any penalty under the provisions of any other Act because the person, when required to do so under this Act –
- (a) provided information that is not exempt information; or

- (b) produced a document that does not contain exempt information; or
- (c) answered a question if the answer does not disclose exempt information.

### **35. Proceedings for offence**

Proceedings for an offence against this Act are to start –

- (a) within 6 months after the commission of the offence; or
- (b) within 6 months after the offence comes to the knowledge of the Ombudsman.

### **36. Evidence**

- (1) In any proceeding, a certificate purporting to be that of the Ombudsman stating that a person is a delegate in relation to a power specified in the certificate or is an officer is evidence of that matter.
- (2) In any proceeding, a certificate purporting to be that of the Ombudsman or of another person referred to in subsection (1) stating that the Ombudsman or the person has made or taken a decision, step or action or that a document is held by or was provided to the Ombudsman or the person is evidence of those matters.

**37. Informality of procedures**

- (1) In performing functions and exercising powers under this Act, the Ombudsman and all officers must have regard to the rules of natural justice.
- (2) Subject to subsection (1), the Ombudsman and each officer –
  - (a) must proceed with as little formality and technicality and with as much expedition as the requirements of this Act and a proper consideration of the matter permit; and
  - (b) are not bound by the rules of evidence but may inform himself or herself of any matter in any manner that he or she considers appropriate.

**38. Providing documents**

A document is effectively provided to a person under this Act if –

- (a) in the case of a natural person, it is –
  - (i) given to the person; or
  - (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the provider of the document; or

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- (iii) sent by way of facsimile transmission to the person's facsimile number; and
- (b) in the case of any other person, it is –
  - (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
  - (ii) sent by way of facsimile transmission to the person's facsimile number.

**39. Budget guidelines**

- (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) . . . . .
  - (c) all energy entities;

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- (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*.

**39A. Preparation and publication of annual budget**

- (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 –

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- (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 and each energy entity; and
  - (b) publishing the budget in the *Gazette*.

**39B. Review of apportionment in budget**

- (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.

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- (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:
  - (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 may determine the applications by –
  - (a) confirming the apportionment of costs specified in the budget; or

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- (b) varying the apportionment of costs specified in the budget.
- (7) In determining applications, the Regulator –
- (a) is to consider all the submissions made in respect of the applications; and
  - (b) may inform himself or herself in any manner he or she considers 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.

**39C. Energy entities to pay costs of administering Act**

- (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

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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.

**40. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision in respect of the following matters:
  - (a) the making and investigation of a complaint;
  - (b) the conduct of any person, including an energy entity, in relation to the making of a complaint;
  - (c) the conduct of any person, including an energy entity, during and in relation to an investigation;
  - (d) the resolution of a complaint, the making of an award and any other matter arising from the completion of an investigation.
- (3) Regulations may be made so as to apply differently according to matters, limitations or restrictions specified in the regulations.

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- (4) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.
- (5) The regulations may prescribe expenses and allowances payable to witnesses under this Act by reference to similar expenses and allowances payable to persons attending as witnesses before a court specified in the regulations.

**41. Transitional matters**

- (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

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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.

**42. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

43. *See Schedule 1.*

**SCHEDULE 1**

*The amendments effected by Section 43 and this Schedule have been incorporated into authorised versions of the following Acts:*

- (a) *Electricity Supply Industry Act 1995;*
- (b) *Ombudsman Act 1978.*

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**NOTES**

The foregoing text of the *Energy Ombudsman Act 1998* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 3 February 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Electricity Ombudsman Act 1998</i>	No. 20 of 1998	19.6.1998
<i>Electricity Ombudsman Amendment Act 2004</i>	No. 40 of 2004	1.1.2005
<i>National Energy Retail Law (Tasmania) (Consequential Amendments) Act 2012</i>	No. 9 of 2012	1.7.2012
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2013</i>	No. 20 of 2013	20.6.2013
<i>Economic Regulator Amendment Act 2015</i>	No. 13 of 2015	1.7.2015
<i>Gas (Consequential Amendments) Act 2019</i>	No. 3 of 2019	3.2.2021

**TABLE OF AMENDMENTS**

Provision affected	How affected
Section 1	Amended by No. 40 of 2004, s. 5
Section 3	Amended by No. 40 of 2004, s. 6, No. 9 of 2012, s. 25, No. 20 of 2013, s. 33, No. 13 of 2015, s. 70 and No. 3 of 2019, s. 6
Section 5	Amended by No. 40 of 2004, s. 7
Section 6	Amended by No. 40 of 2004, s. 8
Section 9A	Inserted by No. 40 of 2004, s. 9
Section 10	Amended by No. 20 of 2013, s. 34
Section 11	Amended by No. 40 of 2004, s. 10 and No. 20 of 2013, s. 35
Section 12	Amended by No. 40 of 2004, s. 11
Section 19	Amended by No. 40 of 2004, s. 12
	Amended by No. 40 of 2004, s. 13 and No. 20 of 2013, s. 36

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Provision affected	How affected
Section 20	Amended by No. 40 of 2004, s. 14 and No. 20 of 2013, s. 37
Section 21	Amended by No. 40 of 2004, s. 15
Section 22	Amended by No. 40 of 2004, s. 16
Section 23	Amended by No. 40 of 2004, s. 17
Section 24	Amended by No. 40 of 2004, s. 18
Section 25	Amended by No. 40 of 2004, s. 19
Section 26	Amended by No. 40 of 2004, s. 20
Section 27	Amended by No. 40 of 2004, s. 21 and No. 20 of 2013, s. 38
Section 28	Amended by No. 40 of 2004, s. 22
Section 29	Amended by No. 40 of 2004, s. 23 and No. 20 of 2013, s. 39
Section 32	Amended by No. 40 of 2004, s. 24 and No. 20 of 2013, s. 40
Section 39	Substituted by No. 40 of 2004, s. 25 Amended by No. 20 of 2013, s. 41
Section 39A	Inserted by No. 40 of 2004, s. 25 Amended by No. 20 of 2013, s. 42
Section 39B	Inserted by No. 40 of 2004, s. 25 Amended by No. 20 of 2013, s. 43 and No. 13 of 2015, s. 71
Section 39C	Inserted by No. 40 of 2004, s. 25
Section 40	Amended by No. 40 of 2004, s. 26
Section 41	Substituted by No. 40 of 2004, s. 27

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