

Constitution
for the
Energy Industry Ombudsman South Africa
-
EIOSA

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1. Name of the organisation

- 1.1. The organisation hereby constituted shall be called 'The Energy Industry Ombudsman – South Africa', abbreviated as 'EIOSA'.

2. Who are we?

- 2.1. EIOSA as an organisation aims to
 - 2.1.1. Reduce risks associated with energy-related projects,
 - 2.1.2. Improve installation standards specific to the electrical sector by raising awareness of existing issues and
 - 2.1.3. Create a mechanism for complaint resolution for the energy sector in South Africa.
- 2.2. The office of the EIOSA is guided by the;
 - 2.2.1. Electrical Installation Regulations,
 - 2.2.2. Occupational Health and Safety Act,
 - 2.2.3. Electrical Machinery Regulations 2011,
 - 2.2.4. Consumer Protection Act, and the
 - 2.2.5. Non-Profit Organisation Act 71 of 1997 amongst others, etc.

3. Vision

- 3.1. Assisting stakeholders suspecting to have been exposed to unfair business practises by facilitating an impartial and objective mediation and or arbitration process between conflicting parties, thereby offering an Alternative Dispute Resolution (ADR) platform.
- 3.2. Our long-term vision is to contribute to the advancement of the energy sector and protect the rights of stakeholders through transparent processes and continuous stakeholder engagement.

4. Mission

- 4.1. Our primary mission is to defend the independence of the office of EIOSA while actively striving to educate end users, consumers, distributors, and service providers to achieve higher standards of doing business, and to highlight ethical conduct; to build trust in the sector.

5. Definitions

- 5.1. **ADR Platform** – Alternative Dispute Resolution Platform.
- 5.2. **Arbitration** – A process in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.
- 5.3. **BCEA** – Basic Conditions of Employment Act 75 of 1997.
- 5.4. **Code of Conduct and Ethics** – A policy adopted as the organisation’s code of conduct to serve as a guideline for transparent and ethical conduct in the organisation.
- 5.5. **CPA** – Consumer Protection Act 68 of 2008.
- 5.6. **EIOSA** –Abbreviation for Energy Industry Ombudsman – South Africa.
- 5.7. **EIR** – Electrical Installation Regulation of 2009.
- 5.8. **EMR** – Electrical Machinery Regulations of 2011.
- 5.9. **Executive committee** – A group of individuals responsible for advising and supporting the management committee in strategy and administration matters of the organisation.
- 5.10. **Litigation** – The process of resolving legal disputes between one or more parties in a court of law.
- 5.11. **LRA** – Labour Relations Act 66 of 1995.
- 5.12. **Management Committee** – The group of individuals responsible for the strategic direction and management of the organisation, overseeing all portfolios and other committees amongst other things.
- 5.13. **Mediation** – An intervention into a dispute by an impartial third party to assist disputing parties in reaching a mutually beneficial settlement to their dispute.
- 5.14. **Members** - Members of EIOSA are stakeholders who subscribe to the services of EIOSA. Various Membership levels are determined by the management committee which reserves the right to alter the available membership levels from time to time.
- 5.15. **NPO Act** - The Non-Profit Organisation Act 71 of 1997.
- 5.16. **Office bearer permanent**
 - 5.16.1. Is permanently employed by the EIOSA and protected under the BCEA.
 - 5.16.2. Is subject to the LRA provisions.
- 5.17. **Office bearer temporary**
 - 5.17.1. An office bearer that can only serve for a fixed contractual period.
- 5.18. **OHS** – Occupational Health and Safety Act 85 of 1993.

- 5.19. **Ombudsperson** - The ombudsperson is a permanent office bearer of the organisation and is part of the Management Committee.
- 5.20. **PAIA** - Promotion of Access to Information Act 2 of 2000
- 5.21. **Solar PV** – A form of renewable energy converted from sunlight into electricity using photovoltaic cells.
- 5.22. **Solar Water Heating Equipment** – A water heating system that uses sunlight to heat water through a solar thermal collector.

6. Legal status

- 6.1. The organisation shall be registered in South Africa as a Non-profit Organisation according to the NPO Act. As such, EIOSA shall:
 - 6.1.1. Exist in its own right, separately from its office bearers and its members.
 - 6.1.2. Continue to exist even when its membership or management changes and regardless of different office bearers.
 - 6.1.3. Be able to own property and other possessions.
 - 6.1.4. Be able to sue and be sued in its own name.
- 6.2. Dispute resolution processes and procedures will be in line with the provisions, purpose, and policies of The Consumer Protection Act 68, 2008, relevant to the energy and electrical sector and other sector-relevant regulations.

7. Objectives

- 7.1. The organisation's main objectives are:
 - 7.1.1. To promote the relevant regulations and standards related to electrical equipment and installations.
 - 7.1.2. Highlight good and ethical business practices.
 - 7.1.3. Facilitate mediation and or arbitration between parties where disputes arise for a variety of reasons.
 - 7.1.4. To redress the imbalance of resources and expertise that is likely to exist between a consumer, end-user, distributor, supplier or contractor, so that neither party needs a lawyer.
- 7.2. Secondary objectives of the organisation:
 - 7.2.1. To work in collaboration with other organisations that deal with energy industry norms and standards.
 - 7.2.2. To collaborate with other consumer protection groups.

8. Income and property

- 8.1.1. The organisation will keep a record of everything it owns.
- 8.1.2. The organisation may not give any of its money or property to its members or office bearers, except when it pays for work performed by that member or office bearer for the organisation. The payment must be a reasonable amount for the work that would have been done.
- 8.1.3. The organisation may raise funds through various activities, including leasing, selling, buying and or hiring property.
- 8.1.4. The organisation may refund office bearers for expenses incurred on behalf of the organisation. Proof of expenses incurred on behalf of the organisation is required.
- 8.1.5. Members or office bearers of the organisation do not have rights over the property that belongs to the organisation, whether fixed or movable.
- 8.1.6. The organisation will not distribute its profits to members.
- 8.1.7. All the income and property of the organisation will be used to promote the objectives and purpose of the organisation.

9. Finance

- 9.1. Financial transparency will be ensured through:
 - 9.1.1. An accounting officer which shall be appointed by the management committee.
 - His/her duties shall include;
 - Auditing and checking on the finances of the organisation.
 - Monitor the income and expenditure of finances by means of a bank account in the name of the organisation.
 - Keeping proper records of all the finances.
 - Preparing financial statements of the organisation.
 - 9.1.2. An approved budget.
 - 9.1.3. A Formal operating procedure through meeting minutes to be kept and financial documents being made available on request.
- 9.2. All financial transactions must be within an approved budget before they are affected.
- 9.3. Transactions of more than an amount agreed by the management committee must be signed for by at least two members of the management committee. Any amount below the

set limit may be authorised by one member of the management committee, provided it was approved in the budget.

- 9.4. The financial year of the organisation ends on the last day of February every year and starts on the first day of March of any given year.
- 9.5. The organisation's accounting records and reports must be ready and handed to the Director of Nonprofit Organisations within six months after the financial year-end.
- 9.6. If the organisation has funds that can be invested, such funds may only be invested with registered and credible financial institutions. These institutions are listed in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984. Alternatively, the organisation can invest in securities that are listed on a licensed stock exchange as set out in the Stock Exchange Control Act, of 1985. The organisation may consult different financial institutions for advice on the best way to look after its funds.

10. Organisational Structure, Governance & Management

- 10.1. The organisation will consist of various levels of management, some to be established in due course, for transparency and good corporate governance.
- 10.2. Permanent Office Bearers (as defined in the Section dealing with Definitions):
 - 10.2.1. Are employed on a permanent basis, protected by the BCEA, are subject to LRA provisions and are accountable to the Management Committee.
- 10.3. Temporary Office Bearers (as defined in Section dealing with Definitions):
 - 10.3.1. Are accountable to the management committee and are appointed based on operational requirements for a contractual period.
- 10.4. Management Committee
 - 10.4.1. The Management Committee consists of the General Secretary, Executive Chairperson, and Ombudsperson, and may be amended based on operational requirements.
 - 10.4.2. The management committee shall;
 - Meet at least once a month.
 - Manage and administer the organisation.
 - Decide on and approve the budget of the organisation.
 - Reserve the right to make ultimate decisions regarding the policy, direction, strategy, and scope of activities of the organisation.

- Determine the rights and responsibilities of members and employees of the organisation.
- Have the right to form sub-committees. This may be e.g. to do an enquiry or to expedite the work of the organisation
- Decide whether to ratify decisions taken by sub-committees.
- Have the authority to raise funds for the organisation, to lease, sell, buy and or hire property on behalf of the organisation.
- Carry out their duties to the best of their ability, and conduct themselves in line with the organisation's code of conduct.
- Make decisions that are binding on all members and employees of the organisation.
- Decide on the powers and functions of office bearers.
- Reserve the right to make changes to the constitution.
- Have a right to call a meeting to discuss the proposed changes to the constitution at any time. The members of the management committee must exercise their right to vote on the proposed changes having applied their mind to such proposed changes.

10.5. Executive Committee:

10.5.1. Shall be created when required by operational demands, and be nominated and voted in by the Management Committee, to, amongst other things assist the management committee with strategy and other activities of the organisation.

10.5.2. Will consist of at least three members for voting purposes.

10.5.3. Members may be voted out by a majority rule where there is deemed to be a conflict of interest or where their intent is questionable.

10.6. The required standard of behaviour of all Permanent Office Bearers, Temporary Office Bearers, the Management Committee, the Executive Committee and any other person that represents EIOSA in any capacity, are defined by the organisation's Code of Conduct and Ethics.

11. Borders of activity

11.1. EIOSA is primarily established to operate within the borders of the Republic of South Africa. Should a need arise in future to extend the scope of the organisation's activities beyond the borders of South Africa, the Management committee will consider and decide if such an

extension would be necessary, practicable and in the interest of the organisation or stakeholders.

12. Powers of the organisation

- 12.1. The organisation may take on the power and authority that it believes it needs to achieve its goals as stated in the “Objectives” section of this constitution.
- 12.2. All activities of the organisation must always abide by the laws of the Republic of South Africa as well as local and international standards and regulations relevant to the organisation.
- 12.3. The organisation has the right to make by-laws for proper management, including procedure for application, approval and termination of membership and changes to this constitution.

13. Limitation of activities

- 13.1. EIOSA does not have the power to override a judicial process or law enforcement proceedings.
- 13.2. EIOSA may choose not to work with lawyers or legal representatives of parties to a dispute brought to our office. Parties to a dispute are encouraged to directly engage with the EIOSA office.
- 13.3. EIOSA may not get involved with the marketing and or sales of goods or services for or on behalf of any member, group of members or affiliates of the organisation as this may create a conflict of interest. This excludes EIOSA’s right to offer members affiliated exposure, whether at no cost or for a fee, by adding member logos to its website, branded material, social media posts, etc.

14. Dispute resolution:

- 14.1. The organisation will always take a neutral stance on disputes reported to it.
- 14.2. All disputes will be acknowledged timeously and findings communicated to affected parties.
- 14.3. EIOSA will follow a broadly defined dispute resolution process, namely:
 - 14.3.1. Acknowledge receipt of complaints within 72 hours.
 - 14.3.2. Upon receipt of a complaint; determine whether the complaint falls within its scope and based thereon either launch an investigation or alternatively refer to relevant authorities.

- 14.3.3. Draw up a formal report of its findings. Findings will be objective and based on a thorough investigation of the matters in dispute.
- 14.3.4. Primarily use mediation and or arbitration as dispute resolution mechanisms.
- 14.3.5. Escalate the matter to a higher body if, after the completion of the investigation and a reasonable attempt at dispute resolution, the matter remains unresolved.
- 14.4. To enable the organisation to speedily resolve the complaints before it, the ombudsperson of the organisation has the power to make unilateral and binding decisions regarding:
 - 14.4.1. The dispute resolution process and or investigations.
 - 14.4.2. Findings and outcomes based on investigations.
 - 14.4.3. Resources necessary for proper investigation of the complaints reported.

15. Disclaimer and exclusion of liability

- 15.1. EIOSA cannot be held liable for any loss or damage suffered by any third party arising out of or in connection with any interaction with EIOSA members, office bearers or personnel whether such loss or damage arises out of an intentional or negligent act or omission, breach of contract, breach of the Code of Conduct and Ethics or any other cause.
- 15.2. Equally, members, personnel or directors of the organisation may not be held liable for losses or damages by virtue of being associated with the organisation.

16. Membership

- 16.1. Membership categories and benefits are subject to the approval of the management committee.
- 16.2. Industry bodies, interest groups, individuals or entities may become members of the organisation on a voluntary basis.
- 16.3. Members of the public and institutions may voluntarily make financial contributions to the organisation without being required to become members of the organisation.
- 16.4. The membership may be based on a subscription payable to the organisation to aid the financial sustainability of the organisation.
- 16.5. If a person wants to become a member of the organisation, they must apply through the organisation's management committee. The management committee reserves the right of admission.
- 16.6. All categories of membership are bound by the code of conduct of the organisation.

- 16.7. A member may not conduct themselves in a manner that would compromise the reputation and integrity of the organisation.
- 16.8. A member may not expect preferential treatment from the organisation on the basis of their membership to EIOSA.
- 16.9. The organisation will not participate in the marketing or related activities of its members and or affiliates. This excludes EIOSA's right to offer members affiliated exposure, whether at no cost or for a fee, by adding member logos to its website, branded material, social media posts, etc.
- 16.10. The organisation's management committee reserves the right to dismiss a member for failing to adhere to the conditions set out above.
- 16.11. A dismissed member may appeal to the management committee to review the decision of their dismissal. After due consideration of such an appeal, the management committee will inform the affected member of its decision and reasons.
- 16.12. Members of the organisation may attend its annual general meetings.
- 16.13. Members agree to have their contact information added to EIOSA's database.
- 16.14. Members agree to have their contact information shared with relevant third parties if and where EIOSA has bona fide cause to do so.

17. Newsletters and communication

- 17.1. Newsletters will be the main form of communication between the management committee and the member base. Newsletters will be circulated via a bulk mail platform. Agreeing to receive newsletters is compulsory for membership. Members and or newsletter subscribers are encouraged to ensure that email addresses from the organisation are "white-listed" and not received as SPAM on their servers.

18. Meetings and related procedures

18.1. Management and Executive Committee Meetings:

- 18.1.1. The management committee must meet at least once a month (see *Organisational Structure, Governance & Management* above) and the executive committee (once formed) must hold at least two ordinary meetings each year.
- 18.1.2. The meetings may be virtual i.e. via Zoom or MS Teams, telephonic or at a physical venue. More than half of the committee members need to be in attendance to make decisions that are allowed to be carried forward. This constitutes a quorum.
- 18.1.3. Minutes of all meetings must be kept safely and always on hand to meet PAIA requirements. Minutes may be kept online or in a virtual environment
- 18.1.4. The chairperson or any member of the committee may call a special meeting, but they must notify the other committee members of the date for the proposed meeting not less than 2 days before it is due to take place. They must also inform the other committee members of what issues will be discussed at the meeting. If, however, one of the matters to be discussed is to appoint a new committee member, then those calling the meeting must give the other committee members not less than 15 days' notice.
- 18.1.5. If the chairperson does not attend a meeting, then members of the committee who are present will choose one member to chair the meeting. This must be done before the meeting starts.
- 18.1.6. When necessary, the management and or executive committee will vote on organisational issues. If votes are equal on an issue, then the executive chairperson has a second or deciding vote.

18.2. Annual general meetings

- 18.2.1. The annual general meeting must be held once every year, towards the end of the organisation's financial year. The meeting may be held virtually or at a physical venue.
- 18.2.2. At the annual general meeting members with voting rights may exercise their right to review and determine the policy of the organisation. Subscribing members may have a right to vote on the policy directions proposed by the management committee at the general meeting.

18.2.3. The annual general meeting of the organisation will typically deal with the following business, amongst others:

- 18.2.3.1. An update on the organisation's activities.
- 18.2.3.2. Challenges and successes of the organisation.
- 18.2.3.3. Strategy or policy direction proposed by the management committee.
- 18.2.3.4. Ombudsman report.
- 18.2.3.5. Annual Financial statement.
- 18.2.3.6. Proposed changes to the constitution.
- 18.2.3.7. Election of new office bearers if necessary.
- 18.2.3.8. General items.

19. Changes to the constitution

- 19.1. Changes to the constitution may be made as and when required to ensure the necessary flexibility and agility for the organization to deliver on its mandate without undue hindrance.
- 19.2. Such changes and reasons thereof would be communicated to stakeholders within two weeks of having been made.
- 19.3. The changes to the constitution may also be discussed and affected through any approved communication method i.e. Email communication or virtual meetings.
- 19.4. No amendments may be made which would have the effect of making the organisation cease to exist.

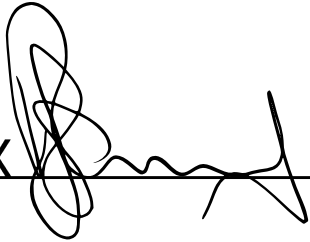
20. Dissolution / Winding-up

- 20.1. The organisation may be dissolved if at least two-thirds of the Management Committee members are present and voting at the meeting convened for the purpose of considering such a matter, and are in favour of dissolving the organisation.
- 20.2. When the organisation closes down it must pay off all its debts.
- 20.3. If after paying off the debts, there is property or money left over, such monies or property may not be paid or given to members of the organisation. Surplus funds will be given in some way to another nonprofit organisation that has similar objectives. The organisation's management committee can decide what this organisation should be.

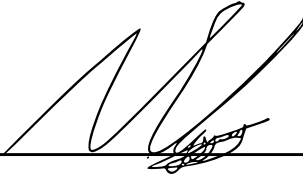
This constitution was approved and accepted by the management committee members of
THE ENERGY INDUSTRY OMBUDSMAN – SOUTH AFRICA, EIOSA.

12 November

At a special (general) meeting held on2023

X 

Carel Ballack
Chairperson

X 

Maretia Wiggitt
General Secretary

X 

Nyameko Gqoboka
Ombudsperson