

# HANDBOOK

## Advisory Council to the Energy and Water Ombudsman Queensland

March 2011

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# 1. COUNCIL FUNCTIONS AND RESPONSIBILITIES

- 1.1 The Advisory Council to the Energy and Water Ombudsman Queensland (the Council) is established through the *Energy and Water Ombudsman Act 2006* (the Act).
- 1.2 The primary responsibility of the Council is to, within the framework of the Act, oversight the operation of the external dispute resolution scheme known as the Energy and Water Ombudsman Queensland (the Scheme).
- 1.3 The functions of the Council are specified in section 49 of the Act :<sup>1</sup>

The advisory council's functions are to-

- (a) monitor the Energy and Water Ombudsman's independence; and
  - (b) advise the Energy and Water Ombudsman on the following-
    - (i) policy and procedural issues relating to this Act;
    - (ii) the operation of this Act for eligible customers and relevant occupiers of land;
    - (iii) the development of guidelines under section 28(5);
    - (iv) the preparation of budgets under section 74, guidelines under section 75 and annual reports under section 77; and
  - (c) advise the Minister on the funding of the Energy and Water Ombudsman's functions and
  - (d) as soon as practicable after the end of each financial year, prepare and provide the Minister with advice about-
    - (i) matters arising in relation to the Energy and Water Ombudsman's independence during the financial year; and
    - (ii) matters mentioned in subparagraphs (i) to (iv) of paragraph (b) arising during the financial year'.
- 1.4 In fulfilling its functions, it is anticipated that the Council shall:
    - 1.4.1 provide advice to the Energy and Water Ombudsman on and, as appropriate, make recommendations on:
      - (a) the appropriateness, scope and effectiveness of the scheme;
      - (b) policies and practices relating to the administration and conduct of the scheme;
      - (c) processes to enhance the responsiveness of the scheme to the needs of stakeholders;
      - (d) the promotion of the scheme and the preparation of the Annual Report.
    - 1.4.2 receive and consider financial budgets and business plans prepared by the Energy and Water Ombudsman, including guidelines for the working out and structure of user-pays fees (section 74 and section 75).
    - 1.4.3 make recommendations to the Minister with the portfolio responsibilities for energy and water (the Minister) and the Energy and Water Ombudsman as the Council sees fit on the financial budget and the business plan for the Scheme.

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<sup>1</sup> Copies of relevant sections of the Act are included in Attachment 1.

## 2. RELATIONSHIP WITH THE ENERGY AND WATER OMBUDSMAN

- 2.1 The Council's role is one of oversight and advice. The Energy and Water Ombudsman is responsible for the scheme's day-to-day operations.

## 3. COUNCIL MEMBERS

### 3.1 Appointment

3.1.1 Section 50 of the Act states:

- (1) The advisory council consists of a chairperson and at least 6 other members appointed by the Minister.
- (2) The chairperson must be independent of the interests of scheme participants or non-entity parties.
- (3) The other members must consist of-
  - (a) members drawn from scheme participants who represent the interests of scheme participants (industry members); and
  - (b) an equal number of members drawn from groups who represent the interests of non-entity parties (consumer members);
  - (c) The industry members must be appointed on the chairperson's recommendation, after consultation with scheme participants;
  - (d) The consumer members must be appointed on the chairperson's recommendation, after consultation with consumer groups and community welfare organisations;
  - (e) At least 2 of the industry members must represent the interests of retailers and at least 1 of the industry members must represent the interests of distributors;
  - (f) At least 1 industry member must be a member who represents the interests of scheme participants that are water entities.

### 3.2 Duties

- 3.2.1 Although Council Members are drawn from groups which represent sectoral interests (i.e. industry and consumer), in exercising their Council responsibilities, Council Members must act in the best interests of the scheme.
- 3.2.2 Council Members are expected to:
- (a) act honestly and exercise powers for their proper purposes;
  - (b) avoid conflicts of interest;
  - (c) act in good faith;
  - (d) exercise diligence, care and skill;
  - (e) maintain their knowledge of energy and water issues, especially those relating to customers;
  - (f) attend an orientation session on the scheme;
  - (g) attend and appropriately prepare for Council meetings.

### **3.3 Term**

- 3.3.1 The Chairperson holds office for the term stated in the chairperson's instrument of appointment, but must not be more than five years. The chairperson may be re-appointed, but must not be re-appointed if the total of the terms of appointment would be more than five years.
- 3.3.2 Council Members are appointed for either one or two years and are eligible for re-appointment.

### **3.4 Remuneration**

- 3.4.1 Council Members shall be entitled to meeting fees approved by the Governor-in-Council, and reimbursement for reasonable costs incurred in attending Council meetings, based on the Department of Justice and Attorney-General guideline "Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities".
- 3.4.2 Where a Council Member, with the prior approval of the Chairperson, undertakes a task or assignment outside those related to regular Council meetings, the Council Member shall be entitled to a special assignment fee, approved by the Governor-in-Council and based on Department of Justice and Attorney-General guideline "Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities".

### **3.5 Vacating / Resignation / Termination**

- 3.5.1 A Council vacancy occurs if a Council Member:
- (a) Dies;
  - (b) resigns in writing to the Minister;
  - (c) is removed by written notice of the Minister;
  - (d) is absent, without leave of the Council and without reasonable excuse, from three consecutive Council meetings of which notice has been given to the Council Member.
- 3.5.2 Where a Council Member vacates his/her position prior to completion of the term of their appointment, the Minister may make an appointment for the balance of the original term.

### **3.6 Disclosure of Interest**

- 3.6.1 If there is a reasonable possibility that a Council Member's participation in a Council decision shall give them, or an entity associated with them a commercial or professional advantage, or otherwise be perceived to be a conflict of interest, they must disclose that possibility to the Chairperson.
- 3.6.2 If a Council Member has a personal or pecuniary interest that appears likely to conflict or be capable of conflicting with the proper performance of their Council duty, that interest must be disclosed to the Chairperson and to the Minister.

## **4. SECRETARIAT AND SUPPORT SERVICES**

### **4.1 The Scheme shall provide secretariat services to the Council**

- 4.1.1 Secretariat services shall include maintenance of:
- (a) a register of Council Members and their contact details;
  - (b) a minutes register;
  - (c) an action item register;
  - (d) an attendance register;
  - (e) a correspondence register;
  - (f) a motor vehicle insurance register.
- 4.1.2 Secretariat services shall also prepare and produce
- (a) a meeting schedule;
  - (b) travel and meeting arrangements;
  - (c) Council document files;
  - (d) agendas, minutes and related documentation;
  - (e) follow-up action items from the meeting;
  - (f) Council budgets;
  - (g) new member papers and orientation.
- 4.1.3 Secretariat services will liaise with persons scheduled to address the Council.

## **5. MEDIA STATEMENTS**

- 5.1 Any media request of the Council shall be referred to the Chairperson.
- 5.2 Individual Council Members shall not provide public comments about Council matters, or on behalf of the Council.

## **6. COUNCIL MEETINGS**

### **6.1 Scheduling**

- 6.1.1 The Council shall normally meet every two months, unless otherwise agreed or requested by the Chairperson, the Energy and Water Ombudsman or the Minister.
- 6.1.2 An annual schedule of meetings shall be agreed at the beginning of each year. This may include meetings in regional Queensland.

### **6.2 Agenda**

- 6.2.1 The agenda for each meeting shall be finalised at the direction of the Chairperson.
- 6.2.2 Approximately three weeks before the meeting, the Chairperson shall arrange for a draft agenda to be forwarded to Council Members for input.

- 6.2.3 Once the agenda is settled, the Secretariat shall arrange for meeting papers to reach Council Members five business days prior to the meeting.
- 6.2.4 The Secretariat shall also liaise with any persons scheduled to address the Council, or otherwise attend a particular Council meeting.

### **6.3 Attendance at meetings**

- 6.3.1 The Energy and Water Ombudsman shall attend and present a report to all regular Council meetings.
- 6.3.2 The Council may invite other persons to attend meetings, as necessary.
- 6.3.3 The Chairperson shall approve any proposed invitees.
- 6.3.4 Any apologies from Council Members for meetings shall be made to the Chairperson.
- 6.3.5 A Council Member who is unable to attend a Council meeting may appoint a proxy for that meeting. The proxy shall be able to vote on the Council Member's behalf at that meeting, should a vote be necessary.
- 6.3.6 A Council Member may not appoint a proxy for more than two meetings in any one year.

### **6.4 Conduct of Meetings**

- 6.4.1 The Chairperson shall chair each Council meeting at which he or she is present.
- 6.4.2 Should the Chairperson be absent from a meeting, a Council Member elected from the Council Members present shall chair the meeting.
- 6.4.3 The meetings of the Council shall be minuted by the Secretariat.
- 6.4.4 Where appropriate, the minutes shall include an action statement, identifying the action to be taken and the responsible Council Member. Where an action is requested of a person outside the Council, that person shall be advised by the Chairperson or the Energy and Water Ombudsman, as appropriate, as soon as possible after the meeting.
- 6.4.5 As far as is possible, meetings shall be conducted in an informal manner, with resolutions reached by consensus.
- 6.4.6 Where a vote is deemed necessary, it shall be by majority vote of the Council Members present at the meeting. Should a Council Member abstain from voting, that shall be recorded in the minutes. The Chairperson has a deliberative vote and, in the case of equality of votes, a casting vote.

### **6.5 Minutes**

- 6.5.1 The Secretariat shall prepare draft minutes and a listing of action items for review by the Chairperson within five business days of each meeting.

- 6.5.2 The Chairperson shall review the draft minutes and action items and work with the Secretariat to have them distributed to Council Members within ten business days of the meeting.
- 6.5.3 The minutes shall be presented at the next Council meeting for confirmation that they are a correct record and maintained in a register of minutes, held by the Secretariat. The action items shall be reviewed in Business Arising.
- 6.5.4 The Chairperson shall work with the Secretariat to draft and send any Council correspondence arising from the meeting.
- 6.5.5 The Secretariat shall arrange for:
  - (a) distribution of the minutes and current action items to Council Members and the Energy and Water Ombudsman;
  - (b) the updating of the completed action items listing;
  - (c) electronic and hardcopy filing of all documents from each meeting;
  - (d) follow-up of action items as appropriate.
- 6.5.6 The Council documents shall be held for 25 years after last action in accordance with the *Public Records Act 2002* and Queensland State Archives Retention and Disposal Schedule of Public Records (Information Standard 31).

## 6.6 Quorum

- 6.6.1 Unless otherwise determined by majority vote, a quorum for the purpose of considering a matter at a Council meeting shall be not less than half plus one of the Council members. This must include at least one 'industry member' and one 'consumer member'.
- 6.6.2 If a quorum becomes unavailable during a meeting, those Council Members remaining may agree to meet informally at that time to consider issues remaining on the agenda. A ratification of decisions taken at this informal meeting shall then be sought at the next regular Council meeting.
- 6.6.3 If a quorum is unavailable and those Council Members present do not elect to meet informally, the business of the meeting shall be deferred to the next regular meeting, or to a special meeting.

## 7. COUNCIL REPORTS

- 7.1 The Chairperson shall meet with the Minister as necessary, and at least once every 12 months.
- 7.2 The Council at the end of each financial year must prepare and provide advice to the Minister in accordance with section 49 of the Act as set out under section 1.3 of the Council handbook (Council Functions and Responsibilities).
- 7.3 As part of the transitional provisions of the functions of the Energy Ombudsman to the Energy and Water Ombudsman, the Council must prepare and give a report to the Minister on the performance of the Energy and Water Ombudsman's functions as they relate to the water entities. This report is to be provided before the end of 2011 in accordance with section 99 of the Act.



## 8. INFORMATION MANAGEMENT

8.1 The *Right to Information Act 2009* applies to all Government appointed Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities. The Advisory Council to the Energy and Water Ombudsman Queensland has been established under the *Energy and Water Ombudsman Act 2006*. Members of the Council are appointed by the relevant Minister and appointments are approved by the Premier.

The *Right to Information Act 2009* (RTI Act) and *Information Privacy Act 2009* (IP Act) gives the public a right of access to information held by government unless, on balance, providing access would be contrary to the public interest.

Most Government Boards in Queensland are established for a public purpose by or under an Act. This means that under the RTI Act, members of the public have a right to access documents that these Government Boards have control or possession of. The Act states that “a board, council, subcommittee or other body established by government to help, or to perform functions connected with, an agency is not a separate agency, but is taken to be comprised within the agency”.

Members of the public can apply under the RTI Act for “documents of any agency”, including documents created before the Act commenced. “Documents of an agency” means a document in the possession or control of any agency, including documents the agency is entitled to access and documents that an officer of the agency holds in their official capacity. The definition of “document of any agency” is broad and would include files, working papers, hand written notes, minutes of meetings, work diaries, post-it notes, computer printouts, maps, films, photographs, tapes, video recordings and electronically recorded data. Drafts and copies of documents are also included. The definition may include documents held outside the agency e.g., at a Government Board member’s home.

Further information on Right to Information and Information Privacy can be found in the Department of the Premier and Cabinet “Welcome Aboard” package or at the Office of the Information Commission website [www.oic.qld.gov.au](http://www.oic.qld.gov.au) .

8.2 Copies of official correspondence shall be provided to the Secretariat for filing.

8.3 If the Council is requested to provide information under the RTI Act, immediate contact shall be made with the Secretariat, which shall contact the appropriate RTI & IP Co-ordinator.

# Attachment 1

## Relevant extracts from the *Energy and Water Ombudsman Act 2006*

### 12 Restrictions on functions – energy entities

- (1) In relation to an energy entity, the Energy and Water Ombudsman can not accept a referral about or investigate any of the following—
  - (a) the fixing of-
    - (i) tariffs for customer connection services or customer retail services; or
    - (ii) charging categories for the tariffs; or
    - (iii) methodologies for fixing the tariffs or categories;
  - (b) the fairness or reasonableness of the terms of a connection contract or retail contract;
  - (c) disputes between small customers (energy) and energy entities about eligibility for State government concessions or rebates;
  - (d) a commercial activity carried out by an energy entity if the activity is outside the scope of any energy Act authority held by the entity;
  - (e) a thing required to be done under an energy Act or an order in a proceeding;  
*Example-*  
a restriction on the supply of electricity required under an emergency rationing order under the *Electricity Act 1994*;
  - (f) customer contribution to the cost of capital works;
  - (g) a dispute between 2 or more entities of the following types of entity—
    - (i) energy entities;
    - (ii) electricity entities under the *Electricity Act 1994*;
    - (iii) special approval holders;
    - (iv) industry participants under the *Gas Supply Act 2003*.
- (2) In this section-  
tariffs includes charges and prices.

### 12A Restriction on functions – water entities

- (1) The Energy and Water Ombudsman can not accept a referral about or investigate the fixing of—
  - (a) charges for wastewater services or water services; or
  - (b) methodologies for fixing the charges.
- (2) In this section –  
**wastewater service** see the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, schedule;  
**water service fee** see the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, schedule.

### 12B General restrictions on functions

- (1) The Energy and Water Ombudsman can not accept a referral about or investigate any of the following—
  - (a) the content of government policies or legislation, an energy Act authority, an industry code or the customer water and wastewater code;
  - (b) a matter that has already been decided by a proceeding;
  - (c) a matter, the subject of an unfinished proceeding started before the referral.

- (2) However, subsection (1)(c) does not apply if—
  - (a) the Energy and Water Ombudsman and the parties to the proceeding agree that the ombudsman may investigate the matter; or
  - (b) an order in the proceeding requires the Energy and Water Ombudsman to investigate the matter.
- (3) In this section—  
**proceeding** includes arbitration.

### 13 Exclusion of disputes relating to community ambulance cover levy

- (1) The Energy and Water Ombudsman's functions do not apply to a dispute between an energy entity and a small customer (energy) about—
  - (a) the performance of a function under the *Ambulance Cover Act*; or
  - (b) the performance of a function under the *Electricity Act 1994*, to the extent that the performance of the function is required, permitted or otherwise provided for under the *Ambulance Cover Act*.
- (2) A person can not make a dispute referral if the relevant dispute is, or is in the nature of, a dispute that, because of subsection (1), is not included in the Energy and Water Ombudsman's functions.
- (3) Without limiting subsection (2), a person can not make a dispute referral about—
  - (a) the levy; or
  - (b) the levy amount paid or payable by a person; or
  - (c) the collection of a levy amount; or
  - (d) the collection of an amount for electricity, if the dispute arises in connection with the collection of a levy amount.
- (4) This section does not limit or otherwise affect section 12 or 12B.
- (5) In this section—  
**Ambulance Cover Act** means the *Community Ambulance Cover Act 2003*.  
**levy** means the community ambulance cover levy under the *Ambulance Cover Act*.  
**levy amount** means a levy amount under the *Ambulance Cover Act*.

### 17 Consultation with advisory council

- (1) The Energy and Water Ombudsman must consult with the advisory council, as required under section 28(6), 74 or 75.
- (2) If—
  - (a) the advisory council gives the Energy and Water Ombudsman advice; and
  - (b) the advice is given because of consultation required under subsection (1) or is within the council's functions;
 the Energy and Water Ombudsman must consider the advice in performing functions under this Act.

### 18 Disputes relating to energy entities that may be referred to Energy and Water Ombudsman

- (1) This section applies if a dispute as follows exists—
  - (a) a dispute between a small customer (energy) and an energy entity about its performance of an energy entity function (the relevant function) if the dispute relates to premises for which the customer is a small customer;  
*Example—*  
a dispute about whether, under an energy Act, the entity must provide customer connection services or customer retail services;
  - (b) a dispute between an energy entity and an occupier of land onto which the entity, or an individual authorised by the entity, enters, or proposes to enter, under an energy Act (also the **relevant function**).

- (2) This section continues to apply even if the relevant entity stops being an energy entity after the performance of the relevant function.
- (3) Subject to sections 19 and 19A, either party to the dispute may refer it to the Energy and Water Ombudsman.
- (4) Subsection (5) applies if the dispute is about whether, under an energy Act, the relevant entity must provide customer connection services or customer retail services.
- (5) For subsection (1)(a), the customer is a small customer (energy) if, had the services been provided, the customer would have been a small customer for the premises.

**18A Disputes relating to water entities that may be referred to Energy and Water Ombudsman**

- (1) This section applies if a dispute exists between a small customer (water) and a water entity about its performance of a water entity function.
- (2) Subject to section 19A, either party to the dispute may refer it to the Energy and Water Ombudsman.
- (3) Subsection (4) applies if the dispute is about whether a water entity must perform a water entity function for a person.
- (4) For subsection (1), the person is a small customer (water) if, had the function been performed, the person would have been a small customer (water).

**19 Restrictions on disputes relating to energy entities that can be referred**

A party to a dispute mentioned in section 18(1) can not make a referral under that section if any of the following circumstances apply-

- (a) the relevant dispute relates to the *Electricity Act 1994*, chapter 5A;
- (b) section 12, 12B or 13 prevents the proposed referral from being made;
- (c) the relevant dispute may be dealt with under-
  - (i) the *Queensland Competition Authority Act 1997*; or
  - (ii) the *Electricity—National Scheme (Queensland) Act 1997*; or
  - (iii) the *Gas Pipelines Access (Queensland) Law*;
- (d) the relevant entity has stopped being an energy entity for more than 12 months.

**19A General restrictions on disputes that can be referred**

- (1) A party to a dispute mentioned in sections 18(1) or 18A(1) can not make a referral under that section if any of the following circumstances apply—
  - (a) 12 months have passed since the later of the following to happen—
    - (i) the performance of the function to which the dispute relates;
    - (ii) the party becoming aware of the performance of the function to which the dispute relates;
  - (b) the Energy and Water Ombudsman has already made a decision on an earlier dispute referral and –
    - (i) the parties to the earlier dispute referral are the same as the parties to the relevant dispute; and
    - (ii) the proposed dispute referral is the same, or substantially the same, as the earlier dispute referral;
  - (c) the party is a non-entity party and the Energy and Water Ombudsman is reasonably satisfied the party has not made a genuine attempt to resolve the matter with the relevant entity.
- (2) For subsection (1)(a)(ii), a non-entity party is taken to have become aware of the performance of the function to which the dispute relates when the party might reasonably be expected to have known it was being performed.

## **22 Refusal to investigate dispute referral**

- (1) The Energy and Water Ombudsman may refuse to investigate a dispute referral or, having started to investigate a dispute referral, may refuse to continue the investigation, if the ombudsman is reasonably satisfied that-
  - (a) the subject of the relevant dispute is trivial; or
  - (b) the dispute referral is frivolous or vexatious or has not been made in good faith; or
  - (c) the referrer does not have a sufficient direct interest in the subject of the relevant dispute; or
  - (d) the relevant entity has not been given a reasonable opportunity to resolve the relevant dispute; or
  - (e) both of the following apply-
    - (i) the referrer has a right of appeal, reference or review, or another remedy, that the referrer has not exhausted;  
*Example of a right of reference-*  
a right under a relevant contract or law of internal review by the energy entity for it to make an insurance claim for the relevant dispute
    - (ii) it would be reasonable in the circumstances to require the referrer to exhaust the right or remedy before the Energy and Water Ombudsman investigates, or continues to investigate, the dispute referral; or
  - (f) if the referral relates to an energy entity function under an energy Act, the regulator or QCA has the power to give appropriate relief to the non-entity party; or
  - (g) because of a preliminary inquiry, the relevant dispute should not be investigated; or
  - (h) in the circumstances, the investigation, or the continuance of the investigation, of the matter the subject of the relevant dispute is unnecessary or unjustifiable.
- (2) Also, the Energy and Water Ombudsman may refuse to investigate an oral dispute referral or, having started to investigate an oral dispute referral, may refuse to continue the investigation, until the dispute referral is remade in the approved form under section 82.
- (3) A right or remedy mentioned in subsection (1) does not include a right under the *Judicial Review Act 1991* to make an application to the Supreme Court.
- (4) To remove any doubt, it is declared that this section does not limit or otherwise affect the Energy and Water Ombudsman's power not to accept or investigate a matter because of section 12, 12A, 12B, 13, 18, 18A, 19 or 19A.

## **28 Investigation procedure**

- (5) The Energy and Water Ombudsman must develop and make guidelines on procedures to be followed for dispute referrals and investigations.
- (6) However, before making or amending the guidelines, the Energy and Water Ombudsman must consult with the advisory council.

## **33 Proceedings after investigation starts**

- (3) However, if the non-entity party starts a proceeding about the relevant dispute, the investigation ends.

### 34 Decision

- (1) This section applies for an investigation into a dispute referral unless
  - (a) the investigation has ended under section 22(1) or 33(3); or
  - (b) the dispute referral has been withdrawn; or
  - (c) agreement has been reached between the parties under which the relevant dispute has been resolved.
- (2) After finishing the investigation, the Energy and Water Ombudsman may decide to make, or refuse to make, an order (a **final order**) in favour of the non-entity party.

### 49 Functions

The advisory council's functions are to-

- (a) monitor the Energy and Water Ombudsman's independence; and
- (b) advise the Energy and Water Ombudsman on the following-
  - (i) policy and procedural issues relating to this Act;
  - (ii) the operation of this Act for eligible customers and relevant occupiers of land;
  - (iii) the development of guidelines under section 28(5);
  - (iv) the preparation of budgets under section 74, guidelines under section 75 and annual reports under section 77; and
- (c) advise the Minister on the funding of the Energy and Water Ombudsman's functions.
- (d) as soon as practicable after the end of each financial year, prepare and provide the Minister with advice about-
  - (i) matters arising in relation to the Energy and Water Ombudsman's independence during the financial year; and
  - (ii) matters mentioned in sub paragraphs (i) to (iv) of paragraph (b) arising during the financial year.

### 50 Appointment

- (1) The advisory council consists of a chairperson and at least 6 other members appointed by the Minister.
- (2) The chairperson must be independent of the interests of scheme participants or non-entity parties.
- (3) The other members must consist of-
  - (a) members drawn from scheme participants who represent the interests of scheme participants (industry members); and
  - (b) an equal number of members drawn from groups who represent the interests of non-entity parties (consumer members).
- (4) The industry members must be appointed on the chairperson's recommendation, after consultation with scheme participants.
- (5) The consumer members must be appointed on the chairperson's recommendation, after consultation with consumer groups and community welfare organisations.
- (6) At least 2 of the industry members must represent the interests of retailers and at least 1 of the industry members must represent the interests of distributors.
- (7) At least one industry member must be a member who represents the interests of scheme participants that are water entities.

### 50A Chairperson

- (1) The chairperson of the advisory council holds office for the term stated in the chairperson's instrument of appointment.
- (2) The stated term must not be more than 5 years.
- (3) The chairperson may be reappointed.

- (4) However, a person must not be reappointed if the total of the person's terms of appointments would be more than 5 years.

#### 74 Annual budgets

- (1) The Energy and Water Ombudsman must, before each 31 March, prepare, in consultation with the advisory council, a budget of estimated costs of the Energy and Water Ombudsman office for the next financial year, having regard to expected membership fees and user-pays fees for the year.
- (2) The Minister must approve, or refuse to approve, a budget by 30 April.
- (3) However, a failure by the Minister to act under subsection (2) does not prevent the Minister approving, or refusing to approve, a budget at a later time.
- (4) A budget has no effect until it has been approved by the Minister on the recommendation of the advisory council and the Energy and Water Ombudsman.
- (5) During a financial year the Energy and Water Ombudsman may prepare amendments to the office's budget for that year.
- (6) An amendment of a budget has no effect until it has been approved by the Minister on the recommendation of the advisory council and the Energy and Water Ombudsman.
- (7) If the advisory council and the Energy and Water Ombudsman differ about what should be recommended to the Minister for an approval under this section, the Minister may still give the approval.
- (8) The Energy and Water Ombudsman may authorise spending by the office during a financial year only under the budget for that year, unless the Minister otherwise approves.
- (9) This section does not require the Energy and Water Ombudsman to give the Minister any details that would, if given, prejudice a current investigation.

#### 75 Budget guidelines

- (1) The Energy and Water Ombudsman must, in consultation with the advisory council, prepare budget guidelines, including guidelines for the working out, structure and adjustment of user-pays fees.
- (2) The budget guidelines must provide for the user-pays fees for a scheme participant to be adjusted at least twice a year having regard to the participant's forecasted costs and relevant performance costs.
- (3) In this section –  
**forecasted costs** has the same meaning as in section 69.  
**Relevant performance costs** has the same meaning as in Section 69.

#### 77 Annual report

- (1) The Energy and Water Ombudsman must-
  - (a) prepare and give to the Minister a written report about the operations of the Energy and Water Ombudsman office during each financial year; and
  - (b) as soon as practicable after it is given to the Minister, publish it on the Energy and Water Ombudsman's website.
- (2) The report must be given as soon as practicable after the end of the financial year, but within a period that will allow the report to be tabled in the Legislative Assembly within the tabling period under the *Financial and Performance Management Standard 2009*, section 49(2).

- (3) Without limiting subsection (1), the Energy and Water Ombudsman must include in the report-
  - (a) a description of the following matters for the year-
    - (i) dispute referrals made;
    - (ii) dispute referrals that the Energy and Water Ombudsman decided, under section 22, not to investigate or continue to investigate;
    - (iii) dispute referrals investigated;
    - (iv) decisions under section 34, including final orders made;
    - (v) matters referred to an energy Act regulator, QCA, the Queensland Water Commission or the regulator under the *Water Supply (Safety and Reliability) Act 2008*, section 10; and
  - (b) details of other functions performed by the Energy and Water Ombudsman or Energy and Water Ombudsman officers during the year; and
  - (c) financial statements for the Energy and Water Ombudsman office for the year.
- (4) A description may include statistics.
- (5) The report must not be prepared in a way that discloses confidential information.

## **78 Reports and observations on Energy and Water Ombudsman's initiative**

- (1) If the Energy and Water Ombudsman considers it appropriate, the ombudsman may give any of the following a report on, or make observations about, a matter arising from the performance of the Energy and Water Ombudsman's functions-
  - (a) a scheme participant;
  - (b) an energy Act regulator;
  - (c) the Queensland Water Commission or the regulator under the *Water Supply (Safety and Reliability) Act 2008*, section 10;
  - (d) the Minister;
  - (e) the advisory council;
  - (f) any public forum.
- (2) However, a report or observation can not be made under subsection (1) if-
  - (a) it is derived from information that is confidential or the disclosure of which might detriment commercial interests; or
  - (b) the making of the report or observation will result in confidential information being disclosed.
- (3) Subsection (2) applies even if the Energy and Water Ombudsman has, under section 31, decided that a belief that the information is confidential is not justified.

## **82 Approved forms**

The Energy and Water Ombudsman may approve forms for use under this Act.