



Energy Ombudsman Queensland Advisory Council

HANDBOOK

1 COUNCIL FUNCTIONS AND RESPONSIBILITIES

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

The advisory council's functions are to—

- (a) monitor the energy ombudsman's independence; and*
- (b) advise the energy ombudsman on the following—*
 - (i) policy and procedural issues relating to this Act;*
 - (ii) the operation of this Act for small 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 ombudsman's functions.*

- 1.4 In fulfilling its functions, it is anticipated that the Council shall:
 - 1.4.1 provide advice to the Energy Ombudsman on and, as appropriate, make recommendations on:
 - the appropriateness, scope and effectiveness of the scheme
 - policies and practices relating to the administration and conduct of the scheme
 - processes to enhance the responsiveness of the scheme to the needs of stakeholders
 - 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 Ombudsman, including guidelines for the working out and structure of user-pays fees (s. 74 and 75)
 - 1.4.3 make recommendations to the Minister for Mines and Energy (the Minister) and the Energy Ombudsman as the Council sees fit on the financial budget and the business plan for the Scheme.

2 RELATIONSHIP WITH THE ENERGY OMBUDSMAN

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

¹ Copies of relevant sections of the Act are included in Attachment 1.

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 members or non-entity parties.*
- (3) The other members must consist of—*
 - (a) members drawn from scheme members who represent the interests of scheme members (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 members.*
- (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.*

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:

- act honestly and exercise powers for their proper purposes
- avoid conflicts of interest
- act in good faith
- exercise diligence, care and skill
- maintain their knowledge of energy issues, especially those relating to customers
- attend an orientation session on the scheme
- attend and appropriately prepare for Council meetings

3.3 Term

3.3.1 The Chairperson is appointed for two years and is eligible for re-appointment.

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 Department of Industrial Relations guidelines.

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 Industrial Relations guidelines.

3.5 Vacating/Resignation/Termination

3.5.1 A Council vacancy occurs if a Council Member:

- dies
- resigns in writing to the Minister
- is removed by written notice of the Minister
- 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's Business Manager shall provide secretariat services to the Council.

4.2 Secretariat services shall include maintenance of:

- a register of Council Members and their contact details
- a minutes register
- a correspondence register
- Council document files

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 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 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 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:
 - distribution of the minutes and current action items to Council Members and the Energy Ombudsman
 - the updating of the completed action items listing
 - electronic and hardcopy filing of all documents from each meeting
 - follow-up of action items as appropriate
- 6.5.6 The hard copy of Council documents shall be held for five years and then archived in accordance with Government policy. The electronic copy shall be held for no less than one year.

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 is not present 10 minutes after the time appointed for the commencement of a meeting, the Council Members present may agree to meet informally at that time to consider issues on the agenda. A ratification of decisions taken at this informal meeting shall then be sought at the next scheduled meeting.
- 6.6.3 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.

- 6.6.4 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 in each six months.
- 7.2 The Chairperson shall include a report on the Council's activities in the scheme's Annual Report.

8 INFORMATION MANAGEMENT

- 8.1 The Freedom of Information Act 1992 provides the community with the right to access information held by the Queensland Government. Therefore, all written communications resulting from the Council shall be accurate, clear, concise, non-discriminatory, well presented, factual and based on sound information and judgement.
- 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 FOI Act, immediate contact shall be made with the Secretariat, which shall contact the appropriate FOI Co-ordinator.

Attachment 1

Relevant extracts from the *Energy Ombudsman Act 2006*

12 General restrictions on functions

- (1) The energy 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 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) the content of government policies or of legislation, an energy Act authority or an industry code;
 - (f) 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*
 - (g) customer contribution to the cost of capital works;
 - (h) 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*;
 - (i) a matter that has already been decided by a proceeding;
 - (j) a matter the subject of an unfinished proceeding started before the referral.
- (2) However, subsection (1)(j) does not apply if—
- (a) the energy 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 ombudsman to investigate the matter.
- (3) In this section—
proceeding includes arbitration.
tariffs includes charges and prices.

13 Exclusion of disputes relating to community ambulance cover levy

- (1) The energy ombudsman's functions do not apply to a dispute between an energy entity and a small customer 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 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.
- (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 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 ombudsman advice; and
 - (b) the advice is given because of consultation required under subsection (1) or is within the council's functions;
- the energy ombudsman must consider the advice in performing functions under this Act.

18 Disputes that may be referred to energy ombudsman

- (1) This section applies if a dispute as follows exists—
- (a) a dispute between a small customer 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 section 19, either party to the dispute may refer it to the energy 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 if, had the services been provided, the customer would have been a small customer for the premises.

19 Restrictions on disputes that can be referred

- (1) 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 or 13 prevents the proposed referral from being made;
 - (c) 12 months have passed since the later of the following to happen—
 - (i) the performance of the relevant function;
 - (ii) the party becoming aware of the performance of the relevant function;
 - (d) 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*;
 - (e) the energy 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;

- (f) the party is a non-entity party and the energy ombudsman is reasonably satisfied the party has not made a genuine attempt to resolve the matter with the relevant entity;
 - (g) the relevant entity has stopped being an energy entity for more than 12 months.
- (2) For subsection (1)(c)(ii), a non-entity party is taken to have become aware of the performance of the relevant function when the party might reasonably be expected to have known it was being performed.

22 Refusal to investigate dispute referral

- (1) The energy 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 ombudsman investigates, or continues to investigate, the dispute referral; or
 - (f) 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 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 ombudsman's power not to accept or investigate a matter because of section 12, 13, 18 or 19.

28 Investigation procedure

- (5) The energy 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 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 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 ombudsman's independence; and
- (b) advise the energy ombudsman on the following—
 - (i) policy and procedural issues relating to this Act;
 - (ii) the operation of this Act for small 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 ombudsman's functions.

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 members or non-entity parties.
- (3) The other members must consist of—
 - (a) members drawn from scheme members who represent the interests of scheme members (**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 members.
- (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.

74 Annual budgets

- (1) The energy ombudsman must, before each 31 March, prepare, in consultation with the advisory council, a budget of estimated costs of the energy ombudsman office for the next financial year, having regard to expected membership fees and user-pays fees for the year.
- (2) A budget has no effect until it has been approved by the Minister on the recommendation of the advisory council and the energy ombudsman.
- (3) During a financial year the energy ombudsman may prepare amendments to the office's budget for that year.
- (4) 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 ombudsman.
- (5) If the advisory council and the energy ombudsman differ about what should be recommended to the Minister for an approval under this section, the Minister may still give the approval.
- (6) The energy ombudsman may authorise spending by the office during a financial year only under the budget for that year, unless the Minister otherwise approves.
- (7) This section does not require the energy ombudsman to give the Minister any details that would, if given, prejudice a current investigation.

75 Budget guidelines

The energy ombudsman must, in consultation with the advisory council, prepare budget guidelines, including guidelines for the working out and structure of user-pays fees.

77 Annual report

- (1) The energy ombudsman must—
 - (a) prepare and give to the Minister a written report about the operations of the energy ombudsman office during each financial year; and
 - (b) as soon as practicable after it is given to the Minister, publish it on the energy ombudsman's website.
- (2) The report must be given as soon as practicable after the end of the financial year, but within 4 months after the year ends.
- (3) Without limiting subsection (1), the energy 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 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 or QCA; and
 - (b) details of other functions performed by the energy ombudsman or energy ombudsman officers during the year; and
 - (c) financial statements for the energy 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 ombudsman's initiative

- (1) If the energy 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 ombudsman's functions—
 - (a) a scheme member;
 - (b) an energy Act regulator;
 - (c) the Minister;
 - (d) the advisory council;
 - (e) 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 ombudsman has, under section 31, decided that a belief that the information is confidential is not justified.

82 Approved forms

The energy ombudsman may approve forms for use under this Act.