



Queensland

Energy Ombudsman Act 2006

Reprinted as in force on 7 December 2006

**Warning—this document has been released in unauthorised
electronic form only**

**Reprint No. 0A
2nd revised edition**

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 7 December 2006.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to omit the enacting words (s 42A).

This page is specific to this reprint. A table of reprints is included in the endnotes.

Also see endnotes for information about when provisions commenced.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.

Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.



Queensland

Energy Ombudsman Act 2006

Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	5
2	Commencement	5
3	Main purpose of Act	6
Division 2	Interpretation	
4	Dictionary	6
5	What is an energy Act	6
6	Who is a small customer	6
7	What is an energy entity	6
8	What is an energy entity function	7
9	References to functions	7
Part 2	The energy ombudsman	
10	Establishment	8
11	Functions	8
12	General restrictions on functions	8
13	Exclusion of disputes relating to community ambulance cover levy	10
14	Obligations in performing functions	11
15	General powers	11
16	Energy ombudsman not subject to direction	11
17	Consultation with advisory council	11
Part 3	Dispute referrals	
18	Disputes that may be referred to energy ombudsman	12
19	Restrictions on disputes that can be referred	12
20	Discretion to accept particular referrals made out-of-time	13
21	Ways of making dispute referral	14

22	Refusal to investigate dispute referral	14
23	Notice of referral not properly made or of refusal to investigate . .	15
24	Preliminary inquiry	16
25	Withdrawal of dispute referral	16
Part 4	Investigations	
26	Notice of investigation	17
27	When investigation starts	17
28	Investigation procedure	17
29	Power to require particular documents or information from relevant entity	18
30	Custody of documents given to energy ombudsman	20
31	Restriction on disclosing energy entity's confidential information.	20
32	Interim orders	21
33	Proceedings after investigation starts	21
Part 5	Action following investigation	
Division 1	Resolving dispute	
34	Decision	22
35	Final orders that may be made	22
36	Criteria for making final order	23
37	Restrictions on final orders	23
38	Notice of decision	24
39	Restriction on including confidential information in decision notice	24
Division 2	Acceptance of final order by non-entity party	
40	Election to accept or not to accept	25
41	Effect of accepted order	25
Division 3	Enforcement of final orders	
42	How final order for an amount may be enforced.	26
43	Non-entity party's duty to allow relevant entity to comply with particular accepted orders	27
44	Inquiry and directions about failure to comply with duty	27
45	Failure of non-entity party to comply with compliance directions .	27
46	Failure by relevant entity to comply with accepted order or compliance directions	28
Division 4	Miscellaneous provision	
47	Dismissal or non-acceptance does not affect other proceedings	28

Part 6	Advisory council	
48	Establishment	29
49	Functions	29
50	Appointment	29
Part 7	Particular provisions about the energy ombudsman	
51	Appointment	30
52	Term of appointment	30
53	Remuneration and conditions	31
54	Restriction on outside employment	31
55	Resignation	31
56	Acting energy ombudsman	31
57	Termination of appointment	32
58	Preservation of rights	33
Part 8	Administration	
Division 1	Energy ombudsman office	
59	Office of the Energy Ombudsman	33
60	Control of office	34
61	Officers	34
62	Officers not subject to outside direction	34
63	Alternative staffing arrangements	34
Division 2	Funding of energy ombudsman office	
Subdivision 1	Membership fees	
64	Scheme membership	35
65	Annual fees	35
66	When membership fee is payable	36
67	Amount of membership fee	36
68	When user-pays fee is payable	37
69	Working out user-pays fee	38
70	Supplementary fees	39
Subdivision 2	Late payments	
71	Unpaid fee interest	40
72	Energy ombudsman may remit unpaid fee interest	40
73	Recovery of unpaid amounts	41
Division 3	Other matters	
74	Annual budgets	41
75	Budget guidelines	41
76	Delegation	42

77	Annual report	42
78	Reports and observations on energy ombudsman's initiative . . .	43
79	Privacy	44
80	Disclosure of particular information	45
81	Protection from liability	46
82	Approved forms	46
83	Regulation-making power.	46
Part 9	Transitional provisions	
Division 1	Preliminary	
84	Definitions for pt 9.	46
Division 2	Transitional provisions for funding and first budget	
85	User-pays fees for changeover quarters	47
86	Reference to previous fees for working out user-pays fee under this Act	47
87	Budget for first financial year	48
Division 3	Existing disputes under energy Act	
88	Application of div 3	48
89	Referral becomes a dispute referral	48
90	Documents and information given for energy Act referral.	49
Part 10	Amendment of Public Service Act 1996	
91	Act amended in pt 10	49
92	Amendment of sch 1 (Public service offices and their heads) . . .	49
Part 11	Amendment of Queensland Competition Authority Act 1997	
93	Act amended in pt 11	50
94	Amendment of s 187 (Confidential information)	50
95	Amendment of s 239 (Confidential information)	50
Schedule	Dictionary	51
 Endnotes		
1	Index to endnotes.	54
2	Date to which amendments incorporated.	54
3	Key	54
4	Table of reprints	55
5	List of legislation.	55

Energy Ombudsman Act 2006¹

[reprinted as in force on 7 December 2006]

An Act to provide for the investigation into and resolution of particular disputes involving energy entities, or particular former energy entities, and for other purposes

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Energy Ombudsman Act 2006*.

2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- part 1, heading
- section 3
- division 2
- part 9, heading and divisions 1 and 2
- the schedule.

¹ This Act (other than part 1 heading, sections 1–3, division 2, part 9 heading, divisions 1–2 and the schedule) had not commenced on or before the reprint date.

3 Main purpose of Act

The main purpose of this Act is to give small customers and relevant occupiers of land a timely, effective, independent and just way of—

- (a) referring disputes about particular matters involving energy entities and particular former energy entities; and
- (b) having the disputes investigated and resolved.

Division 2 Interpretation

4 Dictionary

The dictionary in the schedule defines particular words used in this Act.

5 What is an *energy Act*

An *energy Act* is the *Electricity Act 1994* or *Gas Supply Act 2003*.

6 Who is a *small customer*

- (1) A person is a *small customer* if, under an energy Act, the person is a small customer for premises.
- (2) To remove any doubt, it is declared that the term does not include a person who, under an energy Act, is a receiver of an on-supplier.

7 What is an *energy entity*

An *energy entity* is—

- (a) a distributor; or
- (b) a retailer; or
- (c) a special approval holder whose special approval authorises the holder to provide customer connection services or customer retail services under the *Electricity Act 1994*.

8 What is an *energy entity function*

An *energy entity function* is a function or obligation that—

- (a) is performed or required or permitted to be performed by an energy entity under or in relation to—
 - (i) an energy Act; or
 - (ii) an industry code; or
 - (iii) a connection contract or retail contract; and
- (b) concerns customer connection services or customer retail services.

Examples—

- billing under a connection contract or retail contract
- connection or disconnection of the services
- security deposits for the services
- the reliability or quality of the services
- the carrying out of vegetation management, including for example, clearing, removing, lopping or pruning trees or other vegetation, authorised under an energy Act
- the connection, supply or sale, or the failure to connect supply or sell, electricity or processed natural gas, as required under an energy Act or a licence or agreement
- conduct relating to the formation of a negotiated contract

9 References to functions

In this Act—

- (a) a reference to a function includes a reference to a power; and
- (b) a reference to performing a function includes a reference to exercising a power.

Part 2 **The energy ombudsman**

10 **Establishment**

There is to be an energy ombudsman.

Note—

For particular provisions about the energy ombudsman, see part 7.

11 **Functions**

(1) *The energy ombudsman's functions are—*

(a) *to receive and investigate, and facilitate the resolution of, disputes referred under this Act to the energy ombudsman; and*

Note—

For what disputes may be referred and who may refer them, see sections 18, 19 and 20.

(b) *to resolve the disputes if they can not be resolved by agreement, negotiation or mediation; and*

(d) *to promote the operation of this Act to small customers and relevant occupiers of land; and*

(e) *to identify systemic issues arising out of complaints anyone makes to the ombudsman; and*

(f) *the other functions conferred on the energy ombudsman under any Act.*

(2) *However, the performance of the energy ombudsman's functions is subject to sections 12 and 13.*

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*

Energy Ombudsman Act 2006

- (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.

14 Obligations in performing functions

The energy ombudsman must, in performing the ombudsman's functions, act independently, impartially and in the public interest.

15 General powers

Without limiting the energy ombudsman's specific powers under this Act, the ombudsman may do anything necessary or convenient to be done for, or in connection with, the ombudsman's functions.

16 Energy ombudsman not subject to direction

Subject to section 74, the energy ombudsman is not subject to direction by anyone about—

- (a) the way the energy ombudsman performs the energy ombudsman's functions; or*
- (b) decisions on dispute referrals; or*
- (c) the priority given to investigations or the resolution of dispute referrals.*

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.

Part 3 **Dispute referrals**

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.*

20 Discretion to accept particular referrals made out-of-time

- (1) *This section applies only if—*
- (a) *because of section 19(1)(c), a referral can not otherwise be made under section 18; and*

- (b) *the relevant entity is still an energy entity or, if it is no longer an energy entity, less than 12 months have passed since it stopped being an energy entity.*
- (2) *The energy ombudsman may decide the referral is a dispute referral properly made under section 18 if the ombudsman considers the referrer had good reason for not referring the dispute within the 12 months mentioned in section 19(1)(c).*
- (3) *On the making of the decision, the referral is taken to be a dispute referral made to the energy ombudsman under section 18.*
- (4) *This section applies despite section 19(1)(c).*

21 Ways of making dispute referral

- (1) *Subject to section 22(2), a dispute referral may be oral or written.*
- (2) *A dispute referral may be made for the referrer by someone else authorised by the referrer.*
- (3) *The authorisation may be oral or written.*

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;*

Energy Ombudsman Act 2006

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.*

23 Notice of referral not properly made or of refusal to investigate

- (1) This section applies if—*
- (a) because of section 12, 13, 18 or 19, a purported dispute referral can not be made to or be investigated by the energy ombudsman; or*

- (b) *under section 22, the energy ombudsman refuses to carry out or to continue an investigation.*
- (2) *The energy ombudsman must, as soon as reasonably practicable, notify the referrer that the purported dispute referral, or the dispute referral the subject of the former investigation, will not be investigated, or continue to be investigated, and why.*
- (3) *The notice may be oral or written.*

24 Preliminary inquiry

- (1) *For this part, the energy ombudsman may make reasonably necessary inquiries to decide whether a dispute referral or purported dispute referral can or should be investigated.*
- (2) *The parties must, if the energy ombudsman asks, give the ombudsman reasonable help in the carrying out of a preliminary inquiry.*

25 Withdrawal of dispute referral

- (1) *A dispute referral may be withdrawn at any time by the referrer.*
- (2) *The withdrawal may be by oral or written notice to the energy ombudsman.*
- (3) *On the withdrawal, any investigation relating to the dispute referral ends.*
- (4) *The energy ombudsman must, as soon as practicable after receiving the notice under subsection (2), give the other party written notice of the withdrawal.*

Part 4 **Investigations**

26 **Notice of investigation**

- (1) *On the making of a dispute referral, the energy ombudsman must, as soon as reasonably practicable, give a notice (an **investigation notice**) to the other party of—*
 - (a) *the subject of the relevant dispute; and*
 - (b) *details of the referrer that the energy ombudsman considers appropriate; and*
 - (c) *when the energy ombudsman proposes to start to investigate the dispute unless the dispute referral has been withdrawn before that time.*
- (2) *However, an investigation notice need not be given if the dispute referral has been withdrawn,*
- (3) *An investigation notice may be oral or written.*
- (4) *However if oral notice is given, the energy ombudsman must confirm it by written notice given within a reasonable period after the giving of the oral notice.*
- (5) *This section is subject to section 22.*

27 **When investigation starts**

An investigation into a dispute referral starts if—

- (a) *the energy ombudsman has given an investigation notice for the dispute referral; and*
- (b) *the dispute referral has not been withdrawn by the time stated in the investigation notice as the time when the energy ombudsman proposes to start the investigation.*

28 **Investigation procedure**

- (1) *Unless this Act otherwise provides, the energy ombudsman may regulate the procedure for an investigation in the way the ombudsman considers appropriate.*

- (2) *However, if practicable, the procedure must be one that uses mediation or negotiation to attempt to resolve the dispute before the investigation is finished.*
- (3) *The energy ombudsman, when carrying out an investigation—*
 - (a) *is not bound by the rules of evidence, but must comply with natural justice; and*
 - (b) *may, but is not required to, hold a hearing for the investigation; and*
 - (c) *may obtain documents or information that is, are or may be relevant to the investigation, from the persons, and in the way, the energy ombudsman considers appropriate; and*
 - (d) *may make the inquiries the energy ombudsman considers appropriate; and*
 - (e) *must act in a way that is fair, reasonable, just, informal and timely, and maintains confidentiality; and*
 - (f) *must act in accordance with practice that, among persons who under laws of other States perform functions similar to those of the energy ombudsman, is accepted as being good practice for performance of the functions.*
- (4) *Despite subsection (3)(b), the energy ombudsman can only require the relevant entity to give documents or information by complying with section 29.*
- (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.*

29 Power to require particular documents or information from relevant entity

- (1) *If an investigation into a dispute referral has started, the energy ombudsman may, by written notice, require the relevant entity to give the ombudsman—*

Energy Ombudsman Act 2006

- (a) *stated documents or information (the **relevant material**), or stated types of documents or information (also the **relevant material**), in its custody, possession or power that is, are, or may be relevant to the investigation; or*
- (b) *access to the relevant material.*
- (2) *The notice must state a reasonable period to comply with the requirement.*
- (3) *The relevant entity must comply with the notice, unless—*
 - (a) *the relevant material is not in its custody, its possession and its power; or*
 - (b) *the relevant material is in someone else’s custody and—*
 - (i) *it has made reasonable endeavours to obtain the relevant material from the other person; and*
 - (ii) *the other person has not given it to the entity; or*
 - (c) *complying with the notice would place the energy entity in contravention of a law; or*
 - (d) *the requirement relates to someone else’s confidential information and the other person has refused to consent to it being disclosed to the energy ombudsman despite the energy entity’s reasonable efforts to obtain the consent.*

Maximum penalty—100 penalty units.

- (4) *To remove any doubt, it is declared that it is not a defence to a proceeding under subsection (3) if—*
 - (a) *the giving of the relevant material might tend to incriminate the relevant entity; or*
 - (b) *the relevant material is confidential to the entity or that the giving of the relevant material might be to the detriment of the entity’s commercial or other interests.*
- (5) *However, subsection (4) does not affect or otherwise limit sections 31 and 79.*

30 Custody of documents given to energy ombudsman

- (1) *If a document or other thing is produced to the energy ombudsman for an investigation the energy ombudsman may—*
 - (a) *keep it for a reasonable period to carry out the investigation; and*
 - (b) *for a document—take extracts from or make copies of it.*
- (2) *While the energy ombudsman has custody of the document or other thing, the ombudsman must allow it to be inspected at any reasonable time by a person who would have the right to inspect it if it were not in the ombudsman's possession.*

Note—

See also section 79 (Privacy).

31 Restriction on disclosing energy entity's confidential information

- (1) *This section applies if the relevant entity has given the energy ombudsman information for a preliminary inquiry about, or an investigation into, a dispute referral.*
- (2) *The entity may tell the energy ombudsman that it believes the information is confidential or that disclosing the information might be to the detriment of its commercial interests.*
- (3) *The energy ombudsman must, acting reasonably, decide whether the ombudsman considers the belief is justified.*
- (4) *If the decision is that the belief is justified, the energy ombudsman must not use or disclose the information other than by divulging or communicating it as mentioned in section 79(3).*
- (5) *If the decision is that the belief is not justified, the ombudsman may use or disclose the information only—*
 - (a) *as mentioned in section 79(3); or*
 - (b) *for disclosure—if the disclosure is to the other party.*
- (6) *However, before disclosing the information to anyone other than an energy ombudsman officer, the energy ombudsman*

must give the entity reasonable written notice of the proposed disclosure.

- (7) *The energy ombudsman can not use or disclose the information other than as permitted under this section.*
- (8) *This section does not limit or otherwise affect section 79 or 80.*
- (9) *In this section—*
information *includes a document.*

32 Interim orders

- (1) *The energy ombudsman may give the relevant entity an order that, until an investigation ends, it must do, not do or stop doing, a stated act concerning the relevant dispute.*

Example of an order not to do a stated act—

If the dispute involves disconnection of customer retail services to a small customer, the order could be that, until the investigation ends, the relevant entity must not disconnect the provision of the services to the customer's premises.

- (2) *However, the energy ombudsman may make the order only if the ombudsman considers it is fair and reasonable in the circumstances.*
- (3) *The relevant entity must comply with the order.*
Maximum penalty for subsection (3)—100 penalty units.

33 Proceedings after investigation starts

- (1) *This section applies if the energy ombudsman has started an investigation into a dispute referral.*
- (2) *The non-entity party is not prevented from starting a proceeding about the relevant dispute.*
- (3) *However, if the non-entity party starts a proceeding about the relevant dispute, the investigation ends.*
- (4) *The following are not justiciable in a proceeding, other than under the Judicial Review Act 1991, at the instigation of the relevant entity—*

- (a) *the subject of the relevant dispute;*
- (b) *any issue that emerges in the course of the investigation.*

Part 5 **Action following investigation**

Division 1 **Resolving dispute**

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.*

35 **Final orders that may be made**

- (1) *A final order may order the relevant entity to do all or any of the following as it relates to the subject of the relevant dispute—*
 - (a) *pay compensation to the non-entity party;*
 - (b) *provide the non-entity party with stated goods or services under the relevant energy Act;*
 - (c) *amend, or not impose, a stated charge for stated services under the relevant energy Act;*
 - (d) *perform corrective action or work;*
 - (e) *correct, delete from or add to a stated record;*

- (f) *add to a stated record a statement provided by the non-entity party of a correction, deletion or addition sought by the non-entity party;*
- (g) *to do, or not to do or stop doing, a stated act.*
- (2) *Also, without limiting subsection (1), the energy ombudsman may make an order ending a negotiated contract between the parties.*
- (3) *However, subsection (2) applies only if the energy ombudsman considers the relevant entity's conduct in the formation of the contract was unconscionable, unfair, misleading or deceptive.*

Example—

coercion by or for the relevant entity in the formation of the contract

- (4) *This section is subject to sections 36 and 37.*

36 *Criteria for making final order*

In making a final order, the energy ombudsman must consider—

- (a) *the purposes or objects of the relevant energy Act; and*
- (b) *the rights and obligations of the parties under any of the following—*
 - (i) *the relevant energy Act;*
 - (ii) *a relevant industry code;*
 - (iii) *a relevant energy Act authority;*
 - (iv) *any contract between the parties.*

37 *Restrictions on final orders*

- (1) *A final order can not require the relevant entity to contravene an energy Act, an industry code, a relevant energy Act authority or a law of the Commonwealth or a State.*
- (2) *If an issue arises about whether a proposed final order complies with subsection (1), the energy ombudsman may obtain legal advice on the issue and act on that advice.*
- (3) *A final order can not require the relevant entity to incur costs or pay compensation of a total of more than—*

- (a) *the amount prescribed under a regulation; or*
 - (b) *if no amount is prescribed—*
 - (i) *if all of the parties have agreed to an amount of no more than \$50000—the agreed amount; or*
 - (ii) *otherwise—\$20000.*
- (4) *A final order can not require any of the parties to pay costs of a dispute referral, preliminary inquiry or investigation.*

38 Notice of decision

- (1) *The energy ombudsman must give the parties written notice (a **decision notice**) of—*
- (a) *the ombudsman’s decision under section 34; and*
 - (b) *the reasons for the decision.*
- (2) *If the decision is to make a final order, the decision notice must state that—*
- (a) *the non-entity party may, by written notice to the energy ombudsman, elect to accept or not to accept the order; and*
 - (b) *a notice electing not to accept may be given only within 21 days after the non-entity party receives the decision notice; and*
 - (c) *if a notice electing not to accept is not given within the 21 days, the non-entity party is taken to have elected to accept the order and to be bound by it.*

39 Restriction on including confidential information in decision notice

- (1) *This section applies for a decision notice for a dispute referral if—*
- (a) *the relevant entity has given the energy ombudsman information for a preliminary inquiry about, or an investigation into, the relevant dispute; and*
 - (b) *the energy ombudsman relied on the information to decide the dispute referral; and*

- (c) *the energy ombudsman considers the information is confidential and that disclosing the information might be to the detriment of its commercial interests.*
- (2) *The energy ombudsman must, in giving reasons for the decision, state that the ombudsman has relied on confidential information given by the relevant entity, without disclosing what the information is.*
- (3) *In this section—*
information includes a document.

Division 2 Acceptance of final order by non-entity party

40 Election to accept or not to accept

- (1) *The non-entity party may, by written notice (**election notice**) to the energy ombudsman, elect to accept or not to accept a final order.*
- (2) *An election notice may be given only within 21 days after the non-entity party receives a decision notice about the order.*
- (3) *If, under an election notice, the election is not to accept the order, the order stops having effect.*
- (4) *If an election notice is not given within the 21 days, the non-entity party is taken to have elected to accept the order and to be bound by it.*
- (5) *The energy ombudsman must, as soon as practicable, give the relevant entity a written notice about whether or not the order has been accepted.*

41 Effect of accepted order

- (1) *This section applies only for an accepted order.*
- (2) *The order—*
 - (a) *is final and conclusive; and*
 - (b) *binds the parties for all matters that were the subject of the relevant dispute.*

- (3) *Subject to the Judicial Review Act 1991, the order—*
- (a) *can not be challenged, appealed against, reviewed, quashed, set aside or called into question (whether by the Supreme Court, another court, a tribunal, an authority or a person) in any way; and*
 - (b) *is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal, an authority or a person on any ground.*
- (4) *The parties can not start a proceeding about any of the matters.*
- (5) *A court or tribunal must dismiss a proceeding started in contravention of subsection (3) or (4).*
- (6) *In this section—*
- order* *includes an order affected by jurisdictional error.*
- proceeding* *does not include a proceeding under the Judicial Review Act 1991.*

Division 3 Enforcement of final orders

42 How final order for an amount may be enforced

- (1) *This section applies to an accepted order that provides that the relevant entity must pay a stated amount to the non-entity party.*
- (2) *The non-entity party may file the order in a Magistrates Court.*
- (3) *The energy ombudsman may do the filing for the non-entity party.*
- (4) *Once filed, the order is taken to be a judgment of that court for the stated amount in favour of the non-entity party, against the relevant entity.*

43 Non-entity party's duty to allow relevant entity to comply with particular accepted orders

The non-entity party must do anything that is both necessary and reasonable to allow the relevant entity to comply with an accepted order.

44 Inquiry and directions about failure to comply with duty

- (1) *This section applies if the non-entity party does not comply with the duty under section 43 for an accepted order.*
- (2) *The relevant entity may give the energy ombudsman a written report about the contravention.*
- (3) *The entity must give the non-entity party a copy of the report as soon as practicable after it is given to the energy ombudsman.*
- (4) *On receiving the report, the energy ombudsman may investigate the matter and give the non-entity party and the relevant entity written directions (**compliance directions**) that the ombudsman considers are appropriate to allow the entity to comply with the order.*
- (5) *However, the energy ombudsman must not give compliance directions unless the non-entity party and the relevant entity have been given a reasonable opportunity to give the ombudsman oral or written submissions about the matter and the proposed directions.*
- (6) *For subsections (4) and (5), part 4 applies, with necessary changes, to the investigation as if it were an investigation that had started.*

45 Failure of non-entity party to comply with compliance directions

- (1) *This section applies if the non-entity party does not comply with compliance directions for an accepted order within a reasonable period after they are given.*

- (2) *The energy ombudsman may, by written notice to the non-entity party and the relevant entity, declare that the entity has complied with the accepted order.*
- (3) *The declaration binds the non-entity party.*

46 Failure by relevant entity to comply with accepted order or compliance directions

- (1) *The relevant entity must comply with compliance directions given for an accepted order.*
Maximum penalty—100 penalty units.
- (2) *Without limiting subsection (1), subsections (3) to (5) apply if the relevant entity does not comply with an accepted order or compliance directions of which it has had notice.*
- (3) *The energy ombudsman or the non-entity party may, by written notice, refer the noncompliance to the regulator under the energy Act under which the relevant entity is performing energy entity functions.*
- (4) *The energy Act regulator may take action against the relevant entity, under the following section of the energy Act—*
 - (a) *for the Electricity Act 1994—section 133;*
 - (b) *for the Gas Supply Act 2003—*
 - (i) *if the entity is a distributor—section 57 or chapter 6, part 1A; or*
 - (ii) *if the entity is a retailer—section 181 or chapter 6, part 1A.*
- (5) *The noncompliance is taken to be a ground for taking action under the section or part.*

Division 4 Miscellaneous provision

47 Dismissal or non-acceptance does not affect other proceedings

- (1) *This section applies if—*

- (a) *under section 34, the energy ombudsman decides to refuse to make a final order; or*
 - (b) *a non-entity party elects, under section 40, not to accept a final order.*
- (2) *The decision or election does not stop a proceeding from being started that relates to the subject of the relevant dispute.*

Part 6 **Advisory council**

48 **Establishment**

An advisory council is established.

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.*

Part 7 **Particular provisions about the energy ombudsman**

51 **Appointment**

- (1) *The energy ombudsman is appointed by the Governor in Council.*
- (2) *The energy ombudsman is appointed under this Act and not the Public Service Act 1996.*

52 **Term of appointment**

- (1) *The energy ombudsman holds office for the term stated in the ombudsman's instrument of appointment.*
- (2) *The stated term must not be more than 5 years.*
- (3) *The energy ombudsman may be reappointed.*
- (4) *However, a person must not be reappointed if the total of the person's terms of appointment would be more than 10 years.*

53 Remuneration and conditions

- (1) *The energy ombudsman is to be paid the remuneration and travelling and other allowances decided by the Governor in Council.*
- (2) *The remuneration must not be reduced during the energy ombudsman's term of office without the ombudsman's written consent.*
- (3) *The energy ombudsman is entitled to the leave of absence decided by the Governor in Council.*

54 Restriction on outside employment

The energy ombudsman must not, without the Minister's prior approval in each particular case—

- (a) *hold any office of profit other than that of energy ombudsman; or*
- (b) *engage in any remunerative employment or undertaking outside the duties of that office.*

55 Resignation

The energy ombudsman may, at any time, resign office as energy ombudsman by signed written notice, addressed to the Governor in Council.

56 Acting energy ombudsman

- (1) *The Governor in Council may appoint a person to act as energy ombudsman—*
 - (a) *during a vacancy in the office; or*
 - (b) *during any period, or during all periods, when the energy ombudsman is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.*
- (2) *However, the person can not be appointed for more than 6 months in any 12 month period.*
- (3) *The acting energy ombudsman is appointed under this Act and not the Public Service Act 1996.*

- (4) *The energy ombudsman is to be paid the remuneration and travelling and other allowances decided by the Governor in Council.*

57 Termination of appointment

- (1) *The Governor in Council may, on an address or resolution from the Legislative Assembly, terminate the appointment of the energy ombudsman if the ombudsman—*
- (a) *is found guilty of an indictable offence; or*
 - (b) *becomes incapable of performing the functions of the energy ombudsman because of physical or mental incapacity; or*
 - (c) *becomes an insolvent under administration; or*
 - (d) *is guilty of misconduct of a type that could warrant dismissal from the public service if the energy ombudsman were an officer of the public service; or*
 - (e) *contravenes section 54.*

- (2) *The Acts Interpretation Act 1954, section 25(1)(b)(i) to (iii) does not apply for the energy ombudsman.*

- (3) *In this section—*

insolvent under administration means—

- (a) *a person who is an undischarged bankrupt under the Bankruptcy Act 1966 (Cwlth) or the provisions of a foreign law that correspond to that Act; or*
- (b) *a person who has executed a deed of arrangement under the Bankruptcy Act 1966 (Cwlth), part X or the provisions of a foreign law that correspond to that Act, if the terms of the deed have not been fully complied with; or*
- (c) *a person whose creditors have accepted a composition under the Bankruptcy Act 1966 (Cwlth), part X or the provisions of a foreign law that correspond to that Act, if a final payment has not been made under that composition; or*

- (d) *a person for whom a debt agreement has been made under the Bankruptcy Act 1966 (Cwlth), part IX or the provisions of a foreign law that correspond to that Act, if the debt agreement has not ended or has not been terminated.*

58 Preservation of rights

- (1) *This section applies if an officer of the public service is appointed as the energy ombudsman.*
- (2) *The person keeps all rights accrued or accruing to the person as an officer of the public service as if service as the energy ombudsman were a continuation of service as a public service officer.*
- (3) *At the end of the person's term of office or resignation as the energy ombudsman—*
- (a) *the person has the right to be appointed to an office in the public service at a salary level no less than the current salary level of an office equivalent to the office the person held before being appointed as the energy ombudsman; and*
- (b) *the person's service as the energy ombudsman is taken to be service of a like nature in the public service for deciding the person's rights as an officer of the public service.*

Part 8 Administration

Division 1 Energy ombudsman office

59 Office of the Energy Ombudsman

- (1) *An office called the Office of the Energy Ombudsman is established.*

- (2) *The office's function is to help the energy ombudsman perform the ombudsman's functions.*
- (3) *The office consists of the energy ombudsman and the officers of the energy ombudsman.*

60 Control of office

- (1) *The energy ombudsman controls the energy ombudsman office.*
- (2) *Subsection (1) does not prevent the attachment of the energy ombudsman office to a department to ensure the energy ombudsman office is supplied with the administrative support services it requires to perform its functions effectively and efficiently.*

61 Officers

Energy ombudsman officers are appointed under the Public Service Act 1996 and are officers of the public service.

62 Officers not subject to outside direction

An energy ombudsman officer is not subject to direction by any person, other than from within the energy ombudsman office, about—

- (a) *the way the energy ombudsman's powers for investigations are to be exercised; or*
- (b) *the priority given to investigations.*

63 Alternative staffing arrangements

The energy ombudsman may arrange with the chief executive of a government agency for the services of staff, or for facilities, of the agency to be made available to the ombudsman.

Division 2 Funding of energy ombudsman office

Subdivision 1 Membership fees

64 Scheme membership

- (1) *A retailer becomes a scheme member only when it enters into a contract for the provision of, or starts to provide, customer retail services to a small customer.*
- (2) *Any other type of energy entity becomes a scheme member when it becomes an energy entity.*
- (3) *If an entity stops being an energy entity it continues to be a scheme member for 12 months from when it stopped being an energy entity*
- (4) *To remove any doubt, it is declared that cessation of scheme membership by an entity does not affect an obligation to pay a fee under this Act or any other obligation under this Act that accrued before the cessation.*

65 Annual fees

- (1) *Generally, performance of the energy ombudsman's functions is funded by fees imposed on each scheme member.*

Note—

Under section 70, the functions may, in particular circumstances, also be funded by supplementary fees.

- (2) *The fees are—*
 - (a) *a fee (the **membership fee**) for being a scheme member during all or part of a financial year; and*
 - (b) *a fee (the **user-pays fee**) for the member's costs for the performance of the energy ombudsman's functions.*
- (3) *The membership fee and the user-pays fee must be paid to the energy ombudsman office.*

66 When membership fee is payable

- (1) *The energy ombudsman must give each scheme member at the start of a financial year an invoice for the membership fee for that year.*
- (2) *If an energy entity becomes a scheme member during a financial year, the energy ombudsman must give the member an invoice for the membership fee for the year.*
- (3) *The amount of an invoice must be worked out under section 67.*
- (4) *The membership fee is payable 14 days after the scheme member receives the invoice.*

67 Amount of membership fee

- (1) *If an energy entity is or becomes a scheme member at the start of a financial year (the **relevant financial year**), its membership fee for that year is—*
 - (a) *if it provides customer connection services under only 1 energy Act—*
 - (i) *the amount prescribed under a regulation; or*
 - (ii) *if no amount is prescribed—\$5000; or*
 - (b) *if it provides customer connection services under 2 energy Acts—*
 - (i) *the amount prescribed under a regulation; or*
 - (ii) *if no amount is prescribed—\$10000; or*
 - (c) *if it provides customer retail services under 1 energy Act—*
 - (i) *the amount prescribed under a regulation; or*
 - (ii) *if no amount is prescribed—\$5000; or*
 - (d) *if it provides customer retail services under 2 energy Acts—*
 - (i) *the amount prescribed under a regulation; or*
 - (ii) *if no amount is prescribed—\$10000.*

- (2) *Subsection (1) continues to apply to the entity even if it stops being an energy entity during the relevant financial year.*
- (3) *However, if the entity stops being an energy entity during the relevant financial year, subsection (1) does not apply to it for any subsequent financial year, even though, under section 64, it continues to be a scheme member.*
- (4) *If an energy entity becomes a scheme member during a financial year, its membership fee for that year is the amount worked out by applying the following formula—*

$$\frac{\mathbf{FF} \times \mathbf{ND}}{365}$$

where—

***FF** means the full membership fee that would have been payable under subsection (1) had the energy entity been—*

- (a) *a scheme member at the start of the financial year; and*
- (b) *providing the same customer connection services or customer retail services that it provided when it became a scheme member.*

***ND** means the number of days during which the entity is a scheme member during the financial year.*

68 When user-pays fee is payable

- (1) *The energy ombudsman must at least 14 days, but no more than 1 month, before the end of each quarter—*
- (a) *work out, under section 69, the user-pays fee for the next quarter payable by each energy entity who is then a scheme member; and*
- (b) *give the scheme member an invoice for the fee.*
- (2) *If an energy entity becomes a scheme member during a quarter, the energy ombudsman must—*
- (a) *work out, under section 69, the user-pays fee payable by the scheme member for the period (the **part quarter**) from when the entity became a scheme member to the end of the quarter; and*

- (b) give the scheme member an invoice for the amount of the fee for the part quarter.*
- (3) For applying section 69 for the part quarter, a reference in section 69 to the assessed quarter is taken to include a reference to the part quarter.*
- (4) The user-pays fee for the next quarter or part quarter is payable 14 days after the scheme member receives the invoice.*

69 Working out user-pays fee

- (1) This section provides for the working out of a scheme member's user-pays fee for a quarter (the **assessed quarter**).*
- (2) The energy ombudsman must prepare a forecast of the costs (**forecasted costs**) that the ombudsman reasonably considers will be the scheme member's likely relevant performance costs for the assessed quarter.*
- (3) In making the forecast for the assessed quarter, the energy ombudsman may, but is not required to, have regard to the scheme member's relevant performance costs for the previous quarter or likely relevant performance costs for the current quarter.*
- (4) The amount of the scheme member's user-pays fee for the assessed quarter is the amount of the forecasted costs for the quarter, subject to any adjustment required under subsection (6) or (7).*
- (5) Subsections (6) to (8) apply if the actual amount of the scheme member's relevant performance costs for the previous quarter are different to what were the forecasted costs for that quarter.*
- (6) If the forecasted costs were greater than the actual costs, the forecasted costs for the assessed quarter must be reduced by the difference (the **positive figure**).*
- (7) If the forecasted costs were less than the actual costs, the forecasted costs for the assessed quarter must be increased by the difference.*
- (8) The scheme member is not entitled to, or to be credited for, interest on the positive figure.*

(9) *In this section—*

current quarter means the quarter in which the forecast for the assessed quarter is made.

previous quarter means the quarter ending immediately before the current quarter, whether or not the scheme member was a scheme member for all of that quarter.

relevant performance costs, for a scheme member for a quarter, are the costs incurred by the energy ombudsman during the quarter to perform the ombudsman's functions relating to the member, as worked out under the budget guidelines prepared under section 75, in relation to dispute referrals made to the ombudsman for the member.

70 **Supplementary fees**

(1) *Subsection (2) applies if, at any time, the energy ombudsman considers that, because of any of the following, receipts from ordinary fees are not, or may not be, enough to fund all of the ombudsman's functions—*

(a) *unforeseen expenditure;*

(b) *a revised budget.*

(2) *A regulation may impose a supplementary fee on all scheme members, or a stated class of scheme members, of an amount that will allow all of the functions to be funded.*

(3) *Subsection (4) applies if, at any time, the energy ombudsman considers that because of a particular matter concerning an individual scheme member, receipts from ordinary fees are not, or may not be, enough to fund all of the ombudsman's functions.*

(4) *A regulation may impose a supplementary fee on the individual scheme member of an amount that the energy ombudsman considers will allow all of the functions to be funded.*

(5) *A supplementary fee must be paid at the time and in the way provided for under a regulation.*

(6) *In this section—*

ordinary fees means membership fees and user-pays fees.

Subdivision 2 Late payments

71 Unpaid fee interest

- (1) *A scheme member must pay interest (**unpaid fee interest**) on any fee payable under this division and not paid from time to time (an **unpaid fee amount**).*
- (2) *Unpaid fee interest accrues daily at the rate provided for under subsection (3) on an unpaid fee amount for the period starting on the day immediately after the day the unpaid fee amount became payable and ending on the day the unpaid fee amount is paid in full, both days inclusive.*
- (3) *For subsection (2), the rate for each of the days is the rate that is the sum of the following—*
 - (a) *5%;*
 - (b) *the bank bill yield rate for the day, rounded to the nearest second decimal point.*
- (4) *In this section—*

***bank bill yield rate**, for a day, means the monthly average yield of 90-day bank accepted bills published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the financial year that includes the day.*

Note—

The monthly average yield for 90-day bank accepted bills is published in the Reserve Bank of Australia Bulletin and could, at the commencement of this section, be accessed on the internet at <www.rba.gov.au>.

72 Energy ombudsman may remit unpaid fee interest

- (1) *The energy ombudsman may remit all or part of any unpaid fee interest a scheme member owes.*
- (2) *The remission must be made by written notice given to the scheme member.*

73 Recovery of unpaid amounts

If a scheme member does not pay a fee or unpaid fee interest payable under this division, the State may recover the amount of the fee or interest from the member as a debt.

Division 3 Other matters**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.

76 Delegation

- (1) *The energy ombudsman may delegate the ombudsman's functions to an appropriately qualified energy ombudsman officer.*
- (2) *However, the following functions can not be delegated—*
 - (a) *making a decision under section 34 about a dispute referral, other than with the agreement of the parties;*
 - (b) *giving an annual report under section 77.*
- (3) *In this section—*

appropriately qualified *includes having the qualifications, experience or standing to exercise the power.*

Examples of standing—

a person's classification level in the public service

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.*

79 Privacy

- (1) *This section applies to a person who—*
- (a) *is, or has been, the energy ombudsman or an energy ombudsman officer; and*
 - (b) *obtains in the course of, or because of, any of the following, personal or confidential information that is not publicly available—*
 - (i) *a preliminary inquiry;*
 - (ii) *an investigation;*
 - (iii) *the performance of another function of the energy ombudsman.*
- (2) *The person must not—*
- (a) *make a record of the information; or*
 - (b) *divulge or communicate the information to anyone else, whether directly or indirectly; or*
 - (c) *use the information to benefit any person.*
- Maximum penalty—100 penalty units.*
- (3) *However, subsection (2) does not apply if the record is made, or the information is divulged, communicated or used—*
- (a) *for, or as a part of—*
 - (i) *the performance of the preliminary inquiry, investigation or other function of the energy ombudsman; or*
 - (ii) *formulating a report about or arising from the preliminary inquiry, investigation or other function; or*
 - (b) *with the consent of the person to whom the information relates; or*
 - (c) *as required by law; or*
 - (d) *under section 80(1).*

Note—

Sections 31 and 39 also limit the disclosure of particular confidential information obtained during the performance of the energy ombudsman's functions.

- (4) *Subsection (3)(a) does not limit section 78(2) and (3).*
- (5) *Unless it is necessary to do so for carrying this Act into effect, the person is not required—*
 - (a) *to divulge or communicate the information to a court, tribunal, authority or person having power to require the production of documents or the answering of questions; or*
 - (b) *to produce in court a document that contains the information.*

80 Disclosure of particular information

- (1) *If, under this Act, an energy entity gives the energy ombudsman written information about the entity, the ombudsman must disclose the information to a relevant regulatory body if—*
 - (a) *the body asks the energy ombudsman for the disclosure, to perform its functions under an Act; and*
 - (b) *the entity consents to the disclosure.*
- (2) *If, under another Act, an energy entity gives a relevant regulatory body written information about the entity, the body must disclose the information to the energy ombudsman if—*
 - (a) *the energy ombudsman asks the body for the disclosure, to perform the ombudsman's functions under this Act; and*
 - (b) *the entity consents to the disclosure.*
- (3) *For subsections (1) and (2), consent is taken to have been given if, under an energy Act authority held by the entity, the consent is required to be given.*
- (4) *In this section—*
 - relevant regulatory body means—***
 - (a) *QCA; or*
 - (b) *the regulator under an energy Act.*

81 Protection from liability

- (1) *The energy ombudsman or an energy ombudsman officer does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.*
- (2) *If subsection (1) prevents a civil liability attaching to the energy ombudsman or an energy ombudsman officer, the liability attaches instead to the State.*

82 Approved forms

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

83 Regulation-making power

- (1) *The Governor in Council may make regulations under this Act.*
- (2) *A regulation may provide for a maximum penalty of no more than 20 penalty units for a contravention of a regulation.*

Part 9 Transitional provisions**Division 1 Preliminary****84 Definitions for pt 9**

In this part—

changeover day means the day section 18 commences.

former user-pays provisions means *Electricity Act 1994*, former sections 64A, 64D and 64E, to the extent they relate to the user-pays fee under that Act.

Division 2 Transitional provisions for funding and first budget

85 User-pays fees for changeover quarters

- (1) User-pays fees under this Act are payable by scheme members for the changeover quarters as if sections 64, 65, 68 and 69 had commenced one month before the first changeover quarter started.
- (2) For subsection (1), if the energy ombudsman has not yet been appointed, the fees must be paid to the regulator, for the ombudsman.
- (3) The former user-pays provisions do not apply for the changeover quarters, but continue to apply for any quarter that ended on or before the first changeover quarter.
- (4) In this section—

changeover quarters means the first changeover quarter and second changeover quarter.

first changeover quarter means the last quarter to end on or before the changeover day.

regulator means the regulator under the *Electricity Act 1994*.

second changeover quarter means the first quarter to start on or after the first changeover quarter.

86 Reference to previous fees for working out user-pays fee under this Act

- (1) This section applies if, under the former user-pays provisions, a user-pays fee (the *previous fee*) was payable by a member entity under that Act for a quarter (the *earlier quarter*) ending on or before the first changeover quarter under section 85.
- (2) If the member entity is a scheme member under this Act, the previous fee is, for working out the scheme member's user-pays fee under section 69, taken to be its user-pays fee for the earlier quarter.
- (3) If, under the *Energy Assets (Restructuring and Disposal) Act 2006*, a scheme member acquired all or part of the business of

the member entity, the energy ombudsman may have regard to the previous fee in preparing a forecast under section 69 for the member.

87 Budget for first financial year

Section 74 does not apply for the following period—

- (a) if the changeover day is a day on which a financial year starts—that financial year;
- (b) otherwise—the period from the changeover day to the start of the next financial year.

Division 3 Existing disputes under energy Act

88 Application of div 3

- (1) *This division applies if, immediately before the changeover day—*
 - (a) *under an energy Act, as in force immediately before the changeover day, a dispute between a customer and an energy entity had been referred to an energy Act regulator; and*
 - (b) *a mediated agreement or order under the energy Act, that has taken effect and binds the parties to the dispute, has not resolved the dispute.*
- (2) *This division applies even if the customer is not a small customer as defined under this Act.*

89 Referral becomes a dispute referral

- (1) *The referral is taken to be a dispute referral under this Act, made to the energy ombudsman on the changeover day.*
- (2) *The energy ombudsman may start an investigation into the dispute referral without giving an investigation notice.*

90 Documents and information given for energy Act referral

- (1) *If, under the energy Act, a party to the dispute had given the regulator, an energy mediator or energy arbitrator (the **official**) documents or information to perform functions under that Act for the dispute, the official must give the energy ombudsman the documents or information.*
- (2) *The documents or information are taken to have been given to the energy ombudsman for the investigation.*
- (3) *This section does not affect any privilege or protection that applied for the giving of the documents or information to the official.*

Part 10 Amendment of Public Service Act 1996

91 Act amended in pt 10

This part amends the Public Service Act 1996.

92 Amendment of sch 1 (Public service offices and their heads)

Schedule 1—

insert—

'12B Office of the Energy Ombudsman under the Energy Ombudsman Act 2006

Energy Ombudsman under the Energy Ombudsman Act 2006'.

Part 11 **Amendment of Queensland Competition Authority Act 1997**

93 Act amended in pt 11

This part amends the Queensland Competition Authority Act 1997.

94 Amendment of s 187 (Confidential information)

Section 187(3)—

insert—

‘(j) the energy ombudsman, to facilitate the performance of the the ombudsman’s functions under the Energy Ombudsman Act 2006.’.

95 Amendment of s 239 (Confidential information)

(1) Section 239(2)—

insert—

‘(h) the energy ombudsman, to facilitate the performance of the the ombudsman’s functions under the Energy Ombudsman Act 2006.’.

(2) Section 239(3)—

renumber as section 239(4).

(3) Section 239—

insert—

‘(3) If, under subsection (2)(h), the authority discloses information to the energy ombudsman, it must tell the energy ombudsman that the information—

(a) is confidential information to which this section applies; and

(b) has been disclosed under subsection (2)(h).’.

Schedule Dictionary

section 4

accepted order means a final order that has been accepted under section 40.

advisory council means the advisory council established under section 48.

compliance directions see section 44(4).

connection contract means a connection contract under an energy Act.

customer connection services means customer connection services under an energy Act.

customer retail services means customer retail services under an energy Act.

decision notice see section 38(1).

dispute referral means a referral made under section 18.

distributor means a distribution entity under the Electricity Act 1994 or a distributor under the Gas Supply Act 2003.

energy Act see section 5.

energy Act authority means an approval, authority or licence under an energy Act for customer connection services or customer retail services.

energy Act regulator means the regulator under an energy Act.

energy entity see section 7.

energy entity function see section 8.

energy ombudsman means the person who, under part 7, holds appointment as energy ombudsman.

energy ombudsman office means the Office of the Energy Ombudsman established under section 59.

energy ombudsman officer means an officer mentioned in section 59(3).

Schedule (continued)

final order see section 34(2).

industry code means an industry code under an energy Act.

investigation means an investigation under this Act.

investigation notice see section 26(1).

membership fee see section 65(2)(a).

negotiated contract means a negotiated connection contract or negotiated retail contract under an energy Act.

non-entity party, for a provision about a dispute referral or final order, means the small customer or occupier who is a party to the relevant dispute for the referral or order.

ombudsman means the energy ombudsman.

party, for a provision about a dispute referral, preliminary inquiry, investigation, final order or accepted order, means the small customer, the occupier of land or the energy entity who is a party to the relevant dispute for the dispute referral, inquiry, investigation or order.

preliminary inquiry means inquiries made under section 24(1).

QCA means the Queensland Competition Authority under the *Queensland Competition Authority Act 1997*.

quarter means a 3 month period ending at the end of 31 March, 30 June, 30 September or 31 December.

referrer, for a provision about—

- (a) a dispute referral or purported dispute referral—means the person who made, or purported to make, the referral; or
- (b) a final order—means the person who made the dispute referral the subject of the order.

relevant dispute for—

- (a) a provision about a dispute referral or proposed dispute referral—means the dispute the subject of the dispute referral or proposed dispute referral; or

Schedule (continued)

- (b) a preliminary inquiry or an investigation—means the dispute being inquired or investigated; or
- (c) a provision about a final order or proposed final order—means the dispute referral for which the order was made or the proposed order is to be made.

relevant entity for—

- (a) a provision about a dispute referral, proposed dispute referral or final order—means the energy entity or entity mentioned in section 18(2) who performed the energy entity function the subject of the relevant dispute for the dispute referral, proposed dispute referral or order; or
- (b) an investigation—means the energy entity or entity mentioned in section 18(2) who performed the energy entity function the subject of the relevant dispute for the investigation.

relevant occupier, of land, means a person who is, or may be, an occupier of land, as mentioned in section 18(1)(b).

retail contract means a retail contract under an energy Act.

retailer means a retail entity under the Electricity Act 1994 or a retailer under the Gas Supply Act 2003.

scheme member means an entity that, under section 64, is a scheme member.

small customer see section 6.

special approval means a special approval under the *Electricity Act 1994*.

unpaid fee interest see section 71(1).

user-pays fee see section 65(2)(b).

Endnotes

1 Index to endnotes

	Page
2 Date to which amendments incorporated	54
3 Key	54
4 Table of reprints	55
5 List of legislation	55

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Energy Ombudsman Act 2006 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

5 List of legislation

Energy Ombudsman Act 2006 No. 61

date of assent 7 December 2006

pt 1 hdg, ss 1–3, div 2, pt 9 hdg, divs 1–2, sch commenced on date of assent (see s 2)

remaining provisions not yet proclaimed into force (see s 2)