



Energy and Water Ombudsman Act 2006

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Queensland

Energy and Water Ombudsman Act 2006

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Energy and Water Ombudsman Act 2006

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

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Energy and Water 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.

3 Main purpose of Act

The main purpose of this Act is to give—

- (a) relevant energy customers and relevant occupiers of land a timely, effective, independent and just way of—

- (i) referring disputes about particular matters involving energy entities and particular former energy entities; and
 - (ii) having the disputes investigated and resolved; and
- (b) small customers (water) a timely, effective, independent and just way of—
- (i) referring disputes about particular matters involving water entities; and
 - (ii) 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*

Each of the following is an *energy Act*—

- the *Electricity Act 1994*
- the *Electricity—National Scheme (Queensland) Act 1997*
- the *Gas Supply Act 2003*
- the National Electricity (Queensland) Law
- the *National Gas (Queensland) Act 2008*
- the National Gas (Queensland) Law
- the NERL (Qld).

6 Who is a *small customer (energy)*

- (1) A person is a *small customer (energy)* if, under an energy Act, the person is a small customer.

-
- (2) Also, a person is a small customer (energy) if—
- (a) the person is an exempt customer under the NERL (Qld), section 109; and
 - (b) a condition is imposed under the NERL (Qld) on the exempt seller who sells energy to the customer that the seller complies with this Act to the extent it applies to the seller.
- (3) However, a customer at street lighting premises under the NERL (Qld) is not a small customer (energy) for the premises.

6A Who is a *small customer (water)*

A person is a *small customer (water)* if the person is a small customer under the customer water and wastewater code.

6B Who is an *eligible customer*

An *eligible customer* is a relevant energy customer or a small customer (water).

6C Who is an *eligible non-residential energy customer*

- (1) An *eligible non-residential energy customer* is a business customer who consumes electricity at business premises—
- (a) at or above the upper consumption threshold; and
 - (b) at not more than 160MWh a year.
- (2) However, an *eligible non-residential energy customer* does not include the State or the Commonwealth.
- (3) In this section—

business customer see the NERL (Qld).

business premises see the NERL (Qld).

upper consumption threshold means the upper consumption level under the NERL (Qld).

6D Who is a *relevant energy customer*

- (1) A *relevant energy customer* is—
 - (a) a small customer (energy); or
 - (b) an eligible non-residential energy customer; or
 - (c) a person who, under an energy Act, is supplied energy by a prescribed energy entity.
- (2) However, a person who, under an energy Act, is a receiver of an on-supplier, who is not a prescribed energy entity, for premises is not a relevant energy customer in relation to the premises unless the person is—
 - (a) a small customer under an energy Act in relation to the premises; or
 - (b) an eligible non-residential energy customer in relation to the premises.

7 What is an *energy entity* and a *prescribed energy entity*

- (1) 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 under the *Electricity Act 1994*; or
 - (d) an exempt seller; or
 - (e) a prescribed energy entity.
- (2) A *prescribed energy entity* is an exempt seller or another entity prescribed to be an energy entity by regulation.

7A What is a *water entity* and a *withdrawn council*

- A *water entity* is—
- (a) a distributor-retailer; or

-
- (b) the Gold Coast City Council, Logan City Council or Redland City Council (each a *withdrawn council*).

7B What is a *utility entity*

A *utility entity* is an energy entity or a water entity.

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

8A What is a *water entity function*

A *water entity function* is a function or obligation that is performed or required or permitted to be performed by a water entity under the customer water and wastewater code.

investigate, facilitate the resolution of, make decisions and recommendations for, and report on complaints about acts or practices of scheme participants that may be an interference with the privacy of an individual within the meaning of section 13(1) or (2) of that Act; and

- (f) the other functions conferred on the energy and water ombudsman under any Act.
- (2) However, the performance of the energy and water ombudsman's functions is subject to sections 12, 12A and 12B.

12 Restrictions on functions—energy entities

- (1) In relation to an energy entity, the energy and water ombudsman can not accept a referral about or investigate any of the following—
- (a) the fixing of—
 - (i) tariffs for customer connection services or customer retail services; or
 - (ii) charging categories for the tariffs; or
 - (iii) methodologies for fixing the tariffs or categories;
 - (b) the fairness or reasonableness of the terms of a connection contract or retail contract;
 - (c) disputes between relevant energy customers and energy entities about eligibility for State government concessions or rebates;
 - (d) disputes between—
 - (i) a small customer under an energy Act, or an eligible non-residential energy customer; and
 - (ii) an on-supplier under an energy Act, other than a prescribed energy entity;

[s 12A]

- (e) 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;
- (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*.

- (2) In this section—

tariffs includes charges and prices.

12A Restriction on functions—water entities

- (1) The energy and water ombudsman can not accept a referral about or investigate the fixing of—
 - (a) charges for wastewater services or water services; or
 - (b) methodologies for fixing the charges.
- (2) In this section—

wastewater service see the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, schedule.

water service see the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, schedule.

12B General restrictions on functions

- (1) The energy and water ombudsman can not accept a referral about or investigate any of the following—
 - (a) the content of government policies or of legislation, an energy Act authority, an industry code or the customer water and wastewater code;
 - (b) a matter that has already been decided by a proceeding;
 - (c) a matter the subject of an unfinished proceeding started before the referral.
- (2) However, subsection (1)(c) does not apply if—
 - (a) the energy and water ombudsman and the parties to the proceeding agree that the ombudsman may investigate the matter; or
 - (b) an order in the proceeding requires the energy and water ombudsman to investigate the matter.
- (3) In this section—

proceeding includes arbitration.

14 Obligations in performing functions

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

15 General powers

Without limiting the energy and water 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 and water ombudsman not subject to direction

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

[s 17]

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

Part 3 Dispute referrals

18 Disputes relating to energy entities that may be referred to energy and water ombudsman

- (1) This section applies if a dispute as follows exists—
 - (a) a dispute between a relevant energy 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 relevant energy customer;
Example—
 - a dispute about whether, under an energy Act, the entity must provide customer connection services or customer retail services
 - (b) a dispute between an energy entity and an occupier of land onto which the entity, or an individual authorised

by the entity, enters, or proposes to enter, under an energy Act (also the *relevant function*).

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

18A Disputes relating to water entities that may be referred to energy and water ombudsman

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

18B Dispute may involve complaint about interference with privacy

A dispute about the performance of a utility entity's function as mentioned in section 18(1)(a) or 18A(1) may involve a complaint that an act or practice relevant to the entity's performance of the function was or is an interference with the

privacy of an individual within the meaning of the Privacy Act, section 13(1) or (2).

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

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

- (b) section 12 or 12B prevents the proposed referral from being made;
- (c) the relevant dispute may be dealt with under the *Queensland Competition Authority Act 1997*;
- (d) the relevant entity has stopped being an energy entity for more than 12 months.

19A General restrictions on disputes that can be referred

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

- (a) 12 months have passed since the later of the following to happen—
 - (i) the performance of the function to which the dispute relates;
 - (ii) the party becoming aware of the performance of the function to which the dispute relates;
- (b) the energy and water ombudsman has already made a decision on an earlier dispute referral and—
 - (i) the parties to the earlier dispute referral are the same as the parties to the relevant dispute; and
 - (ii) the proposed dispute referral is the same, or substantially the same, as the earlier dispute referral;

-
- (c) the party is a non-entity party and the energy and water ombudsman is reasonably satisfied the party has not made a genuine attempt to resolve the matter with the relevant entity.
 - (2) For subsection (1)(a)(ii), a non-entity party is taken to have become aware of the performance of the function to which the dispute relates when the party might reasonably be expected to have known it was being performed.

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

- (1) This section applies if—
 - (a) for a dispute relating to an energy entity function—
 - (i) because of section 19A(1)(a), a referral can not otherwise be made under section 18; and
 - (ii) 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; or
 - (b) for a dispute relating to a water entity function, because of section 19A(1)(a), a referral can not otherwise be made under section 18A.
- (2) The energy and water ombudsman may decide the referral is a dispute referral properly made under section 18 or 18A if the ombudsman considers the referrer had good reason for not referring the dispute within the 12 months mentioned in section 19A(1)(a).
- (3) On the making of the decision, the referral is taken to be a dispute referral made to the energy and water ombudsman under section 18 or 18A.
- (4) This section applies despite section 19A(1)(a).

21 Ways of making dispute referral

- (1) Subject to section 22(2), a dispute referral may be oral or written.

[s 22]

- (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 and water ombudsman may refuse to investigate a dispute referral or, having started to investigate a dispute referral, may refuse to continue the investigation, if the ombudsman is reasonably satisfied that—
 - (a) the subject of the relevant dispute is trivial; or
 - (b) the dispute referral is frivolous or vexatious or has not been made in good faith; or
 - (c) the referrer does not have a sufficient direct interest in the subject of the relevant dispute; or
 - (d) the relevant entity has not been given a reasonable opportunity to resolve the relevant dispute; or
 - (e) both of the following apply—
 - (i) the referrer has a right of appeal, reference or review, or another remedy, that the referrer has not exhausted;
Example of a right of reference—
a right under a relevant contract or law of internal review by the energy entity for it to make an insurance claim for the relevant dispute
 - (ii) it would be reasonable in the circumstances to require the referrer to exhaust the right or remedy before the energy and water ombudsman investigates, or continues to investigate, the dispute referral; or
 - (f) if the referral relates to an energy entity function, under an energy Act, the regulator or QCA has the power to give appropriate relief to the non-entity party; or
 - (g) because of a preliminary inquiry, the relevant dispute should not be investigated; or

- (h) in the circumstances, the investigation, or the continuance of the investigation, of the matter the subject of the relevant dispute is unnecessary or unjustifiable.
- (2) Also, the energy and water ombudsman may refuse to investigate an oral dispute referral or, having started to investigate an oral dispute referral, may refuse to continue the investigation, until the dispute referral is remade in the approved form under section 82.
- (3) A right or remedy mentioned in subsection (1) does not include a right under the *Judicial Review Act 1991* to make an application to the Supreme Court.
- (4) To remove any doubt, it is declared that this section does not limit or otherwise affect the energy and water ombudsman's power not to accept or investigate a matter because of section 12, 12A, 12B, 18, 18A, 19 or 19A.

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

- (1) This section applies if—
 - (a) because of section 12, 12A, 12B, 18, 18A, 19 or 19A, a purported dispute referral can not be made to or be investigated by the energy and water ombudsman; or
 - (b) under section 22, the energy and water ombudsman refuses to carry out or to continue an investigation.
- (2) The energy and water 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 and water 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 and water 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 and water ombudsman.
- (3) On the withdrawal, any investigation relating to the dispute referral ends.
- (4) The energy and water ombudsman must, as soon as practicable after receiving the notice under subsection (2), give the other party written notice of the withdrawal.

25A Use and disclosure of personal information

- (1) For any IPP under the *Information Privacy Act 2009*, the making of a dispute referral is, of itself, taken to be agreement by each party to their personal information relevant to the dispute—
 - (a) being used by the energy and water ombudsman or either party for a preliminary inquiry or investigation concerning the dispute; or
 - (b) being disclosed by the ombudsman to a party or from a party to the ombudsman for a purpose mentioned in paragraph (a); or
 - (c) if a party is required to disclose the information under section 24(2) or 29, being disclosed to the ombudsman.

(2) In this section—

party means a party to the dispute referral.

25B Disclosure of customer identifying information

(1) The making of a dispute referral by an eligible customer is, of itself, taken to be agreement by the customer to the customer's customer identifying information being disclosed to a utility entity to the extent reasonably necessary for invoicing the utility entity for a user-pays fee.

Example—

disclosing the customer account number of an eligible customer to the utility entity to allow the entity to confirm that the account is held with the entity

(2) Without limiting subsection (1)—

- (a) the making of a dispute referral by an eligible customer includes—
 - (i) the purported or proposed making of a dispute referral by an eligible customer if the energy and water ombudsman advises the customer that, under section 19A(1)(c), the customer can not make the dispute referral; and
 - (ii) the making of a dispute referral by an eligible customer even though the energy and water ombudsman refuses, under section 22(1)(d), to investigate the dispute referral or to continue the investigation of the dispute referral; and
- (b) for an eligible customer who is an individual, this section applies for any IPP under the *Information Privacy Act 2009*.

Part 4 Investigations

26 Notice of investigation

- (1) On the making of a dispute referral, the energy and water 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 and water ombudsman considers appropriate; and
 - (c) when the energy and water 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 and water 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 and water 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 and water ombudsman proposes to start the investigation.

28 Investigation procedure

- (1) Unless this Act otherwise provides, the energy and water 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 and water 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 and water ombudsman considers appropriate; and
 - (d) may make the inquiries the energy and water 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 and water ombudsman, is accepted as being good practice for performance of the functions.
- (4) Despite subsection (3)(c), the energy and water ombudsman can only require the relevant entity to give documents or information by complying with section 29.
- (5) The energy and water ombudsman must develop and make guidelines on procedures to be followed for dispute referrals and investigations.

- (6) However, before making or amending the guidelines, the energy and water ombudsman must consult with the advisory council.

29 Power to require particular documents or information from relevant entity

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

- (1) If a document or other thing is produced to the energy and water ombudsman for an investigation the energy and water 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 and water 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 relevant entity's confidential information

- (1) This section applies if the relevant entity has given the energy and water ombudsman information for a preliminary inquiry about, or an investigation into, a dispute referral.
- (2) The entity may tell the energy and water ombudsman that it believes the information is confidential or that disclosing the information might be to the detriment of its commercial interests.

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- (3) The energy and water 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 and water 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 and water ombudsman officer, the energy and water ombudsman must give the entity reasonable written notice of the proposed disclosure.
- (7) The energy and water 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 and water 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 is about the amount alleged to be owing to—

- (a) an energy entity by the other party, the order could be that, until the investigation ends, the energy entity must not send reminder notices about the disputed amount to the other party or disconnect, or restrict the provision of, an energy service to the other party; or
- (b) a water entity by the other party, the order could be that, until the investigation ends, the water entity must not send reminder notices

about the disputed amount to the other party or restrict the provision of water services or wastewater services to the other party.

- (2) However, the energy and water 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 and water 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

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- (b) the dispute referral has been withdrawn; or
 - (c) agreement has been reached between the parties under which the relevant dispute has been resolved.
- (2) After finishing the investigation, the energy and water ombudsman may decide to make, or refuse to make, an order (a *final order*) in favour of the non-entity party.

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 or the customer water and wastewater code;
 - (c) amend, or not impose, a stated charge for stated services under the relevant energy Act or the customer water and wastewater code;
 - (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), if the subject of the relevant dispute relates to an energy Act function, the energy and water ombudsman may make an order ending a negotiated contract between the parties.
- (3) However, subsection (2) applies only if the energy and water 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 and water ombudsman must consider—

- (a) if the order relates to an energy entity function—
 - (i) the purposes or objects of the relevant energy Act; and
 - (ii) the rights and obligations of the parties under any of the following—
 - (A) the relevant energy Act;
 - (B) a relevant industry code;
 - (C) a relevant energy Act authority;
 - (D) a contract between the parties; or
- (b) if the order relates to a water entity function—
 - (i) the purposes or objects of, and the rights and obligations of the parties under, the customer water and wastewater code; or
 - (ii) the rights and obligations of the parties under a 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, the water legislation 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 and water 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 \$50,000—the agreed amount; or
 - (ii) otherwise—\$20,000.
- (4) A final order can not require any of the parties to pay costs of a dispute referral, preliminary inquiry or investigation.
- (5) In this section—

water legislation means each of the following—

 - (a) the *Water Act 2000*;
 - (b) the *Water Supply (Safety and Reliability) Act 2008*;
 - (c) the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*;
 - (d) the customer water and wastewater code.

38 Notice of decision

- (1) The energy and water 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 and water 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 and water ombudsman information for a preliminary inquiry about, or an investigation into, the relevant dispute; and
 - (b) the energy and water ombudsman relied on the information to decide the dispute referral; and
 - (c) the energy and water ombudsman considers the information is confidential and that disclosing the information might be to the detriment of its commercial interests.
- (2) The energy and water 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 and water 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.

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- (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 and water 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 accepted 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 accepted 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—

accepted order includes an accepted 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 and water 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 and water 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 and water ombudsman.
- (4) On receiving the report, the energy and water 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.

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- (5) However, the energy and water 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 and water 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), subsection (3) applies if the relevant entity does not comply with an accepted order or compliance directions of which it has had notice and the relevant entity is not a water entity.
- (3) The energy and water 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) Without limiting subsection (1), subsection (5) applies if the relevant entity does not comply with an accepted order or

compliance directions of which it has had notice and the relevant entity is a water entity.

- (5) The energy and water ombudsman or the non-entity party may, by written notice, refer the noncompliance to the regulator under the *Water Supply (Safety and Reliability) Act 2008*, section 10.

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 and water 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 and water ombudsman's independence; and
- (b) advise the energy and water ombudsman on the following—
 - (i) policy and procedural issues relating to this Act;

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- (ii) the operation of this Act for eligible customers and relevant occupiers of land;
 - (iii) the development of guidelines under section 28(5);
 - (iv) the preparation of budgets under section 74, guidelines under section 75 and annual reports under section 77; and
- (c) advise the Minister on the funding of the energy and water ombudsman's functions; and
- (d) as soon as practicable after the end of each financial year, prepare and provide the Minister with advice about—
- (i) matters arising in relation to the energy and water ombudsman's independence during the financial year; and
 - (ii) matters mentioned in subparagraphs (i) to (iv) of paragraph (b) arising during the financial year.

50 Appointment

- (1) The advisory council consists of a chairperson and at least 6 other members appointed by the Minister.
- (2) The chairperson must be independent of the interests of scheme participants or non-entity parties.
- (3) The other members must consist of—
 - (a) members drawn from scheme participants who represent the interests of scheme participants (*industry members*); and
 - (b) an equal number of members drawn from groups who represent the interests of non-entity parties (*consumer members*).
- (4) The industry members must be appointed on the chairperson's recommendation, after consultation with scheme participants.

- (5) The consumer members must be appointed on the chairperson's recommendation, after consultation with consumer groups and community welfare organisations.
- (6) At least 2 of the industry members must represent the interests of retailers and at least 1 of the industry members must represent the interests of distributors.
- (7) At least 1 industry member must be a member who represents the interests of scheme participants that are water entities.

50A Chairperson

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

Part 7 Particular provisions about the energy and water ombudsman

51 Appointment

- (1) The energy and water ombudsman is appointed by the Governor in Council.
- (2) The energy and water ombudsman is appointed under this Act and not the *Public Service Act 2008*.

52 Term of appointment

- (1) The energy and water 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 and water 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 and water 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 and water ombudsman's term of office without the ombudsman's written consent.
- (3) The energy and water ombudsman is entitled to the leave of absence decided by the Governor in Council.

54 Restriction on outside employment

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

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

55 Resignation

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

56 Acting energy and water ombudsman

- (1) The Governor in Council may appoint a person to act as energy and water ombudsman—
- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the energy and water 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 and water ombudsman is appointed under this Act and not the *Public Service Act 2008*.
- (4) The acting energy and water 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 and water ombudsman if the ombudsman—
 - (a) is found guilty of an indictable offence; or
 - (b) becomes incapable of performing the functions of the energy and water 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 and water 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 and water 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 and water 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 and water 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 and water 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 and water ombudsman; and
 - (b) the person's service as the energy and water 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 and water ombudsman office

59 Office of the Energy and Water Ombudsman

- (1) An office called the Office of the Energy and Water Ombudsman is established.
- (2) The office's function is to help the energy and water ombudsman perform the ombudsman's functions.
- (3) The office consists of the energy and water ombudsman and the officers of the energy and water ombudsman.

60 Control of office

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

61 Officers

Energy and water ombudsman officers are appointed under the *Public Service Act 2008* and are officers of the public service.

62 Officers not subject to outside direction

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

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

63 Alternative staffing arrangements

The energy and water 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 and water ombudsman office

Subdivision 1 Participation fees

64 Scheme participation—energy entities

- (1) An exempt seller, other than a prescribed energy entity, becomes a scheme participant only when it starts to sell energy to a relevant energy customer.
- (2) A retailer becomes a scheme participant only when it enters into a contract for the provision of, or starts to provide, a customer retail service to a relevant energy customer.
- (3) Any other type of energy entity becomes a scheme participant when it becomes an energy entity.
- (4) If an entity stops being an energy entity it continues to be a scheme participant for 12 months from when it stopped being an energy entity.
- (5) To remove any doubt, it is declared that cessation of scheme participation by an entity that was an energy 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.

64A Scheme participants—water entities

A water entity is, or becomes, a scheme participant on or from—

- (a) for a distributor-retailer—1 January 2011; or
- (b) for a withdrawn council—1 July 2012.

65 Annual fees

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

Note—

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

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

66 When participation fee is payable

- (1) The energy and water ombudsman must give each scheme participant at the start of a financial year an invoice for the participation fee for that year.
- (2) If a utility entity becomes a scheme participant during a financial year, the energy and water ombudsman must give the participant an invoice for the participation fee for the year.
- (3) The amount of an invoice must be worked out under section 67 or 67A.

[s 67]

- (4) The participation fee is payable 14 days after the scheme participant receives the invoice.
- (5) However, if a scheme participant is a prescribed energy entity—
 - (a) despite subsections (1) and (2), the energy and water ombudsman must comply with the requirements prescribed by regulation about giving an invoice for a participation fee to the prescribed energy entity; and
 - (b) despite subsection (4), the participation fee for a prescribed energy entity is payable within the period prescribed by regulation.

67 Amount of participation fee—energy entity

- (1) If an energy entity is or becomes a scheme participant at the start of a financial year (the *relevant financial year*), its participation fee for that year is—
 - (a) if it is the holder of a distribution authority under either the *Electricity Act 1994* or the *Gas Supply Act 2003* but not both Acts—
 - (i) the amount prescribed under a regulation; or
 - (ii) if no amount is prescribed—\$5,000; or
 - (b) if it is the holder of a distribution authority under both the *Electricity Act 1994* and the *Gas Supply Act 2003*—
 - (i) the amount prescribed under a regulation; or
 - (ii) if no amount is prescribed—\$10,000; or
 - (c) if it is the holder of 1 retailer authorisation under the NERL (Qld)—
 - (i) the amount prescribed under a regulation; or
 - (ii) if no amount is prescribed—\$5,000; or
 - (d) if it is the holder of 2 retailer authorisations under the NERL (Qld)—
 - (i) the amount prescribed under a regulation; or

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- (ii) if no amount is prescribed—\$10,000; or
 - (e) if it is the holder of a special approval and provides customer connection services—
 - (i) the amount prescribed under a regulation; or
 - (ii) if no amount is prescribed—\$5,000; or
 - (f) if it is an exempt seller other than a prescribed energy entity—the amount prescribed under a regulation for the exempt seller or the class of exempt sellers to which the exempt seller belongs; or
 - (g) if it is a prescribed energy entity—the amount prescribed by regulation.
- (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 participant.
 - (4) If an energy entity becomes a scheme participant during a financial year, its participation fee for that year is the amount worked out by applying the following formula—

$FF \times ND$

365

where—

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

- (a) a scheme participant 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 participant.

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

67A Amount of participation fee—water entity

The participation fee for an entity that is a water entity at the start of a financial year is \$10,000.

68 When user-pays fee is payable

- (1) The energy and water 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 utility entity who is then a scheme participant; and
 - (b) give the scheme participant an invoice for the fee.
- (2) If an energy entity becomes a scheme participant during a quarter, the energy and water ombudsman must—
 - (a) work out, under section 69, the user-pays fee payable by the scheme participant for the period (the *part quarter*) from when the entity became a scheme participant to the end of the quarter; and
 - (b) give the scheme participant 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 participant receives the invoice.
- (5) This section does not apply to a scheme participant that is a prescribed energy entity.

69 Working out user-pays fee generally

- (1) This section provides for the working out of a scheme participant's user-pays fee for a quarter (the *assessed quarter*).

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- (2) The energy and water ombudsman must prepare a forecast of the costs (*forecasted costs*) that the ombudsman reasonably considers will be the scheme participant's likely relevant performance costs for the assessed quarter.
 - (3) In making the forecast for the assessed quarter, the energy and water ombudsman may, but is not required to, have regard to the scheme participant's relevant performance costs for the previous quarter or likely relevant performance costs for the current quarter.
 - (4) The amount of the scheme participant's user-pays fee for the assessed quarter is the amount of the forecasted costs for the quarter, subject to any adjustment required under the budget guidelines prepared under section 75.
 - (5) The scheme participant is not entitled to, or to be credited for, interest on any amount credited to the participant because of an adjustment mentioned in subsection (4).
 - (5A) This section does not apply to a scheme participant that is a prescribed energy entity.
 - (6) 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 participant was a scheme participant for all of that quarter.

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

69A User-pays fees for prescribed energy entities

- (1) A regulation may prescribe—

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- (a) the amount of a user-pays fee for a prescribed energy entity; and
 - (b) requirements about giving an invoice for a user-pays fee to a prescribed energy entity; and
 - (c) when a user-pays fee is payable by a prescribed energy entity.
- (2) The energy and water ombudsman must comply with the requirements prescribed by regulation about—
- (a) giving an invoice for a user-pays fee to a prescribed energy entity; and
 - (b) when a user-pays fee is payable by a prescribed energy entity.

70 Supplementary fees

- (1) Subsection (2) applies if, at any time, the energy and water 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 participants, or a stated class of scheme participants, of an amount that will allow all of the functions to be funded.
- (3) Subsection (4) applies if, at any time, the energy and water ombudsman considers that because of a particular matter concerning an individual scheme participant, 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 participant of an amount that the energy and water 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 participation fees and user-pays fees.

Subdivision 2 Late payments

71 Unpaid fee interest

- (1) A scheme participant 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 and water ombudsman may remit unpaid fee interest

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

73 Recovery of unpaid amounts

If a scheme participant 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 participant as a debt.

Division 3 Other matters

74 Annual budgets

- (1) The energy and water ombudsman must, before each 31 March, prepare, in consultation with the advisory council, a budget of estimated costs of the energy and water ombudsman office for the next financial year, having regard to expected participation fees and user-pays fees for the year.
- (2) The Minister must approve, or refuse to approve, a budget by each 30 April.
- (3) However, a failure by the Minister to act under subsection (2) does not prevent the Minister approving, or refusing to approve, a budget at later time.
- (4) A budget has no effect until it has been approved by the Minister on the recommendation of the advisory council and the energy and water ombudsman.
- (5) During a financial year the energy and water ombudsman may prepare amendments to the office's budget for that year.
- (6) An amendment of a budget has no effect until it has been approved by the Minister on the recommendation of the advisory council and the energy and water ombudsman.

- (7) If the advisory council and the energy and water ombudsman differ about what should be recommended to the Minister for an approval under this section, the Minister may still give the approval.
- (8) The energy and water ombudsman may authorise spending by the office during a financial year only under the budget for that year, unless the Minister otherwise approves.
- (9) This section does not require the energy and water ombudsman to give the Minister any details that would, if given, prejudice a current investigation.

75 Budget guidelines

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

76 Delegation

- (1) The energy and water ombudsman may delegate the ombudsman's functions to an appropriately qualified energy and water 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, for an energy and water ombudsman officer to whom functions may be delegated, includes having the qualifications, experience or standing appropriate for the function.

Example of standing for energy and water ombudsman officer—

the officer's classification or level in the energy and water ombudsman office

functions includes powers.

77 Annual report

(1) The energy and water ombudsman must—

- (a) prepare and give to the Minister a written report about the operations of the energy and water ombudsman office during each financial year; and
- (b) as soon as practicable after it is given to the Minister, publish it on the energy and water ombudsman's website.

(2) The report must be given as soon as practicable after the end of the financial year, but within a period that will allow the report to be tabled in the Legislative Assembly within the tabling period under the *Financial and Performance Management Standard 2009*, section 49(2).

(3) Without limiting subsection (1), the energy and water ombudsman must include in the report—

- (a) a description of the following matters for the year—
 - (i) dispute referrals made;
 - (ii) dispute referrals that the energy and water ombudsman decided, under section 22, not to investigate or continue to investigate;
 - (iii) dispute referrals investigated;
 - (iv) decisions under section 34, including final orders made;

- (v) matters referred to an energy Act regulator, QCA or the regulator under the *Water Supply (Safety and Reliability) Act 2008*, section 10; and
 - (b) details of other functions performed by the energy and water ombudsman or energy and water ombudsman officers during the year; and
 - (c) financial statements for the energy and water ombudsman office for the year.
- (4) A description may include statistics.
- (5) The report must not be prepared in a way that discloses confidential information.

78 Reports and observations on energy and water ombudsman's initiative

- (1) If the energy and water ombudsman considers it appropriate, the ombudsman may give any of the following a report on, or make observations about, a matter arising from the performance of the energy and water ombudsman's functions—
- (a) a scheme participant;
 - (b) an energy Act regulator;
 - (c) the regulator under the *Water Supply (Safety and Reliability) Act 2008*, section 10;
 - (d) the Minister;
 - (e) the advisory council;
 - (f) any public forum;
 - (g) the Information Commissioner within the meaning of the *Australian Information Commissioner Act 2010* (Cwlth).
- (2) However, a report or observation can not be made under subsection (1) if—

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- (a) it is derived from information that is confidential or the disclosure of which might detriment commercial interests; or
 - (b) the making of the report or observation will result in confidential information being disclosed.
- (3) Subsection (2) applies even if the energy and water ombudsman has, under section 31, decided that a belief that the information is confidential is not justified.

79 Privacy

- (1) This section applies to a person who—
- (a) is, or has been, the energy and water ombudsman or an energy and water 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 and water 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 and water 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 and water 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.
- (6) In this section, a reference to the energy and water ombudsman or an energy and water ombudsman officer includes a reference to a person who was the energy ombudsman or an energy ombudsman officer under this Act as in force before the commencement of the *Water and Other Legislation Amendment Act 2010*, section 3.
- (7) Without limiting section 25B, agreement of an eligible customer under the section may also have effect as consent under subsection (3)(b).

80 Disclosure of particular information

- (1) If, under this Act, a utility entity gives the energy and water ombudsman written information about the entity—

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

- (ii) the regulator under an energy Act; or
- (b) in relation to a water entity—the regulator under the *Water Supply (Safety and Reliability) Act 2008*, section 10.

81 Protection from liability

- (1) The energy and water ombudsman or an energy and water 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 and water ombudsman or an energy and water ombudsman officer, the liability attaches instead to the State.

82 Approved forms

The energy and water 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 for Act No. 61 of 2006

Division 1 Preliminary

84 Definitions for pt 9

In this part—

changeover day means the day section 18 commences.

energy ombudsman means the energy ombudsman under this Act as in force before the commencement of the *Water and Other Legislation Amendment Act 2010*, part 2.

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.

scheme member means a scheme member under this Act as in force before the commencement of the *Water and Other Legislation Amendment Act 2010*, part 2.

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 Transitional provisions for the Water and Other Legislation Amendment Act 2010

91 Definitions for pt 10

In this part—

commencement means the commencement of the provision in which the term is used.

post-amended Act means this Act as in force immediately after the commencement.

pre-amended Act means this Act as in force immediately before the commencement.

92 Office continues

The Office of the Energy and Water Ombudsman established by the post-amended Act, section 59 is a continuation of the Office of Energy Ombudsman established by the pre-amended Act, section 59.

93 Saving of certain appointments etc.

- (1) On the commencement—
 - (a) the person who immediately before the commencement held appointment under the pre-amended Act, part 7 as energy ombudsman is taken to have been appointed as the energy and water ombudsman under the post-amended Act, part 7 on the same terms and conditions as the first mentioned appointment; and
 - (b) a person who immediately before the commencement held appointment under pre-amended Act as an energy ombudsman officer is taken to have been appointed as an energy and water ombudsman officer under the post-amended Act on the same terms and conditions as the first mentioned appointment.
- (2) Anything done by the energy ombudsman or an energy ombudsman officer under the pre-amended Act that has a continuing effect is taken to have been done by the energy and water ombudsman or an energy and water ombudsman officer under the post-amended Act.
- (3) Without limiting subsection (2)—
 - (a) a delegation by the energy ombudsman under the pre-amended Act having effect immediately before the commencement continues to have effect as a delegation

by the energy and water ombudsman under the post-amended Act; and

- (b) a form approved by the energy ombudsman under the pre-amended Act having affect immediately before the commencement continues as a form approved by the energy and water ombudsman under the post-amended Act.

94 References to energy ombudsman

In an Act or document, a reference to the energy ombudsman may, if the context permits, be taken to be a reference to the energy and water ombudsman.

95 Scheme members

- (1) An energy entity that, immediately before the commencement, was a scheme member under the pre-amended Act becomes, on the commencement, a scheme participant under the post-amended Act.
- (2) An amount payable under the pre-amended Act, part 8, division 2 immediately before the commencement by an entity that was a scheme member under that Act continues to be payable by the entity under the post-amended Act, part 8, division 2.

96 Advisory council members go out of office and appointment of new members

- (1) On the commencement, the chairperson and other members of the advisory council go out of office.
- (2) Subsections (3) and (4) apply for the appointment of the members of the council first happening after the commencement.
- (3) The post-amended Act, section 50(4) and (5) does not apply.
- (4) Each water entity is taken to be a scheme participant.

97 Application of ss 68 and 69 to water entities for last 2 quarters of 2010–2011 financial year

- (1) This section applies to each water entity that is to become a scheme participant on 1 January 2011 under section 64A.
- (2) For section 68(1) and (4), the water entity is taken to become a scheme participant on the commencement.
- (3) For section 69, the forecasted costs of the water entity as a scheme participant for each of the 3rd and 4th quarters of the 2010–2011 financial year is \$55,000.
- (3) For part 8, division 2, the amount of \$55,000 is taken to have been worked out under section 69.

98 Energy and water ombudsman may prepare amended budget

- (1) The purpose of this section is to empower the energy and water ombudsman to prepare an amended budget for the 2010–2011 financial year having regard to the extra functions given to the ombudsman by the *Water and Other Legislation Amendment Act 2010*, part 2.
- (2) The energy and water ombudsman may prepare the amended budget on the basis that each water entity will become a scheme participant on 1 January 2011.
- (3) Subsection (4) applies if, at the time the energy and water ombudsman prepares the amended budget, there are no members of the advisory council.
- (4) Despite the post-amended Act, section 74(6) and (7), the Minister may approve the amended budget.

99 Advisory council to report in relation to water entities

- (1) The advisory council must prepare and give a report to the Minister on the performance of the energy and water ombudsman's functions as they relate to water entities.
- (2) The report must be given to the Minister before the end of 2011.

Allconnex means the distributor-retailer called the Southern SEQ Distributor-Retailer Authority.

successor, for a provision about a customer or a dispute referral concerning a customer, means the withdrawn council in whose local government area the customer received, or wanted to receive, services from Allconnex of a type mentioned in the Water Supply Act, schedule 3, definition *customer*.

104 Migration of small customers (water) of Allconnex

Each person who, at the end of 30 June 2012, is a small customer (water) of Allconnex becomes a small customer (water) of Allconnex's successor on 1 July 2012.

105 Existing dispute referrals

- (1) This section applies to a dispute referral about Allconnex made before 1 July 2012.
- (2) The referral is taken to be, and to have always been, a dispute referral about Allconnex's successor, and may be continued by or against the successor.
- (3) Subsection (2) applies as if, at all relevant times, the successor had performed the water entity function the subject of the referral.
- (4) The successor is taken to be, and to have always been, the relevant entity for the referral.
- (5) If the referral was made by Allconnex, the successor is taken to be the referrer.

106 Disputes not referred before 1 July 2012

- (1) This section applies for a dispute about the performance of Allconnex's water entity functions about which a dispute referral could have been, but has not been, made before 1 July 2012.

- (2) Either party to the dispute may, on or from 1 July 2012, make a dispute referral for the dispute as if Allconnex's successor has performed the functions.
- (3) Subsection (2) is subject to section 19A.
- (4) If the referrer is a small customer (water) and the dispute referral names Allconnex as the relevant entity, Allconnex's successor is taken to have been named instead.

107 Existing investigations

- (1) An investigation or preliminary inquiry (a *procedure*) started under this Act before 1 July 2012 about Allconnex is taken to be a procedure of the same type about Allconnex's successor.
- (2) The procedure is taken to be, and to have always been, about Allconnex's successor, and may be continued about the successor.
- (3) Subsection (2) applies as if, at all relevant times, the successor had performed the water entity function the subject of the procedure.
- (4) The successor is taken to be, and to have always been, the relevant entity for the procedure.

108 Existing information requirements

- (1) This section applies to an information requirement made of Allconnex that has not been complied with before the end of 30 June 2012.
- (2) On 1 July 2012, the information requirement is taken to have been made of Allconnex's successor about the same matter.
- (3) In this section—
information requirement means a requirement under section 29.

109 Existing orders, decisions, declarations and directions

- (1) This section applies to an order, decision, declaration or direction (the *action*) under this Act about Allconnex.
- (2) The action is taken to have been made about Allconnex's successor on 1 July 2012.
- (3) Subsection (2) does not prevent part 5, division 2 applying to the order.
- (4) In this section—
about includes to and against.
order includes a judgment under section 42.

110 Amended budget for 2011–12 financial year

- (1) The energy and water ombudsman may prepare an amended budget for the 2011–2012 financial year to take into account the withdrawn councils becoming scheme participants on 1 July 2012.
- (2) An advisory council recommendation under section 74(6) is not required for approval of the amended budget.
- (3) In this section—
2011–2012 financial year means the financial year beginning on 1 July 2011 and ending on 30 June 2012.

111 Withdrawn councils' user-pays fees for 2012–13 financial year

- (1) For section 68(1) and (4), a withdrawn council is taken to become a scheme participant when this section commences.
- (2) For section 69—
 - (a) the amended budget under section 110 must be taken into account; and
 - (b) the forecasted costs of the withdrawn council as a scheme participant for the 2012–13 financial year are its

share of Allconnex's likely relevant performance costs under subsection (3).

- (3) The share is the withdrawn council's share of participation rights under its participation agreement with Allconnex under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* immediately before the retransfer under that Act.
- (4) In this section—
2012–13 financial year means the financial year beginning on 1 July 2012 and ending on 30 June 2013.

112 References in Acts and other documents

- (1) This section applies for references in an Act or other document from 1 July 2012.
- (2) A reference to a water entity or scheme participant is taken to include a reference to a withdrawn council.
- (3) A specific reference to Allconnex is taken to be a reference to Allconnex's successor.

Part 13 Transitional provision for Electricity Competition and Protection Legislation Amendment Act 2014

113 Scheme participation by retailers and exempt sellers

- (1) This section applies if, immediately before the commencement, a retailer or an exempt seller was a scheme participant under pre-amended section 64.
- (2) The retailer or exempt seller continues to be a scheme participant after the commencement.

(3) An obligation to pay a fee under this Act or any other obligation under this Act that accrued before the commencement continues after the commencement.

(4) In this section—

commencement means the commencement of this section.

pre-amended section 64 means section 64 as in force immediately before the commencement.

Schedule Dictionary

section 4

2010– 2011 financial year means the financial year beginning on 1 July 2010 and ending on 30 June 2011.

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

advisory council means the advisory council established under section 48.

Allconnex, for part 12, see section 103.

commencement, for part 10, see section 91.

compliance directions see section 44(4).

connection contract means a connection contract under an energy Act.

customer connection service—

- (a) in relation to the Maranoa Regional Council or the Western Downs Regional Council as a distributor—see the *Gas Supply Act 2003*, section 19; or
- (b) otherwise—has the meaning given by the NERL (Qld).

customer retail service has the meaning given by the NERL (Qld).

customer water and wastewater code means the customer water and wastewater code under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, chapter 4.

decision notice see section 38(1).

dispute referral means a referral made under section 18 or 18A.

distributor means the holder of a distribution authority under the *Electricity Act 1994* or the *Gas Supply Act 2003*.

distributor-retailer means a distributor-retailer under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, section 8.

eligible customer see section 6B.

eligible non-residential energy customer see section 6C.

energy has the meaning given by the NERL (Qld).

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

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

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

energy entity see section 7.

energy entity function see section 8.

exempt seller has the meaning given by the NERL (Qld).

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).

National Electricity (Queensland) Law see the *Electricity—National Scheme (Queensland) Act 1997*, section 3(1).

National Gas (Queensland) Law see the *National Gas (Queensland) Act 2008*, section 3(1).

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

NERL (Qld) see the *National Energy Retail Law (Queensland) Act 2014*, section 3.

non-entity party, for a provision about a dispute referral or final order, means—

- (a) if the dispute relates to an energy entity function, the relevant energy customer or occupier who is a party to the relevant dispute for the referral or order; or
- (b) if the dispute relates to a water entity function, the small customer (water) who is a party to the relevant dispute for the referral or order.

ombudsman means the energy and water ombudsman.

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

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

post-amended Act, for part 10, see section 91.

pre-amended Act, for part 10, see section 91.

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

prescribed energy entity see section 7(2).

Privacy Act means the *Privacy Act 1988* (Cwlth).

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
- (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 energy customer see section 6D.

relevant entity for—

- (a) a provision about a dispute referral, proposed dispute referral or final order—means the energy entity, entity mentioned in section 18(2) or water entity that performed the energy entity function or water 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, entity mentioned in section 18(2) or water entity that performed the energy entity function or water 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 the holder of a retailer authorisation under the NERL (Qld).

scheme participant means an entity that under section 64 or 64A is a scheme participant.

small customer (energy) see section 6.

small customer (water) see section 6A.

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

successor, for part 12, see section 103.

unpaid fee interest see section 71(1).

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

utility entity see section 7B.

water entity see section 7A.

water entity function see section 8A.

withdrawn council see section 7A(b).