



# EWON Expanded Jurisdiction

Final report incorporating stakeholder feedback on membership model, fees, voting rights and Board composition

9 May 2018

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# Project background and approach to consultation

# Project background

## Background

KPMG was engaged by EWON to support the development of a revised funding and membership model, and present an assessment of options associated with this expansion in EWON's jurisdiction – namely the requirement that previously exempt networks and retailers and some small water providers will be required to become members of EWON. The scope of the engagement is outlined in KPMG's engagement letter dated 6 December 2017 and subsequent correspondence with EWON in relation to extending the terms of the engagement.

This report outlines KPMG's views in relation to the membership model, fee structure, member voting rights and board composition. This report has been informed by work completed by EWON, KPMG's own analysis and stakeholder feedback, including a number of written submissions.

Following the process detailed on pages 6 and 7, this report provides details of feedback from each class of stakeholder on the proposed options, and then summarises the proposed option in respect of each matter.

# Project deliverables

## Key deliverables

In delivering the engagement KPMG has prepared a number of key deliverables. This paper presents the final deliverable.

### Summary of key deliverables:

High-level review of EWON's proposed membership and funding models

Report on targeted consultation (six members)

Participation at the all-day Board meeting

High-level review of EWONs updated membership categories, funding model, Board composition and voting rights

Workshops with members, consumer representatives and exempt entities

Stakeholder feedback report to the Expanded Jurisdiction Working Group

Final report on Expanded Jurisdiction project provided to the Board

Briefing to the EWON Board

# Approach

## Overview of approach

This report has been informed by work completed by EWON, KPMG's own analysis and stakeholder feedback, including **ten written submissions**. The complete list of stakeholders that have provided these written submissions can be found in Appendix A.

## Research

Preliminary research and scoping of the embedded network landscape in New South Wales was undertaken by EWON, in conjunction with information provided by the Australian Energy Regulator (AER). EWON were able to access limited data in relation to the extent of embedded network exemptions granted by the AER throughout NSW, informing the initial funding model and membership options presented by KPMG.

KPMG were also able to prepare an initial analysis paper, reflecting on the learnings gained while assisting the Victorian Energy and Water Ombudsman revise their membership and funding models. This analysis helped frame the presentation materials developed with EWON for the ensuing targeted stakeholder consultations and workshops.

## Consultation

- Targeted engagement with six current EWON members to gather preliminary views on membership model options and fees
- Four workshops in mid-March on member model, fees, voting rights and Board composition. These four workshops were structured as follows:
  - Two workshops with current EWON members in Melbourne and Sydney
  - One workshop with consumer representatives in Sydney
  - One workshop with exempt entities in Sydney
- Follow-up consultations with six current members were held to gather final feedback on the proposed options.

### The remainder of this report is structured as follows:

- Summary of key themes
- Proposed membership models
- Proposed funding models
- Proposed voting rights
- Proposed Board composition, including Director tenure options





# Summary of key themes

# Summary of key themes

## Accepting of change

- Stakeholders, including current members, consumer representatives and exempt entities consulted were **appreciative of the process** being undertaken by EWON
- Stakeholders accepted that the **current model** was **not fit-for-purpose and should be revisited**
- Attendees at the recent workshops were generally **accepting of the general principles** the Board will use to guide the development of the membership, funding and governance models

## Membership model

- The majority of stakeholders consulted **supported the proposed membership model**
- Current members largely sought greater clarity over the role that billing agents would likely hold in the new membership arrangements

## Funding model

- The majority of stakeholders consulted **supported the proposed funding model**, recognising that continuing with the current arrangement would be inappropriate
- Current members stressed the importance of retaining a **'contributor pays'** model, minimizing any cross subsidies by existing members upon expanding the scheme's jurisdiction

## Voting rights

- Most stakeholders considered that the existing model of voting would be **unsuitable** in the context of EWON's expanded membership
- Stakeholders consulted largely supported the proposed voting models based on either financial contribution to EWON or customer numbers, as **both approaches acknowledged members' size**

## Board composition

- **Few current members supported any of the original five options as presented during the stakeholder consultation.** The majority of current members agreed that all Industry Directors should be **chosen by members**, noting that **reserving Board positions** for relevant energy sectors (retail, distribution) was the best way to ensure that the Board had sufficient skills and capabilities, but that **members** should be able to vote for each position



# Section 1: The proposed membership model

# The proposed membership model

## Proposed option: membership model

- EWON's Board is **not proposing to change** the current membership model
- Each **company (the legal entity) that holds an authorisation / license / exemption will be required to become a member of EWON**. A company that holds a number of authorisations / licenses / exemptions in the same company name will only be required and allowed to have one membership
- The proposed membership model does not preclude parent companies or agents playing a role in relation to the day-to-day management of a member's interaction with EWON. This is to help both members and EWON manage complaints in an efficient and effective manner

## Summary of current member feedback:



Current members consulted were in **agreement that the current model's principles of membership should extend to the new model**

- Some current members noted the **challenge EWON faces in encouraging scheme registration** of exempt entities, conscious of the limited compliance mechanisms available



Many members sought clarity around the membership requirements of exempt entities, highlighting the importance of **retaining the current 'contributor pays' approach** and the minimisation of cross-subsidies

Current members noted the likely nature of new members, understanding that they are different from traditional members of EWON and that their customers in some instances are likely to be vulnerable members of society who may be at high risk of default if exposed to high fees

# The proposed membership model

## Summary of consumer representatives feedback:



Representatives consulted were in **agreement that the current model's principles of membership should extend to the new model**, as the model would be **inequitable** if the status quo were to remain

- Consumer representatives emphasised that for new members joining the scheme, EWON must be considered critically important as a means through which to improve the customer experience – **noting that vulnerable residents within residential parks and retirement villages are at high risk of bearing costs of Ombudsman fees**

## Summary of exempt entity feedback:



Exempt entity representatives were in **agreement that the principles of membership of the current model should extend to the new model**

Emphasised that **billing agents should play a prominent role in facilitating communication** between EWON, the owners' corporations (OCs) and other entities they manage, in an effort to promote targeted and efficient complaint handling with EWON:



- Exempt entity representatives noted that it may be more effective if billing agents were to **act as interlocutors with EWON on behalf of the embedded networks they represent** – for example, assisting EWON manage their relationship with small Owners Corporations, while also helping maintain accountability if complaints escalate
- In practice, billing agent representatives suggested EWON record which entity manages each OC upon the embedded networks joining as EWON members, at which point a relationship with the billing agent could be established – allowing EWON a central point of contact to embedded networks that may previously have remained hidden in the market
- Proposed that a **peak body membership option be explored for residential parks**



# Section 2: Proposed funding model

# The proposed funding model

## Proposed option: funding model

- EWON's Board **recognises the need to revise the funding model, ensuring the Ombudsman remains accessible to all new members**
- The **current joining fee** of \$5,450 is proposed to become much more granular, scaled to reflect the customer base of exempt entities
- The **current base fee** of \$8,800 is set to be lowered to a nominal figure for smaller new members, which would otherwise prove a major barrier to entry to the scheme
- The proposed **annual fixed fee** is also to be scaled based on customer number ranges, as the smallest current bandwidth of 'less than 20,000' has been identified as inappropriate
- The EWON Board is **not considering any changes be made to the variable case based fees**
- The **Operational Reserve** is planned to be utilised as a short term cover, bearing the initial administrative costs associated with expanding EWON's jurisdiction

## Summary of current members feedback:



Members consulted **agreed that the current funding model was no longer fit for purpose, that the current fee schedule was inappropriate in consideration of the nature and size of exempt entities** – noting that the proposed model should actively seek to minimise cross-subsidisation



In principle, current members consulted **agreed with revising the current fee schedule**, accommodating new members through logical and practical adjustment to the tiers of annual fixed fees:

- It was noted as appropriate for fees to be **scaled to reflect the new member's customer base and market size accordingly**
- Current members emphasised that the **use of the Operational Reserve should remain short term and be actively reimbursed through appropriate cost recovery by new members - with EWON ideally recovering the majority of costs incurred by expanding jurisdiction over the following 2 to 3 years**
- Some current members voiced concerns in relation to recovering the true cost of expansion, as the 'elasticity' of potentially low joining fees for markedly smaller, new members may make this difficult

# The proposed funding model



Members agreed that **the variable case fee should remain unchanged, continuing the model of 'user pays'** while incentivising the effective and efficient management of complaints – and for EWON to cautiously manage the potential for bad debts



All current members were keen to understand a **clearer indication of what a tiered fee scheme would look like**, comparative to the EWON annual budget:

- In principle, current members **largely supported appropriately scaled lower fees proposed for exempt entities**, noting that there may be instances of exempt entities passing on their Ombudsman costs to potentially vulnerable tenants – posing risks of eviction

## Summary of consumer representatives feedback:



Consumer representatives consulted were in **agreement that the current funding model was no longer fit for purpose**, that an emphasis should be placed on encouraging new members to join the scheme.

- Consumer representatives also identified the potential for an inequitable fee schedule to be imposed upon **new member water companies and newly authorised energy retailers**, as exempt entities will likely be paying markedly lower annual fees



Representatives were conscious of membership fees being passed on to vulnerable, permanent tenants within residential parks or retirement villages, with stakeholders **supporting the proposed option of appropriately scaled joining and annual fees that will assist in breaking down barriers to entry**

- It was noted that EWON should recognise the likely nature of a number of these new customers, many of whom may suffer a degree of financial and housing vulnerability – unable to bear additional Ombudsman costs that could potentially be passed on to them if fees are imposed at an inappropriate level
- Consumer representatives also noted the risk of high variable case fees pushing consumers to pursue complaint resolutions through cheaper, alternative dispute resolution services such as NCAT and avenues available through the Residential Tenancies Act

# The proposed funding model

## Summary of consumer representatives feedback (cont.):



Consumer representatives **highlighted the risks associated with some customers of embedded networks having to support the full cost of case fees**, as this may result in some vulnerable tenants being placed in a position where they may be apprehensive when lodging a complaint, with the perception that they may be forcibly evicted by landlords or exempt entity operators who are seeking to avoid escalating Ombudsman fees.

## Summary of exempt entity feedback:



Exempt entity representatives were in **agreement that the current funding model is no longer fit for purpose**

All stakeholders agreed that a **more granular annual fee scale was appropriate and a sensible approach for new members**.



- Billing agents actively offered to assist with the compliance of new members, identifying the possibility to facilitate the payment of the exempt entities' fees to EWON by developing an additional layer to their relationship with the owners corporations and other entities they manage



Exempt entity representatives were conscious of the **impact that these fees may have on vulnerable tenants** residing within embedded networks:

- While accepting a more granular joining and annual fee, some exempt entities were **concerned that no change was proposed for case based fees** – highlighting that these case based fees are likely to have the largest negative impact on residential land lease communities



# Section 3: Proposed voting rights for members

# The proposed voting rights

## Feedback on the status quo and proposed principles for change:



**All stakeholders (current members, potential new members and consumer representatives) agreed that the current approach to voting rights (one member one vote) would not be fit-for-purpose going forward**

### The following criteria will be used to assess the options:

1. Recognises member size as a share of the overall market and contribution to EWON
2. Enables and supports EWON to meet its obligations under legislation (e.g. Corporations Law 2001)
3. Is adaptable and flexible in response to market changes or other industry reforms
4. Is not easily manipulated to give unintentional and potentially inappropriate influence to a particular member or group of members
5. Simple and easy both to administer. The voting arrangements should be easy to understand for members and simple to administer for EWON.

### These criteria have been used to assess the voting rights options on page 23

The majority of members agreed with the stated criteria. In particular, members expressed strong support for Criteria 1 with many noting that EWON's voting structure should clearly reflect relative size of members in the market, their proportionate impact on the quality, or otherwise, of customer service to NSW consumers, and therefore, the nature of and the regularity of their interactions with EWON. This strong feedback in effect weights this criteria more highly than the other criteria. This will therefore influence the evaluation of options later in this section.

Some current members **cited that the emphasis on 'undue influence' outlined in the original criteria four could be revisited** as it implied a negative connotation, rather than recognising that some current members are in fact larger than many others. An alternative was suggested as follows "*Is not easily manipulated to give unintentional and potentially inappropriate influence to a particular member or group of members*". This revision has been adopted in the criteria.

All consumer representatives agreed with the criteria, noting that the revised voting rights should support better consumer outcomes.



All stakeholders recognised that the matter of voting rights is directly linked to Board composition, and that both matters should be considered in parallel.

# The proposed voting rights

## Summary of selected comparison schemes:



To support the identification and assessment of options, a **high-level comparator analysis was completed of five existing ombudsman schemes** – both in the energy and water sector and other sectors. The following table summarises some of the key features of the comparator scheme's voting rights. More detailed information is contained in Appendix B.

	Voting model	Preferential Voting	What do members vote on
Telecommunications Industry Ombudsman	 Based on total annual fees	✘	Constitutional changes
Energy and Water Ombudsman Victoria	 EWOV conducts polls using a preferential voting system approved by the Board from time to time. EWON may wish to explore the introduction of preferential voting in the future.	✔	Industry Directors; Constitutional changes; Budget
Financial Ombudsman Service Australia	 All money paid to FOS in the previous year including annual fees and case costs	✘	Constitutional changes
Energy and Water Ombudsman South Australia	 ✘	✘	Constitutional changes; Industry Directors
Energy and Water Ombudsman Queensland	✘	✘	Members do not vote



One vote per customer



One vote per dollar

# The proposed voting rights



Options **A**, **B** and **C** were identified for consultation with EWON's members. Three further options, **D**, **E**, **F** and **G** were developed following the result of these consultations and analysis against the principles. The additional options are based on members' financial contribution to EWON.

## Options presented for consultation

**A**

**One vote per membership  
(status quo)**

Each member has one vote per annual membership

**B**

**One vote per dollar of fixed annual fees**

Members have one vote for each dollar of total Annual Fixed Fees paid

**C**

**One vote per customer**

Members have one vote per customer

## Additional options identified:

**D**

**One vote dollar of scaled customer fee**

Members have one vote per dollar of their customer fee divided by their relevant bandwidth

**E**

**One vote per dollar of annual fees capped at \$60,000**

Members have one vote per dollar of Annual Fixed Fees with a maximum vote of 60,000

**F**

**One vote per dollar of annual fees capped at \$40,000**

Members have one vote per dollar of Annual Fixed Fees with a maximum vote of 40,000

**G**

**One vote per dollar of annual fees capped at \$20,000**

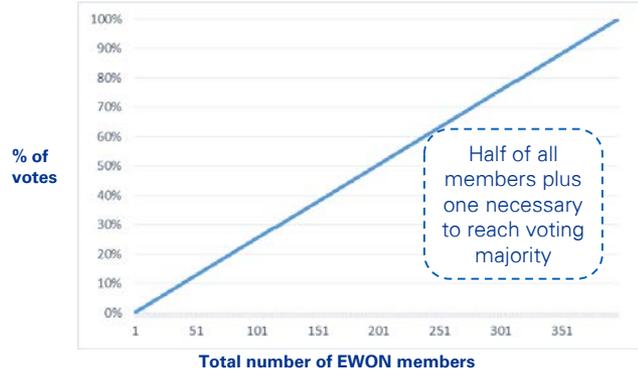
Members have one vote per dollar of Annual Fixed Fees with a maximum vote of 20,000

# The proposed voting rights

The following graphs show the distribution of votes under the three proposed voting options.

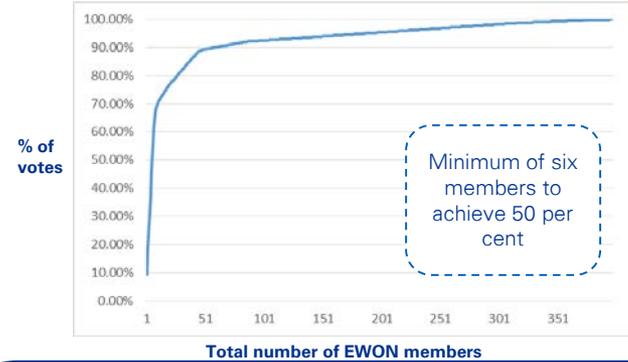
A

## One vote per membership



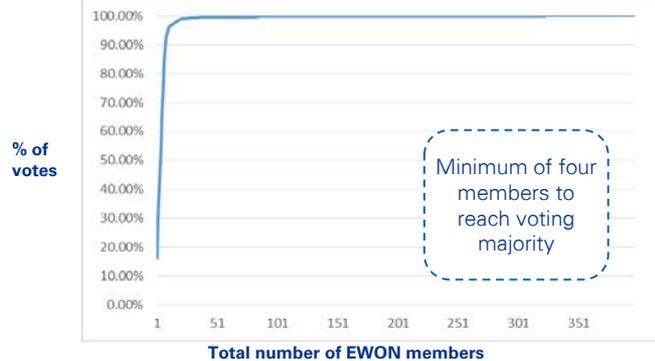
B

## One vote per dollar of fixed annual fees



C

## One vote per customer



**Option A**, the status quo, gives all members one vote. It results in a voting system that is disproportionate to members' customer bases and their contribution to EWON.

**Option B** gives members voting power proportionate to their fixed annual fees paid to EWON. Under this model just six members are required to achieve 50 per cent of votes\*.

**Option C** gives members voting power proportionate to their customer numbers. Just four members are required to form a voting majority under this model. Additionally, there are likely to be administrative challenges in accurately calculating customer numbers at the time of each resolution, requiring a poll vote.

\*Using current member fixed fees. Potential new member fixed fees are calculated on the basis of a scaled down fee schedule as outlined on page 14.

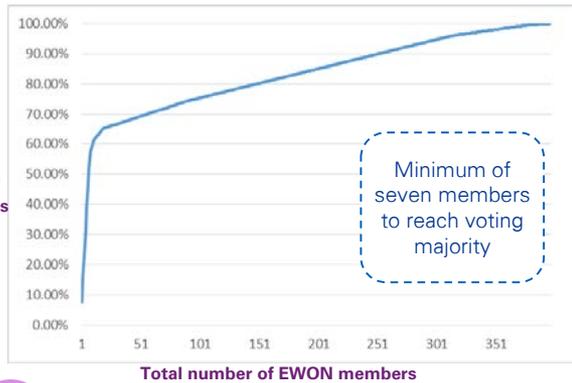


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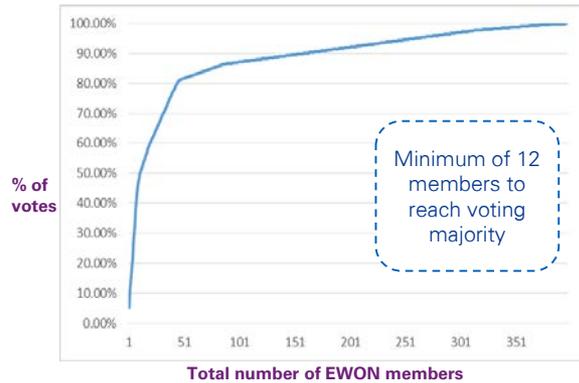
# The proposed voting rights

The following graphs show the distribution of votes under the four alternative voting options.

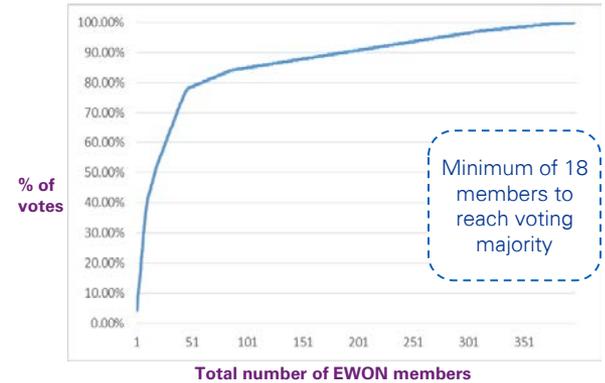
**D** One vote per dollar of scaled customer fee



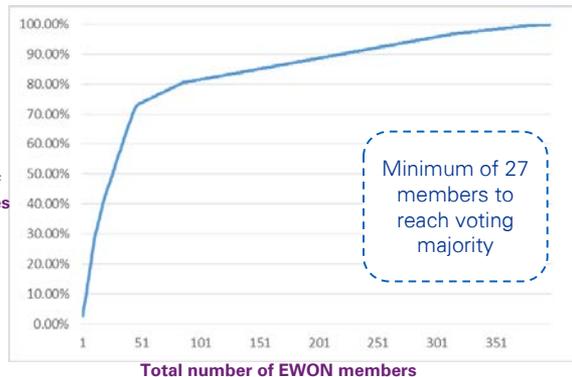
**E** One vote per dollar of fixed annual fees with a cap of 60,000



**F** One vote per dollar of fixed annual fees with a cap of 40,000



**G** One vote per dollar of fixed annual fees with a cap of 20,000

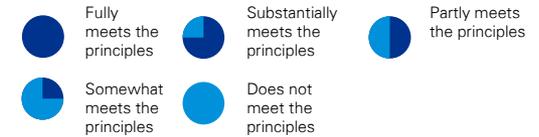


Four additional options were identified.

**Option D** allocates one vote per dollar of customer fee paid divided by the applicable customer bandwidth. For example, a member with 250,000 customers has a customer fee of \$18,819 and is in band 4, is entitled to 4705 votes.

**Options E, F** and **G** allocate one vote per dollar paid in annual fees (the same as Option B) but caps the maximum number of votes at 60,000, 40,000 and 20,000 respectively. This approach significantly increases the number of members required to form a voting majority to 12, 18 and 27 respectively. As the models of Options E, F and G show, as the cap increases, its effect on the minimum number of members required to form a voting majority diminishes.

# The proposed voting rights



## KPMG assessment against the criteria

	Minimum number of members required to form a voting majority	Recognises member size as a share of the overall market and contribution to EWON	Enables and supports EWON to meet its obligations under legislation	Is adaptable and flexible in response to market changes or other industry reforms	Is not easily manipulated to give unintentional and potentially inappropriate influence to a particular member or group of members	Simple and easy to administer
<b>A</b> One vote per membership	Over half					
<b>B</b> One vote per dollar of fixed annual fees	6					
<b>C</b> One vote per customer	4					
<b>D</b> One vote dollar of scaled customer fee	7					
<b>E</b> One vote per dollar of annual fees capped at 60,000	12					
<b>F</b> One vote per dollar of annual fees capped at 40,000	18					
<b>G</b> One vote per dollar of annual fees capped at 20,000	27					

**Options B and C** performed best against the agreed criteria. These options also had strong support from consulted members and stakeholders. **Option B** performed marginally better because of the additional administrative difficulties involved in accurately, and in a timely fashion, identifying members under **Option C**. Notably, all options properly administered should allow the Board to meet its legislative obligations, as directors are bound by fiduciary obligations to EWON.

# The proposed voting rights

## Options analysis



**The following conclusions are based on consultation feedback, formal submissions to EWON and KPMG's analysis of each option against the agreed criteria.**

**A**

It is clear that the status quo will not be suitable in the context of EWON's expanded membership. Existing members noted that **Option A** would not accurately reflect the structure of the energy market, while other stakeholders noted that an approach proportionate to customer numbers would be fairest.

**B**

**C**

**Options B and C** allocate votes on the basis of a member's contribution to EWON and their market share respectively. Consultations revealed general support for both options, with existing members noting that both **Option B and C** prioritised the best interests of consumers and would best reflect the energy industry's current and evolving structure.

**Option B is utilised by the South Australian and Victorian Energy and Water Ombudsmen, both of which allocate votes based on customer numbers. Option C is also utilised by comparable organisations like the Financial Services and Telecommunications Ombudsmen, which allocate votes based on annual fees.**

Models of Options B and C demonstrate that less than two percent of members are able to form a voting majority under both approaches. Considering this is an accurate reflection of the market however, both Options B and C align closely with Criterion 1; that the chosen model should recognise member size as a share of the overall market and contribution to EWON.

Further, even though only a small number of members are able to form a voting majority under each model (six and four members respectively), this does not necessarily breach Criterion 4, that the model should minimise where possible the potential for the interests of a subset of members to have potentially inappropriate influence, because both models ensure that members must represent more than 50% of customers before they are able to achieve a majority. Options to address this potential concern are outlined in the next section: Proposed Board composition.

Both options generally performed well against the agreed criteria.

# The proposed voting rights

## Options analysis



**These options have been developed following feedback from stakeholders and an analysis of options A,B and C against the agreed criteria. Feedback on these additional options was sought during follow-up consultations with six current members.**

**D**

Option D allocates votes on the basis of customer based fees paid to EWON divided by the relevant customer band. Analysis of this option against the criteria shows that it does not fully address the problems identified in Options B and C as just seven members could form a voting majority, but also does not sufficiently reflect a member's market share to adequately meet Criteria 1.

**E**

**F**

**G**

Options E and F allocate votes on the basis of annual fees paid to EWON but cap the maximum number of votes at 60,000, 40,000 and 20,000 respectively. A minimum of 12 members are required to reach a majority under Option E, which represents 97% of customers. A minimum of 18 members are required to reach a majority under Option F representing 98% of customers. A minimum of 27 members are required to reach a majority under Option G representing 99% of customers. Caps were not identified as a preferred option during consultations and are not utilised in comparable organisations, but are useful examples against which other options can be compared.

## Conclusion

Options B and C are the preferred options, both when assessed against the agreed criteria and after feedback from members in consultations and submissions. Both meet the most heavily weighted criteria, in that they reflect EWON's customer orientated mission by assigning votes proportionate to a member's stake in the market. Compared with other options, they are also relatively simple and easy to administer. Finally, both options are also inherently flexible and adaptable to future changes in EWON's membership, allowing any new members to enter EWON with voting rights proportionate to their market share or, their proportionate impact on the quality, or otherwise, of customer service to NSW consumers, and therefore, the nature of and the regularity of their interactions with EWON.

# The proposed voting rights

On the basis of the preceding analysis, the preferred options are below:

## Conclusion summary

B

### One vote per dollar of fixed annual fees

Members have one vote for each dollar of total Annual Fixed Fees paid

#### Key features:

- Simpler and easier to administer
- Marginally smaller recognition of member's size within the market
- Adaptable and flexible to change

C

### One vote per customer

Members have one vote per customer

#### Key features:

- More challenging to administer because of delay in registering accurate customer numbers
- Clearly recognises size of member within the market
- Adaptable and flexible to change



# Section 4: Proposed Board composition and tenure

# The proposed Board composition and tenure

## Feedback on the status quo and proposed principles for change:



Stakeholders **recognised that it was timely to review the composition of the industry members of the EWON Board** in light of the expanded jurisdiction of EWON. Many stakeholders also recognised that the adopted approach needs to ensure that the Industry Directors provide the Board with diverse skills and experience across all sectors covered by EWON. It is therefore critical to ensure the above and to maintain Board integrity and independence, that Directors be elected on merit without requiring support generated by extensive campaigning/lobbying.



### The following criteria will be used to assess the options:

1. Board members have the necessary skills and sector knowledge to provide effective oversight of the strategic priorities of EWON
2. Maintains the independence of the Ombudsman and the scheme
3. The Board should be of an appropriate size, composition and commitment to enable it to discharge its duties effectively (e.g. effectively discharge its duties under law)
4. Provides stable and effective governance and leadership
5. Evolves where necessary in response to changes within the sectors that EWON covers and other aspects of the environment in which EWON operates
6. Minimises where possible the potential for the interests of a subset of members to have inappropriate influence. The composition of the Board should account for the relative size of members in the market, their proportionate influence over industry-wide positive customer outcomes and their overall contribution to EWON.

### These criteria have been used to assess the Board composition options on page 31



There was general consensus found amongst all stakeholders of the criteria presented, with weighting to be placed equally against each criterion noting that it was important that the Board reflect the spread of customers throughout the energy market.

# The proposed Board composition

## Summary of selected comparison schemes:



To enable an assessment of the various options considered, **a high-level analysis was completed of five comparator ombudsman schemes** – both in the energy and water sector and other sectors. The following table summarises some of the key features of the comparator schemes' Board composition.

	Board composition	Method of appointment (Industry Directors)	Sector-based reserved positions	Sector voting	Power of the Board to appoint or nominate	Tenure
<b>Telecommunications Industry Ombudsman</b>	1 Chair 3 Industry Directors 3 Consumer Directors 2 Independent Directors	Board	✓	✗	✓	3 years
<b>Energy and Water Ombudsman Victoria</b>	1 Chair Up to 5 Industry Directors Up to 5 Community Directors	Class of members	✓	✓	✗	Undefined unless removed
<b>Financial Ombudsman Service Australia</b>	1 Chair 4 Industry Directors 4 Community Directors	Board	✗	✗	✓	3 years
<b>Energy and Water Ombudsman South Australia</b>	1 Chair 4 Industry Directors 4 Consumer Directors	Class of members	✓	✓	✗	3 years
<b>Energy and Water Ombudsman Queensland</b>	1 Chair At least 3 Industry Directors At least 3 Consumer Directors	Minister	✗	✗	✗	1 or 2 years

# The proposed Board composition

## Options presented for consideration:

A

### All Industry Directors chosen by members

- The status quo
- All members can nominate and vote for a candidate to be an Industry Director.

B

### Four Industry Directors chosen by all members and the fifth Industry Director chosen by the Board.

- Four Industry Directors elected by all members.
- The Board chooses the remaining Industry Director having regard to its current composition and giving members an opportunity to propose candidates for the appointment.

C

### Four Industry Directors chosen from particular sectors by all members, and the fifth Industry Director chosen by the Board.

- Two Industry Directors from the energy retail sector elected by all members.
- One Industry Director from the energy network sector elected by all members.
- One Industry Director from the water sector elected by all members.
- The fifth Industry Director is appointed by the Board after having received nominations from members.

D

### Four Industry Directors chosen from particular sectors by members from the relevant sector, and the fifth Industry Director chosen by the Board.

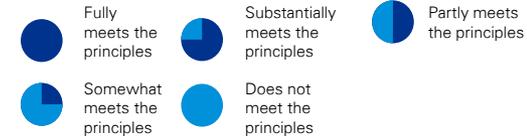
- Two Industry Directors from the energy retail sector elected by energy retail members.
- One Industry Director from the energy network sector elected by energy network members.
- One Industry Director from the water sector elected by water members.
- The fifth Industry Director is appointed by the Board having received nominations from members.

E

### All Industry Directors chosen by Industry Nominations Committee

- All Industry Directors are appointed by a Board-appointed Nominations Committee after calling for expressions of interest from members.
- The Nominations Committee will be made up of five to seven non-Directors with substantial and collectively broad industry experience, chaired by the EWON Board Chair in a non-voting capacity.

# The proposed Board composition



## KPMG assessment against the criteria

	Board members have the necessary skills and sector knowledge to provide effective oversight of the strategic priorities of EWON	Maintains the independence of the Ombudsman and the scheme	The Board should be of an appropriate size, composition and commitment to enable it to discharge its duties effectively	Provides stable and effective governance and leadership	Evolves where necessary in response to changes within the sectors that EWON covers and other aspects of the environment in which EWON operates	Minimises where possible the potential for the interests of a subset of members to have inappropriate influence
<b>A</b> All Industry Directors chosen by members						
<b>B</b> Four Industry Directors chosen by all members and the fifth Industry Director chosen by the Board.						
<b>C</b> Four Industry Directors chosen from particular sectors by all members, and the fifth Industry Director chosen by the Board.						
<b>D</b> Four Industry Directors chosen from particular sectors by members from the relevant sector, and the fifth Industry Director chosen by the Board.						
<b>E</b> All Industry Directors chosen by Industry Nominations Committee						

As the table demonstrates, Options **A-D** are largely unsuitable when assessed against the agreed criteria. While Option E does largely align with the criteria, feedback from members and stakeholders was almost universally opposed to this option because it eliminates members' existing right to elect Industry Directors. As such, Options A-E have been determined as unsuitable. KPMG have therefore developed four further options, using elements of the original options and ideas raised during consultations and in feedback.

**NOTE: RATINGS ARE DEPENDENT ON THE VOTING RIGHTS MODEL CHOSEN**

# The proposed Board composition

**Additional options identified as a result of discussions with the Working Group, consultations with members and stakeholders and written submissions to EWON.**

C1

**Four Industry Directors chosen from particular sectors by all members, and a fifth Industry Director elected by all members from a shortlist compiled by a Nominations Committee**

- Two Industry Directors from the energy retail sector elected by all members.
- One Industry Director from the energy network sector elected all members
- One Industry Director from the water sector elected by all members.
- One Industry Director selected by all members to address a particular skills or experience gap identified by the Board.
- A Nominations Committee would support the Board by seeking candidates from industry

C2

**Five Industry Directors chosen from particular sectors by all members**

- Two Industry Directors from the energy retail sector elected by all members.
- One Industry Director from the energy network sector elected by energy network members.
- One Industry Director from the water sector elected by all members.
- One Industry Director chosen from smaller members (i.e. Members with less than a specified number of customers) by all members.

D1

**Four Industry Directors chosen from particular sectors by the members from those sectors, and a fifth Industry Director elected by all members from a shortlist compiled by a Nominations Committee**

- Two Industry Directors from the energy retail sector elected by energy retail members.
- One Industry Director from the energy network sector elected by energy network members.
- One Industry Director from the water sector elected by water members.
- One Industry Director elected by all members to address a particular skills or experience gap identified by the Board.
- A Nominations Committee would support the Board by seeking candidates from industry

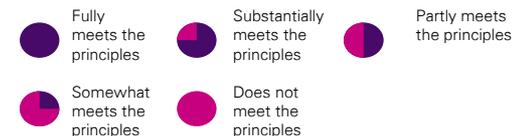
D2

**Five Industry Directors chosen from particular sectors by the members from those sectors**

- Two Industry Directors from the energy retail sector elected by energy retail members.
- One Industry Director from the energy network sector elected by energy network members.
- One Industry Director from the water sector elected by water members.
- One Industry Director chosen from smaller members (ie. Members with less than a specified number of customers) by those members.

# The proposed Board composition

## KPMG assessment of additional options against the criteria



	Board members have the necessary skills and sector knowledge to provide effective oversight of the strategic priorities of EWON	Maintains the independence of the Ombudsman and the scheme	The Board should be of an appropriate size, composition and commitment to enable it to discharge its duties effectively	Provides stable and effective governance and leadership	Evolves where necessary in response to changes within the sectors that EWON covers and other aspects of the environment in which EWON operates	Minimises where possible the potential for the interests of a subset of members to have inappropriate influence
<b>C1</b> Four Industry Directors chosen from particular sectors by all members, and a fifth Industry Director elected by all members from a shortlist compiled by a Nominations Committee						
<b>C2</b> Five Industry Directors chosen from particular sectors by all members						
<b>D1</b> Four Industry Directors chosen from particular sectors by the members from those sectors, and a fifth Industry Director elected by all members from a shortlist compiled by a Nominations Committee						
<b>D2</b> Five Industry Directors chosen from particular sectors by the members from those sectors						

**Options C1, C2, D1 and D2** were largely found to be well-aligned with the agreed criteria after further testing with the Working Group and member consultation. The options have all performed similarly against the criteria because they share many similar elements. All options failed to fully meet Criteria 5, because reserved positions inherently reduce flexibility.

**NOTE: RATINGS ARE DEPENDENT ON THE VOTING RIGHTS MODEL CHOSEN**

KPMG undertook modelling of sector-based voting (see next page) in order to accurately assess **Options D1 and D2** against Criteria 6.

# Board composition – sector based voting

## Sector-based voting

As members noted during consultation, voting rights and the structure of EWON’s Board are closely linked. In order to accurately assess Options D, D1 and D2 against the agreed criteria, KPMG has modelled how sector-based voting would function under each of the proposed voting rights options. As a comparative example, both the Energy and Water Ombudsman for South Australia and Victoria have sector based voting for Board positions. While sector based voting had some support among consulted members and stakeholders, most favoured a voting model that gave all members universal voting rights.

**KPMG understands that during EWON’s history, non-competitive sectors (i.e. water and electricity networks) have agreed on director nominations from the sectors which best meet EWON’s requirements. It is not anticipated that this would change.**

For the purposes of this model, all members with less than 5000 customers have been allocated to the ‘Small’ sector unless they have an existing classification (retail, water or network). The table below sets out the minimum number of members required to reach a voting majority in each sector, based on EWON’s current constitution.

## Conclusions

As the modelling below demonstrates, when sector-based voting is applied to voting options B-G, a very small number of members are generally required to achieve a voting majority. There could potentially be risks associated with models that allow such a small number of members to control a voting majority in particular sectors, including Industry Director positions that are seen to be de facto reserved positions for particular companies. While this is particularly evident in the Water sector, where just one member will control a majority of votes under voting Options B-D, it is also relevant to Retail and Network members. It is less relevant to the ‘Small’ sector because customers are spread more evenly across these organisations.

	Retail	Network	Water	Small
<b>Total members</b>	<b>33</b>	<b>9</b>	<b>9</b>	<b>346</b>
<b>A</b> One vote per membership	17	5	5	174
<b>B</b> One vote per dollar of fixed annual fees	3	2	1	124
<b>C</b> One vote per customer	2	2	1	55
<b>D</b> One vote dollar of scaled customer fee	2	2	1	147
<b>E</b> One vote per dollar of annual fees capped at 60,000	6	3	2	124
<b>F</b> One vote per dollar of annual fees capped at 40,000	9	3	2	124
<b>G</b> One vote per dollar of annual fees capped at 20,000	12	4	3	124

Cap has no effect for ‘Small’ members because no member’s vote exceeds it.

# The proposed Board composition

## Options analysis



There were strong views among members that **Industry Directors should be appointed by members**. Members also expressed views that the Board should reserve Director positions for the major industry sectors under EWON's jurisdiction, but that all members should vote for each position. Members contended that this approach would organically ensure that the Board has a balanced set of skills, capabilities and industry experience.

## Tenure

There was a strong consensus amongst stakeholders that directors should be appointed for a three year term. There was some discussion around the merits of directors being able to seek one or two additional terms. The majority of stakeholders suggested, on balance, that one additional term would be appropriate.

A

Option A was deemed undesirable for most members and stakeholders consulted because of their preference for a model that included reserved positions for particular sectors.

B

C

D

Options B, C, and D were discussed at length by members and stakeholders during consultations and in submissions to EWON. While a very small minority supported these options as presented, most members rejected all three models because they all included one Industry Director chosen by the Board. Members rejected the suggestion that a Director chosen by the Board was necessary to ensure an appropriate mix of skills, and instead argued that the Board's final position should be selected by members.

When members and stakeholders considered Options B, C and D, excluding the Industry Director chosen by the Board, the majority supported Option C because it included Industry Director positions reserved for particular sectors but allowed all members to vote for all positions regardless of sector. Members argued that this approach ensured that appointments to the Board were fair, transparent and balanced.

E

Option E was deemed unsuitable by almost all consulted members and stakeholders because of strong consensus that Industry Directors should be chosen by members. Members generally agreed that this was essential to be adequately representative and give industry a voice on the Board.

# The proposed Board composition

## Summary of prospective Board composition options:



KPMG developed four additional options in response to consultation feedback, submissions to EWON and analysis against the agreed principles. These options have been tested with the Working Group and with members and stakeholders during additional consultations.

C1 C2

Options C1 and C2 recognise strong support among members for Industry Director positions to be reserved for EWON's defined sectors, but for each Director to continue to be elected by all members. Both options address the generally held consensus formed across consultations and submissions that the power to appoint Industry Directors should remain with members.

D1 D2

Options D1 and D2 recognise that there was some support for sector-based voting among EWON's members and stakeholders. These options are based on the premise that members of a sector are best placed to choose who occupies the Director's position reserved for that sector. It is noteworthy that both South Australia and Victoria's Energy and Water Ombudsmen have sector-based voting, and EWON's adoption of this approach will ensure consistency with these fellow organisations.

C1 D1

Options C1 and D1 seek to balance member and stakeholder views against the need to ensure that members of the Board have the skills necessary to properly discharge EWON's obligations. It ensures that the Board will be able to address skills and experience deficiencies that arise in its composition while retaining members' existing right to appoint all Industry Directors.

C2 D2

Options D2 and C2 aim to align EWON's Board with its changed membership profile. These models seek to ensure that customers from all sectors (including exempt entity customers) are recognised on the Board, while still acknowledging that over 80% of complaints managed by EWON relate to Retail energy members and it is therefore reasonable for this sector to have two reserved Industry Director positions.



# Summary

# Summary of final options

## Accepting of change

- The existing governance models of EWON are not fit for purpose in light of regulatory changes and should be reviewed

## Membership model

- The current membership model is to remain in place upon expansion of jurisdiction

## Funding model

- Proposed funding model to include scaled fees made up of: joining, annual base, annual fixed and annual variable fees

## Voting rights

### Two options:

- **B:** One vote per dollar of fixed annual fees
- **C:** One vote per customer

## Board composition

### Four options:

- **C1:** Four Industry Directors chosen from particular sectors by all members, and a fifth Industry Director selected by all members from a shortlist compiled by a Nominations Committee
- **C2:** Five Industry Directors chosen from particular sectors by all members
- **D1:** Four Industry Directors chosen from particular sectors by the members from those sectors, and a fifth Industry Director selected by all members from a shortlist compiled by a Nominations Committee
- **D2:** Five Industry Directors chosen from particular sectors by the members from those sectors



# Appendix A

# Appendix: Scope of consultation

## Current members:

- AGL
- 1<sup>st</sup> Energy
- Energy Australia
- Alinta Energy
- Red Energy
- Jemena
- ERM Power
- OC Energy
- APA Group
- Lendlease Recycled Water
- Sydney Water
- Hunter Water
- Flow Systems
- Origin Energy
- People Energy
- CovaU Energy
- Endeavour Energy
- Essential Energy
- Pooled Energy
- Ausgrid

## Consumer representatives:

- Public Interest Advocacy Group
- Energy Consumers Australia
- Tenants Union NSW
- Combined Pensioners
- Affiliated Residential Park Residents (ARPR)
- NSW Council of Social Service (NCOSS)

## Exempt entities:

- Caravan and Camping Industry Association of NSW
- Energy Trade
- Aquacell
- Network Energy Services
- Narrara Eco Village
- Compliance Quarter

**Observers:** Fair Trading NSW, NSW Department of Planning and Environment (IPART)

## Written submissions received:

- Origin Energy
- APA Group
- AGL
- Energy Australia
- PowerHub
- NCOSS
- Caravan and Camping Industry Association of NSW
- Ausgrid, Endeavour Energy and Essential Energy
- Tenants Union NSW
- Red Energy

# Follow-up current member consultations

## Summary

The final step of stakeholder consultation was to complete additional consultations with six existing members (**shown below**), specifically on the revised voting rights and board composition options.

The results of these consultations have been incorporated throughout the report where appropriate, and summarised on the following slide.



# Follow-up current member consultations

## Key consultation feedback themes

1

### Options for proposed voting rights

- Members consulted agreed that Options **B** (voting based on annual fees) and **C** (voting based on customer numbers) were the only viable models. None of the six members indicated a preference for any of the options that included a cap on the number of votes.
- While there was no clear consensus in relation to voting rights, there was a marginal preference for voting based on customer numbers.

2

### Options for proposed Board composition

- The majority of members consulted indicated that the alternative Board composition options developed were preferable to the original options outlined during the workshops.
- There was a marginal preference for all members voting on all positions (Options **C1** and **C2**). Members cited the simplicity of this approach and the importance of giving all members a voice to be the key advantages. Those members with a preference for sector based voting (Option **D1** and **D2**) cited advantages such as being able to make a more informed decision (as the nominee is more likely to be known) and avoiding larger members influencing Industry Director positions outside their sector.
- There was a slight preference for allocating the fifth Industry Director position to smaller members (Options **C2** and **D2**). The key concern in relation to having the fifth Industry Director selected by all members from a shortlist compiled by a Nominations Committee was that members should have full control over the appointment of Industry Directors.

3

### Further considerations

- Should the Board pursue the development of options C1 or D1, to address some member concerns, careful consideration will need to be given to the powers, role and composition of the Nominations Committee, and the role non-Industry Directors might play in the process.
- Regardless of the options selected, EWON should look to enhance the transparency and completeness of the processes associated with standing for an Industry Director position. This will assist current and future members make the most informed decisions possible.



# Appendix B: Case Studies

# Case Study 1: Telecommunications Industry Ombudsman

## Voting rights (poll)

One vote per dollar paid in operating costs to TIO



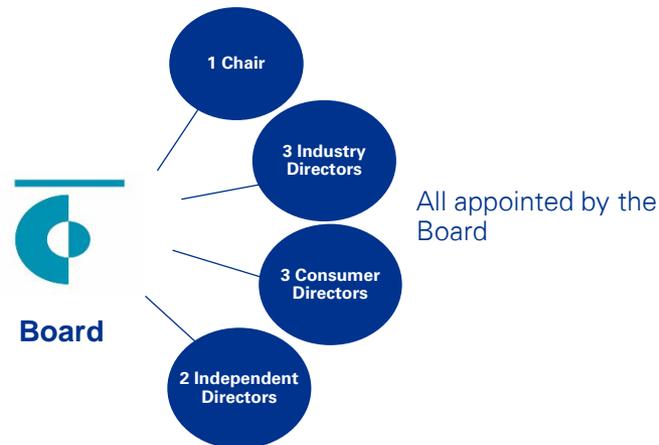
When a poll is called at TIO's AGM, members are entitled to one vote for each dollar spent on operating costs in the financial year prior to the meeting. Notably, while TIO members are separated into classes, this has no bearing on their entitlement to vote.

## Board composition

Appointments made by Board after Nominations Committee recommendation



The Board appoints both the Chair and all Directors. A Director must be nominated by the Nominations Committee before being appointed. The Nominations Committee comprises of the Board's Chair, one Consumer Director, one Industry Director, one person nominated by a peak group representing users of telecommunications services or public interest issues relevant to telecommunications services, and one person nominated by a peak group representing the telecommunications industry. Of the 3 Industry Connections, 2 positions are reserved for the first and second largest member companies based on customer numbers (currently Optus and Telstra).



# Case Study 2: Energy and Water Ombudsman Victoria

## Voting rights (poll)

One vote per customer



When a poll is called at EWOV's AGM, members are entitled to one vote for each customer they have (with the exception of special arrangements for Melbourne Water Corporation and SPI PowerNet Pty Ltd). Notably, while EWOV divides members into classes (water, gas or electricity) this does not affect a member's right to vote on any issue. Voting is conducted through a preferential process approved by the Board.

## Board composition

Reserved sector-based positions appointed by members



Water

The composition of EWOV's Board composition is similar to EWON's current model. Both share common features including a Independent Chair, 5 Industry Directors and 5 Community Directors. Under EWOV's model however, 3 Industry Directors positions are reserved for each of their three classes of membership (electricity, gas and water). Classes can appoint more than 1 Director as long as the total number does not exceed 5. EWOV currently has 4 Industry Directors who are employees of one of Origin, AGL, Western and AusNet services. EWOV's model for Industry Director appointments is predicated on EWOV's membership model which is based around classes of membership.



# Case Study 3: Financial Ombudsman Service



## Voting rights (poll)

One vote per dollar paid in levies and case costs to FOS



When a poll is called at FOS's AGM each member is entitled to one vote for each dollar paid to FOS by way of levies and case costs in the previous financial year. While FOS previously had a system of membership classes, they had no affect on a member's rights and no longer applied to members.

## Board composition

Appointments made by Board with due regard to relevant individuals and organisations



Industry Directors are appointed by the Board. Prior to appointing an Industry Director, the Directors must consult with, and have due regard to the views of, such individuals and organisations (including key industry organisations) as the Directors consider appropriate in order to give proper consideration to the person's expertise in and knowledge of one or more sectors of the Industry, Independence, capacity and willingness to consult with the Industry. FOS's constitution does not provide advice on the effects of not observing the due regard requirement but it is unlikely that this would invalidate an appointment.



# Case Study 4: Energy and Water Ombudsman South Australia



## Voting rights (poll)

One vote per customer



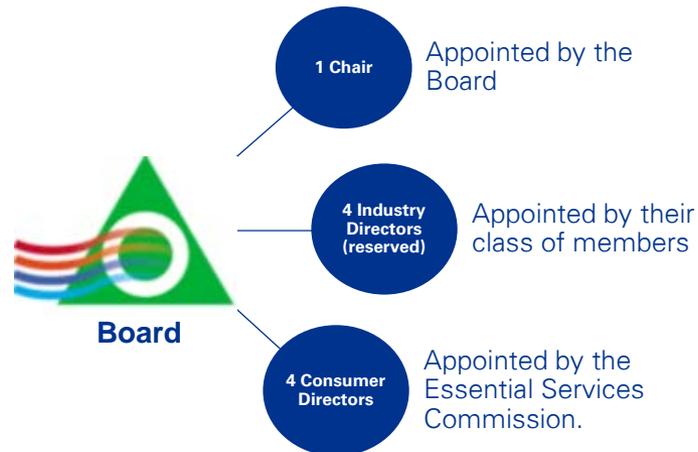
When a poll is called at EWOSA's AGM, members are entitled to a number of votes equal to their aggregate customer number at the time of the poll. EWOSA's defines customer numbers as the 'number of customers in South Australia of the relevant Member for either an electricity or a gas service, or a water service'.

## Board composition

Reserved sector-based positions appointed by members



The Board includes four Industry Directors. Two positions are elected by electricity members, one position for elected by gas and one position for water members. Each member is entitled to nominate one candidate for the position reserved for their sector. Current Industry Director positions are held by members of SA Water, AGL, SA Power Networks and Australian Gas Networks.



# Case Study 5: Energy and Water Ombudsman Queensland



## Voting rights (poll)

No voting rights



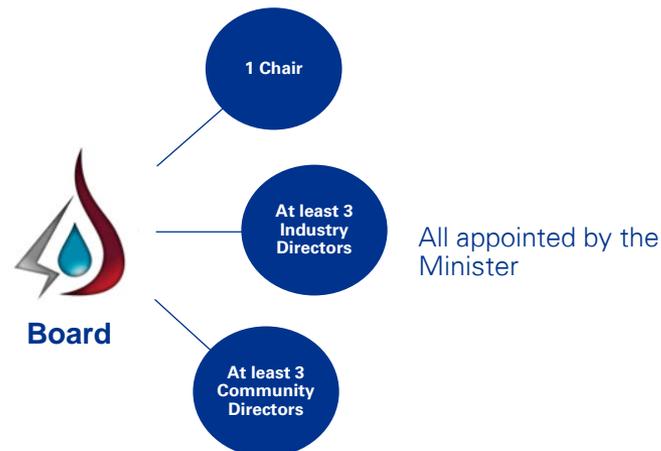
EWOQ is a statutory body created by legislation. Energy companies are not members (but rather scheme participants) and have no voting rights.

## Board composition

Representative Board at the recommendation of the Chairperson



EWOQ is led by an Advisory Council which consists of a chairperson and at least 6 other members appointed by the Minister. There must be equal numbers of industry and consumer representatives. Industry representatives are appointed on the recommendation of the Chair after consultation with the scheme participants. Current industry representatives come from Origin, Unitywater, Red Energy and Lumo Energy, and Ergon Energy Retail.





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