

THE CORPORATIONS ACT

CONSTITUTION

OF

**ENERGY AND WATER OMBUDSMAN
(SA) LIMITED**

(ACN 089 791 604)

**A company limited by guarantee
Incorporated in South Australia**

Adopted by Special Resolution passed on 25 May 2022

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The Corporations Act

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CONSTITUTION

OF

ENERGY AND WATER OMBUDSMAN (SA) LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution the following definitions apply unless the context requires otherwise:

“**AER**” means the Australian Energy Regulator, established under Part IIIAA of the *Competition and Consumer Act 2010*.

“**Annual Funding Figure**” in respect of a Financial Year means the figure to be contributed by the Members toward the total funding of the Company for that Financial Year, approved by the Members in general meeting in accordance with Clause 11.4 or determined by the Commission in accordance with Clause 10.6 (as may have been varied under Clause 11.7).

“**Annual Levy**” means the annual levy payable by a Member to cover operating costs of the Scheme.

“**Board**” means the whole or any number of Directors assembled at a meeting of Directors not being less than a quorum.

“**Budget**” means the budget for each Financial Year set in accordance with the Charter.

“Charter” means the Charter of the Company, as amended from time to time.

“Commission” means the Essential Services Commission (of South Australia) established under the *Essential Services Commission Act 2002 (SA)*.

“Company” means Energy and Water Ombudsman (SA) Limited (ACN 089 791 604).

“Competition and Consumer Act” means the Competition and consumer Act 2010 as amended by the Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2021

“Notifiable Instrument” means the Competition and Consumer (Consumer Data Right – Recognised External Dispute Resolution Schemes) Instrument 2021

“Constitution” means this Constitution as amended from time to time.

“Consumer Data Rules” means the rules in force under section 56BA of the Competition and Consumer Act.

“Corporate Representative” means a representative appointed by a Member in accordance with section 250D of the Corporations Law.

“Customer” means a customer of a Member for either an electricity or gas service, or a water service, and includes the owner and occupier of land or other property over which a Member is exercising statutory powers in relation to that land or other property or in relation to neighbouring land or other property. A retail gas customer shall be deemed to be a customer of the gas distributor. Also see “Water Customer”.

“Customer Numbers” means the number of customers in South Australia of the relevant Member for either an electricity or a gas service, or a water service. For the purpose of calculating the “customer numbers” for the Electricity Transmission Member, it shall be treated as if it had “customer numbers” equivalent to 5% of the total number of electricity retail customers.

“Defaulting Member” means any Member who neglects or wilfully refuses to comply with the provisions of this Constitution, the Charter or any regulations of the Company.

“Director” means any Director of the Company for the time being.

“Electricity Act” means the *Electricity Act 1996 (SA)*.

“Electricity Member” is a Member who holds any licence under the Electricity Act or an authorisation under the National Energy Retail Law, or any Member who is exempt from the requirement to hold a licence or authorisation and, as a condition of the exemption, is required to become a Member.

“Embedded Network” means a distribution system, connected at a connection point to either a distribution system or transmission system that forms part of the national grid, and which is owned, controlled or operated by a person who is not a network service provider (as defined in the National Electricity Law).

“Energy Service” means the product or service provided to satisfy an energy demand or need, including the transmission, distribution and supply of electricity, or the distribution and supply of gas and associated energy services.

“Exempt Network Service Provider” means an operator of a network who is exempted from the requirement to be a registered network service provider.

“Exempt Energy Seller” means a person, business or other entity holding or subject to an individual, registrable or deemed exemption under the National Energy Retail Law, in accordance with the AER (Retail) Exempt Selling Guideline.

“Financial Year” means the financial year of the Company being the period from 1 July in each year to 30 June in the following year.

“Gas Act” means the *Gas Act 1997 (SA)*.

“Gas Member” is a Member who holds any licence under the Gas Act or an authorisation under the National Energy Retail Law or any Member who is exempt from the requirement to hold a licence or authorisation and, as a condition of the exemption, is required to become a Member.

“Member” means any person for the time being admitted to membership of the Company (as either an electricity or a gas Member or both, or as a water Member) and who contracts to be bound by and participate in the Scheme. For the avoidance of doubt, “Member” does not include third party agents.

“National Electricity Law” means the Schedule, National Electricity (South Australia) Act 1996

“National Energy Retail Law” means the *National Energy Retail Law (South Australia) Act 2011* and any other legislation in force that implement the National Energy Retail Law in South Australia, and all statutory instruments made under, in accordance with, or for the purposes of that Act.

“OAIC” means the Office of the Australian Information Commissioner.

“Ombudsman” means the Energy and Water Ombudsman appointed pursuant to Clause 17.

“Scheme” means the South Australian Energy and Water Ombudsman Scheme provided for in this Constitution and the Charter.

“Water Act” means the *Water Industry Act 2012*.

“Water Customer” means customer, as defined in the *Water Industry Act 2012*.

“Water Member” means:

- (a) a Member who holds any licence under the Water Act, or
- (b) any Member who is exempt from the requirement to hold a licence or authorisation and, as a condition of the exemption, is required to become a Member.

“Water Service” means:

- a) a service constituted by the collection, storage, production, treatment, conveyance, reticulation or supply of water; or any other service, or any service of a class, brought within the ambit of this definition by the regulation under the Water Act, or
- b) a service constituted by the collection, storage, treatment or conveyance of sewage through the use of a reticulated system, or
- c) any other service, or any service of a class, brought within the ambit of this definition by the regulations under the Water Act.

“Year” means a period of 12 consecutive months.

1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa
- (b) a gender includes all genders
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning
- (d) the word person includes a firm, body corporate, unincorporated association or authority
- (e) a reference to writing includes typing, printing, lithography and any other mode of representing or reproducing words or figures in a visible form including words or figures displayed on an electronic screen
- (f) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them
- (g) terms defined in the Corporations Act have the same meaning when used in this Constitution, and
- (h) headings are for convenience only and do not affect interpretation.

1.3 Replaceable Rules

The replaceable rules contained in the Corporations Act do not apply to the Company and are replaced by the rules set out in this Constitution.

2. OBJECTS

The objects of the Company are to maintain an independent Energy and Water Ombudsman Scheme in South Australia and to appoint an Ombudsman with the power to receive, investigate and facilitate the resolution of:

2.1 Complaints by Customers regarding:

- (a) the connection, supply, or sale of (or the failure to connect, supply or sell) electricity, gas or water services by a Member to a Customer as required or permitted by a licence, authorisation or agreement
- (b) billing disputes
- (c) the administration of credit and payment services by a Member
- (d) disconnection and security deposit issues
- (e) the manner in which a Member has exercised its statutory powers in relation to land or other property owned or occupied by the Customer or in relation to neighbouring land or other property
- (f) privacy and credit reporting under the *Privacy Act 1988*, and

2.2 Complaints referred by the Commission or the AER in relation to the conduct of a Member's business, and

2.3 Complaints referred by the OAIC in relation to acts or practices of a Member on privacy or credit reporting related matters, and

2.4 Complaints relating to the operation of the Consumer Data Rules in relation to the energy sector, and

2.5 Such other complaints as may, by agreement with the Ombudsman (including agreement as to jurisdiction, powers, procedures and costs) and the complainant, be referred to the Ombudsman by a Member.

A further object of the Company is to provide information to Members to assist them in the development and maintenance of good complaint-handling practices.

3 LEGAL CAPACITY AND POWERS

The Company has all of the powers of a natural person as set out in section 124(1) of the Corporations Act.

4 LIABILITY OF MEMBERS LIMITED

The Company is a public company limited by guarantee.

Every person who is or has been a Member undertakes that in the event that the Company is wound up during the currency of that membership or within one year of the person ceasing to be a Member, they will contribute to the property of the Company for:

- (a) payment of the debts and liabilities of the Company incurred before the person ceased to be a Member
 - (b) the costs, charges and expenses of winding up
 - (c) an adjustment of the right of the contributories among themselves, and
 - (d) such other amount as may be required
- up to a maximum amount of one hundred dollars (\$100).

5 INCOME AND PROPERTY OF THE COMPANY

5.1 The entire income and property of the Company shall be applied solely towards the promotion of the objects of the Company as set out in Clause 2 and no part shall be paid or transferred directly or indirectly to Members by way of dividend, bonus or otherwise.

5.2 Nothing in Clause 5.1 or this Constitution prevents the payment:

- (a) in good faith of remuneration to any officers or employees of the Company or to any Member in return for goods supplied or services rendered in the ordinary and usual course of business
- (b) of interest at prevailing market rates on money borrowed from any Member, and
- (c) of reasonable and proper rent for premises let by any Member to the Company.

6 MEMBERS OF THE COMPANY

The Members of the Company shall consist of the subscribers to this Constitution, and such other persons who are admitted to membership in accordance with this Constitution from time to time.

The Company Secretary shall maintain a register of membership of the Company from time to time.

7 MEMBERSHIP

7.1 A person shall be eligible to be a Member only if the person:

- (a) is the holder of a retail, distribution or transmission licence issued under the Electricity Act, or
- (b) is the holder of a retail or distribution licence issued under the Gas Act, or
- (c) is South Australian Water Corporation or is the holder of any licence issued under the Water Act, or
- (d) is the holder of a relevant authorisation under the National Energy Retail Law, or
- (e) is the holder of an exemption under the Electricity Act, the Gas Act, the Water Act, the National Electricity Law or the National Energy Retail Law, including an exempt energy seller or an exempt network service

provider (for example, an Embedded Network operator) distributing energy or water to small customers within South Australia, and

- (f) such person agrees in writing to become a Member of the Company by completing an application for membership in the form prescribed by the Board, and
- (g) at the time of making the application, undertakes in writing to:
 - (i) participate in the Scheme in accordance with the provisions of the Constitution and the Charter (as amended from time to time), and
 - (ii) pay the Joining Fee and the Annual Levy as determined by the Board.

7.2 The Board may accept, reject or defer consideration of any application for membership. If accepted, the applicant shall be deemed to be a Member from the date of acceptance.

7.3 The rights and privileges of a Member shall not be transferable without the approval of the Board.

7.4 Each Member:

- (a) must at all times comply with this Constitution and the Charter
- (b) must operate a bona fide internal complaints handling service in relation to its energy or water services for the benefit of its customers and publicise to users of their energy or water services the availability of that service
- (c) must inform customers of their energy and water services that the Scheme is available to provide them with a free complaints resolution service
- (d) must appoint a contact person for the Scheme and provide the Scheme with the name and contact details of that person and any replacement contact person appointed from time to time
- (e) must comply with any Ombudsman's Binding Decision, as defined in clause 7 of the Company's Charter
- (f) consents to the Ombudsman and the Company making public:
 - (i) any failure by the Member to comply in whole or in part with a Binding Decision of the Ombudsman, or
 - (ii) the termination of the Member's participation in the Scheme, and
- (g) consents to the provision, by the Ombudsman and the Company, of any information the Ombudsman is entitled or required to provide under his/her existing powers concerning the Member to regulators, government agencies or other relevant authorities.

8 CESSATION OF MEMBERSHIP

- 8.1 Any Member may withdraw from the Company by giving the Company Secretary not less than one month's notice to that effect and its membership shall cease on expiry of such notice.
- 8.2 The Directors may pass a resolution recommending the expulsion of a Defaulting Member from the Company. The Directors must, within 21 days of such a resolution being passed, convene a meeting of Members to determine whether or not to adopt the Directors' recommendation and expel the Defaulting Member. Membership ceases on the passing of the Members' resolution.
- 8.3 Any person who ceases to be a Member shall:
- (a) forfeit all and any rights and privileges of membership as at the date of cessation of membership
 - (b) have no further rights against or claims upon the Company or the property or funds of the Company, except rights or claims as a creditor (if any) and any rights or claims arising from actions or omissions during the period of membership
 - (c) continue to be liable for payment of monies due to the Company by the Member and unpaid as at the date of cessation of membership and in addition for any sum for which that person is liable as a Member under Clause 4.2 of the Constitution
 - (d) continue to be bound by (and shall discharge) any determination of the Ombudsman made in respect of any complaint unresolved or outstanding at the date of cessation of membership.

9 FUNDING

9.1 Annual Levy

- (a) The Board shall determine an Annual Levy to be paid by each Member to satisfy the Budget and to cover the annual costs of the Scheme.
- (b) The Annual Levy for each Member shall have two components as follows:
 - (i) a fixed per capita contribution as determined by the Board in consultation with the Commission from time to time, and
 - (ii) the balance being a further contribution determined annually by the Board based on the amount required to fund the Scheme for the relevant year.
- (c) For the purposes of Clause 9.1(b)(ii) the calculation of the contribution shall be determined and allocated between Members taking into account Customer Numbers for each energy or water

service, Members' usage of the Scheme based on the previous year and any other matter determined by the Board to be relevant.

- (d) Supplementary Annual Levies will be payable by Members where:
- (i) they are necessary because of revised Budgets
 - (ii) they arise from matters concerning individual Members where a determination is made by the Board that a Supplementary Annual Levy is necessary to cover those matters.

9.2 Joining Fee

Each new Member shall be required to pay a Joining Fee as determined by the Board in consultation with the Commission from time to time.

9.3 Loans

The Board may, by unanimous resolution of all Directors entitled to vote, raise loans from Members or third parties for particular purposes with the approval of the Company in general meeting. Loans, for the purpose of this Clause, do not include short term debt, such as a bank overdraft facility.

10 BUSINESS PLANS, ANNUAL FUNDING FIGURES AND BUDGETS

- 10.1 For each successive Financial Year, the Board shall require the Ombudsman to prepare a proposed business plan for the Company and to submit to the budget committee at a time determined by the Board before the commencement of that Financial Year. The Board shall require the Ombudsman to submit with the business plan a proposed Annual Funding Figure and a proposed Budget for the relevant Financial Year.
- 10.2 The Board will, from time to time, appoint a budget committee, known by whatever name the Board chooses, comprising an equal number of Directors appointed by the Members and Directors otherwise appointed.
- 10.3 The Chair of the Board may not be appointed as Chair of the budget committee.
- 10.4 The budget committee will, for each Financial Year, formulate a proposed Annual Funding Figure for the Company in a proposed Budget in consultation with the Ombudsman, and submit them to the Board at a time determined by the Board before the commencement of that Financial Year.
- 10.5 The Board will, for each Financial Year, produce a proposed Annual Funding Figure for the Company and a proposed Budget, taking into consideration the proposed Annual Funding Figure and proposed Budget formulated by the budget committee, and will ensure that the Board's proposed Annual Funding Figure is put before a general meeting of the Company to be voted upon at least 14 days before the commencement of that Financial Year.

- 10.6 In producing proposed Annual Funding Figures the Board will seek to ensure that the level of funding is such that the Ombudsman is able to carry out the functions under the Constitution and the Charter.
- 10.7 If the Company in general meeting does not, at least 14 days before the commencement of a Financial Year, approve the Annual Funding Figure proposed by the Board for that Financial Year, the Board may refer the setting of the Annual Funding Figure for that financial year to the Commission for determination.
- 10.8 Variations to Annual Funding Figures of the Company may be proposed by the Board but will only be effective once passed by the Company in general meeting, except that if a motion to accept such a variation is not passed when put to a general meeting of the Company, the Board may refer the proposed variation to the Commission for determination.
- 10.9 If the Annual Funding Figure put by the Board to a general meeting of the Company in accordance with Clause 10.5 is passed by the meeting or if referred to the Commission under Clause 10.7 is approved by the Commission, the Board's proposed Budget will become the Budget for the relevant Financial Year. If the Commission determines an Annual Funding Figure other than the one proposed by the Board, or if the Annual Funding Figure is varied in accordance with Clause 10.8, the Board shall as soon as possible refer the matter to the Budget Committee for discussion with the Ombudsman. The Budget Committee shall then, as soon as possible, propose a new Budget based on the Commission's determination and submit it to the Board. The Board shall then, as soon as possible, consider the new Budget based on the Commission's determination. Once the new Budget has been approved by the Board, it shall become the Budget for the relevant Financial Year.
- 10.10 The Company must not make any expenditure in excess of a current Budget. A Budget may be varied only by the same process as for a new Budget.

11. GENERAL MEETINGS AND ANNUAL GENERAL MEETINGS

- 11.1 Annual general meetings of the Company shall be held in accordance with the provisions of the Corporations Act. All general meetings other than annual general meetings shall be called "general meetings".
- 11.2 General meetings may be convened by the Board whenever it thinks fit or by requisition as provided by the Corporations Act.
- 11.3 Subject to the provisions of the Corporations Act relating to special resolutions and consent to short notice, at least twenty-one days' notice (exclusive of the day on which the notice is served or received or deemed to be served or received and exclusive of the day for which notice is given) specifying the place, the day and the time of meeting and, in the case of special business, the general nature of that business, shall be given to persons entitled to receive such notices from the Company.

- 11.4 For the purposes of Clause 11.3, all business that is transacted at a general meeting or annual general meeting (with the exception of the consideration of accounts, financial statements and the reports of the Board and auditors) shall be special business.
- 11.5 Accidental omission to give notice of a general meeting or annual general meeting by the Company to, or the non-receipt of notice of a meeting by, any Member shall not invalidate proceedings at a general meeting or annual general meeting.
- 11.6 The Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Any such resolution may consist of several identical documents each signed by one or more Members.

12. PROCEEDINGS AT GENERAL MEETINGS AND ANNUAL GENERAL MEETINGS

12.1 Quorum

No business shall be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise provided in this Constitution, eight Members shall constitute a quorum at any general meeting. At times when the Company has less than eight Members a quorum shall be constituted by all the Members of the Company. The quorum must be present at all times during the meeting. For the purpose of this clause, persons attending as a proxy or Corporate Representative shall be counted as Members.

12.2 If Quorum is not present

If a quorum of Members is not present within 30 minutes of the time appointed for a general meeting, the meeting shall, if convened upon the requisition of Members, be dissolved or, in any other case, stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Chair may determine (being a day which is not more than 30 days after the originally scheduled date).

If a quorum of Members is not present within 30 minutes of the time appointed for the adjourned meeting (and notice of the general meeting having been properly given in accordance with this Constitution) then the quorum shall be any six Members.

12.3 Chair

The Chair of the Board shall preside as Chair at general meetings of the Company. If the Chair of the Board is not present within 30 minutes of the time appointed for holding a general meeting or if the Chair of the Board is

unable or unwilling to act, the Members present shall elect one of their number to be Chair of the general meeting.

12.4 Adjourned Meetings

The Chair of any general meeting may, with the consent of the majority of those Members present at the general meeting (being a meeting at which the quorum is present) adjourn the general meeting. No business shall be transacted at any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.

Except as otherwise provided by the Constitution, it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned general meeting.

12.5 Voting

- (a) Any resolution to be considered at a general meeting shall be decided on a show of hands, unless a poll is demanded before or on the declaration of the result of the show of hands by any Member present in person, by proxy, by attorney or by Corporate Representative and who is entitled to vote.
- (b) Unless a poll is so demanded, a declaration by the Chair of the general meeting that a resolution has been carried, carried unanimously, carried by a particular majority or lost on a show of hands and an entry to that effect made in the minutes of proceedings of the Company, shall be conclusive evidence of the fact of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.
- (c) If a poll is duly demanded, it shall be taken either at once or after an interval or adjournment and in such manner as the Chair of the general meeting directs. A poll demanded on the election of the Chair of the general meeting or on the question of adjournment shall be taken immediately.
- (d) On a poll for general business each Member will have the number of votes equal to the aggregate of its Customer Numbers at the time of the poll for each energy or water service provided that every Member will have at least one vote
- (e) On a poll for the election of a Director to the Board under Clause 13.1 each Member will have the number of votes equal to its Customer Numbers at the time of the poll for the particular energy or water service.
- (f) The result of the poll shall constitute the resolution of the meeting at which the poll was demanded.
- (g) For the purposes of this clause “energy service” will be either an electricity service or a gas service, and customer numbers for each service will be calculated accordingly. Water service will be the services provided by water Members, and customer numbers will be

the number of customers each water Member has in South Australia at the time of the poll.

- (h) In the case of an equality of votes on a show of hands or on a poll, the Chair of the general meeting shall not be entitled to a second or casting vote and the motion shall be deemed lost.
- (i) A Member may vote in person, by proxy, by attorney or by Corporate Representative. On a show of hands, every Member shall have one vote.

12.6 Proxies and Other Authorities

- (a) The instrument appointing a proxy for a general meeting or a poll shall be in the form determined by the Board and shall be either under seal or under the hand of an officer or duly authorised attorney of the Member.
- (b) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Member shall be entitled to instruct his or her proxy to vote in favour of, or against, any proposed resolution. Unless otherwise instructed, a proxy may vote as he or she thinks fit.
- (c) The instrument appointing a proxy for a Member and a copy of the power of attorney or other authority under which it is signed shall be deposited at the registered office of the Company (or such other place within the State as is specified for that purpose in the notice convening the general meeting) not less than 24 hours before the general meeting or adjourned general meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. In default of the foregoing requirements, the instrument of proxy may, at the discretion of the Chair of the general meeting, be declared invalid.
- (d) A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding:
 - (a) revocation of the instrument, or
 - (b) revocation of the authority under which the instrument was executedunless an indication in writing of such revocation has been received at the registered office of the Company before the commencement of the general meeting at which the instrument is used.
- (e) Any corporation or other body corporate which is a Member of the Company may authorise such person as it thinks fit to act as its Corporate Representative at any general meeting of the Company. The person so authorised shall be entitled to exercise the same powers on behalf of the Member as the Member could exercise and

in accordance with his or her authority until his or her authority is revoked by the Member.

12.7 Virtual and Hybrid Meetings

- (a) The Company may hold general meetings and annual general meetings at two or more venues (a physical meeting) or at one or more physical locations and using any technology to allow persons to attend virtually (a hybrid meeting) or using any technology to allow members to attend virtually (a wholly virtual meeting).
- (b) Where the meeting is hybrid or wholly virtual, all the members who are entitled to receive notice of the meeting will receive sufficient information about the technology being used for the meeting and how to join the online part of the meeting.
- (c) The general meeting or annual general meeting is taken to be held at the main physical location if it is a hybrid meeting or at the registered office of the Company if it is a wholly virtual meeting.
- (d) The notice of the meetings, proxy forms and related materials may be distributed to members electronically, or alternatively, sufficient information may be given to members by electronic communication to allow them to access the documents electronically.
- (e) Members will be given reasonable opportunity to participate, including to speak orally at the meeting if a member elects to do so.
- (f) Voting on resolutions at meetings using technology will be conducted by poll rather than show of hands.

13. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS

The Board

13.1 The Board shall consist of nine Directors comprising of:

- (a) two Directors who shall be elected by Electricity Members voting as if it were a poll as provided under clause 12.5 (c). Each Electricity Member may only nominate one candidate for election to the Board
- (b) one Director who shall be elected by Gas Members voting as if it were a poll as provided under clause 12.5 (c). Each Gas Member may only nominate one candidate for election to the Board
- (c) one Director who shall be elected by Water Members voting as if it were a poll as provided under clause 12.5 (c). Each Water Member may only nominate one candidate for election to the Board, and
- (d) additional Directors appointed under Clause 13.3.

For the purposes of 'voting as if it were a poll' under clauses (a), (b) and (c) above, each Member who has nominated a candidate, shall only vote for the candidate they have nominated in the election of a Director to the Board. Members other than those nominating a candidate, shall not be included in the poll.

- 13.2 Only one person who is a director or employee of each Member may be a Director.13.3 The Directors appointed under Clause 13.1 (a), (b) and (c) shall appoint to the Board:
- (a) four persons nominated by the Commission to represent customers of electricity, gas and water services or public interest groups relevant to such services, and
 - (b) an independent Chair in accordance with Clause 13.4.
- 13.4 The Directors shall, with the approval of the Commission, appoint a person to be the independent Chair of the Board for a term of no more than 3 years, who shall be eligible for reappointment for a subsequent term or terms.
- 13.5 No Director who is elected shall hold office for a period in excess of three years, or until the third annual general meeting following the Director's election, whichever is the longer, without submitting himself or herself for re-election.
- 13.6 The Directors nominated by the Commission and appointed under Clause 13.3 (a) shall hold office for a term of no more than three years as determined by Commission, and they shall be eligible to be nominated and appointed again for a subsequent term or terms.
- 13.7 No director appointed under clauses 13.3 (a) and (b) shall be eligible to serve more than 9 consecutive years as a director.

Vacation of Office

- 13.8 The office of a Director becomes vacant if the Director:
- (a) becomes a bankrupt or makes any arrangement or composition with his or her creditors generally
 - (b) becomes prohibited from holding the office of a Director under the Corporations Act
 - (c) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health
 - (d) resigns by notice in writing to the Company
 - (e) is absent from meetings of the Board for more than 6 months without the permission of the Board
 - (f) holds any office of profit under the Company or receives any payment from the Company other than remuneration properly payable in accordance with this Constitution
 - (g) is removed by the Members in general meeting, in the case of Directors elected by the Members, or
 - (h) is removed by the Directors (with the prior approval of the Commission in the case of the Chair or the Directors appointed to represent customers of electricity, gas or water services or public interest issues relevant to such services)

- (i) in the case of Directors appointed under Clauses 13.1 (a), (b) and (c) by the Electricity Members, Gas Members or Water Members (but excluding the Chair), ceases to be employed by or to be an officer or a member, unless otherwise resolved by the relevant Member.

Casual Vacancy

13.9 Should a casual vacancy in the office of a Director occur at any time, then the Office must be filled for the unexpired term of the Director by a process consistent with the process for the appointment of the Director under this Clause 13, except that in the case of Directors appointed under Clauses 13.1 (a), (b) and (c) by the Electricity Members, Gas Members or Water Members (but excluding the Chair), the relevant Member may nominate a Director for the unexpired term of the resigning Director, and in the case of Directors appointed under Clause 13.3, at the discretion of the Commission.

Remuneration

13.10 Total annual figure for remuneration of Directors:

- (a) The Members may in general meeting approve a total annual figure for the remuneration of the Directors under this clause.
- (b) If so (and in no other case), the Directors may, by resolution of the Board, be entitled to be paid out of the funds of the Company, as remuneration for their ordinary services as Directors.

Such remuneration must be the same for each of these Directors, except that the Board may resolve that the independent Chair may receive greater remuneration than the other Directors.

Remuneration fixed by the Board for the Directors' ordinary services must not exceed the relevant total annual figure approved by the Members in general meeting.

- (c) If any Director performs services which, in the opinion of the Board, are outside the scope of the ordinary duties of a Director, he or she may be paid a sum determined by the Board, by way of special remuneration for such services.

14. POWERS AND DUTIES OF THE DIRECTORS

14.1 Subject to:

- (a) the Corporations Act
- (b) this Constitution
- (c) the Charter, and
- (d) such regulations as may be prescribed by the Board or the Company in a general meeting that are not inconsistent with the Corporations Act, this Constitution or the Charter,

the business, affairs and property of the Company shall be managed by the Board who may pay all expenses incurred in promoting and maintaining the Company out of the funds of the Company and may exercise all powers of the Company that are not required to be exercised by the Company in general meeting.

- 14.2 Any regulation made by the Board shall be circulated among Members within one month of being made.
- 14.3 Each officer of the Company (including each Director) must comply with the following duties (insofar as the Corporations Act imposes them, or they are otherwise imposed by law, from time to time) in the exercise of his or her powers and the discharge of the duties of his or her office:
- (a) he or she must at all times act honestly
 - (b) he or she must exercise the degree of care and diligence that a reasonable person in a like position in a corporation would exercise in the Company's circumstances
 - (c) he or she must not make improper use of information acquired by virtue of his or her position to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Company or another person, and
 - (d) he or she must not make improper use of his or her position to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Company or another person.

Each officer of the Company (including each Director) must also comply with all other obligations imposed by law.

- 14.4 Subject to Clause 9.3, the Board may exercise all the powers of the Company to borrow or raise money.
- 14.5 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments drawn on bank accounts maintained by the Company and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in the manner determined by the Board from time to time.
- 14.6 The Board shall cause minutes to be made of:
- (a) all appointments of officers and employees of the Company
 - (b) the names of Directors present at all general meetings of the Members and meetings of the Board, and
 - (c) all resolutions and proceedings at general meetings of the Members and meetings of the Board.

15. PROCEEDINGS OF THE BOARD

15.1 Meetings

- (a) The Board may meet together to attend to business and adjourn and otherwise regulate its meetings as it thinks fit.
- (b) A Director may at any time and the Company Secretary shall on the requisition of a Director, summon a meeting of the Board.
- (c) A meeting of directors may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.
- (d) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum constitutes a meeting of the directors.
- (e) A meeting by telephone or other electronic means is taken to be held at the place where the Chair of the meeting is.
- (f) A director taking part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.

15.2 Voting

- (a) Subject to Clause 15.3, questions arising at any meeting of the Board shall be decided by a simple majority of votes and a determination by an appropriate majority of the Board shall be deemed to be a determination of the Board.
- (b) Subject to clause 10.3, decisions of the Board in respect of levies and funding under Clause 10 must be passed at a meeting of Directors by a majority of at least 75% of such Directors as are present and, being entitled to do so, vote in person at that meeting.

15.3 Quorum

- (a) The number of Directors necessary for a quorum for a meeting of the Board shall be five.
- (b) The Directors may act notwithstanding any vacancy or vacancies in the Board membership, but if and so long as their number is reduced below the number fixed by this Constitution as a quorum of the Board, the Directors may only act for the purpose of calling a general meeting and seeking such amendments to this Constitution as would be desirable in the circumstances to enable sufficient Directors to be appointed to constitute a quorum, or to amend Clause 13.1.1.

15.4 Chair

- (a) If there is no Chair or if the Chair is not present within 10 minutes after the time appointed for holding a meeting of the Board, then the Directors present may elect one of their number to be the Chair of the meeting.

- (b) The Chair of any meeting shall have a deliberative vote but shall not have a casting vote on any matter at a meeting.

15.5 Committees

- (a) In addition to the budget committee, the Board may establish such other committees as it deems appropriate. Membership of committees shall comprise Directors and Officers of the Company and such other persons as the Board determines.
- (b) The Board may delegate any of its powers and/or functions (except powers conferred and duties imposed on the Directors by law which are incapable of delegation) to a committee or an Officer of the Company.
- (c) The committees so formed shall:
 - (i) conform to any regulation that may be imposed by the Board
 - (ii) have power to co-opt any person or persons for assistance provided that any person so co-opted shall not have a vote on such committee unless authorised by the Board
 - (iii) meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit
 - (iv) determine questions arising at any meeting by a simple majority of votes of the committee members present and entitled to vote and, in the event of an equality of votes on a motion, the Chair of the committee shall not have a second or casting vote and the motion shall be deemed lost.

15.6 Validity of Actions

All acts of the Board, a committee or a person acting as a Director or committee member shall be deemed valid as if every such person had been duly appointed and was qualified to act and to hold their purported office, notwithstanding that it is subsequently discovered that:

- (a) there was a defect in the appointment of a Director or committee member or person so acting, or
- (b) a Director or committee member acted while disqualified.

15.7 Circulating Resolutions

A resolution in writing circulated to and signed by all the Directors for the time being entitled to receive notice of meetings of the Board and vote on a matter, shall be valid and effectual as if it had been passed at a duly convened meeting of the Board. Any such resolution may consist of several identical documents each signed by one or more Directors.

For the purposes of this clause 15.7, a reference to “all the Directors” does not include:

- (i) a Director who, at a meeting of directors, would not be entitled to vote on the resolution
- (ii) a Director who disqualifies him or herself from considering the resolution in question, or
- (iii) any Director on leave of absence approved by the Board.

A resolution passed in accordance with this Clause shall be tabled at the next following meeting of the Board and be noted in the minutes of that meeting.

15.8 Declarations of Interest

- (a) A Director may not be counted in any quorum and is not entitled to vote in respect of any contract or proposed contract with the Company in which he or she has a direct or indirect interest.
- (b) In addition to the requirements of Clause 15.9 (a), if a Director has a material personal interest in a matter being considered by the Board, the requirements of the Corporations Act shall be satisfied.

15.9 Alternate Directors

- (a) With the approval of the Board (and in the case of the Chair and the Directors appointed on the Commission's nomination to represent customers of electricity, gas and water services or public interest issues relevant to such services, with the approval of the Commission) any Director may appoint any person or another Director to be an alternate Director in his or her place during such period as he or she thinks fit.
- (b) Any alternate Director shall be entitled to notice of meetings of Directors, to attend and vote at such meetings and to exercise all the powers of the appointor in his or her place. An alternate Director shall immediately vacate office if the appointor vacates or is removed from office. Any appointment or removal under clause 15.10 (a) shall be effected by notice in writing signed by the appointor and delivered to the registered office of the Company.
- (c) An alternate Director who is also a Director in his or her own right shall be entitled to vote in his or her own capacity as Director and again for the alternate Directorship held.

16. CHARTER

- (a) The Company shall maintain a Charter for itself, the Members and the Ombudsman.
- (b) The Company shall operate in accordance with this Constitution and the Charter and shall observe the roles, functions, powers and obligations of the Ombudsman set out in the Charter.

- (c) In becoming a Member of the Company each Member agrees:
 - (i) to be bound by and observe the terms of the Charter (to the extent that it is consistent with this Constitution), and
 - (ii) that any amendments to the Charter shall be made in accordance with the terms of the Charter for the time being in force.

17. OMBUDSMAN

- (a) The Board shall appoint an Ombudsman for such term and upon such terms and conditions as the Board thinks fit, and whose terms of appointment shall include an undertaking by the Ombudsman to be bound by the Charter.
- (b) A person who is associated with any Member is ineligible to be appointed as Ombudsman and during the term of appointment the Ombudsman must not be associated with any Member.
- (c) The Board may, at any time and subject to contractual obligations, terminate the appointment of the Ombudsman.
- (d) The Board may appoint a person to act in the position of the Ombudsman in the event of the incapacity or absence on leave of the Ombudsman.
- (e) The Board shall use reasonable endeavours to ensure that the Ombudsman complies with the Scheme, and that the Members use their best endeavours to assist the Ombudsman to discharge his duties under the Scheme.

18. COMPANY SECRETARY

- (a) The Board shall appoint a Company Secretary for such term and upon such terms and conditions as the Board thinks fit.
- (b) The Board may, at any time, terminate the appointment of the Company Secretary.
- (c) If the Company Secretary is also a Director of the Company, then subject to Clause 14.4 he or she is entitled to receive remuneration as determined by the Board.

19. SEAL

- (a) The Company may have a common seal. If the Company has a common seal, it may also have a duplicate common seal.
- (b) A Seal shall only be used with the authority of the Board.
- (c) Every instrument to which the Seal is affixed must be signed either by:
 - (i) two Directors, or
 - (ii) a Director and the Company Secretary.
- (d) This Clause does not limit the ways in which the Company may execute a document.

20. ACCOUNTS

- (a) The Board shall cause proper accounts and other records to be kept and shall distribute copies of financial statements and related documents as required by law.
- (b) Subject to the Corporations Act, the Board shall determine the times and places, and the conditions and regulations, upon which the accounting and other records of the Company shall be open for inspection by the Members.

21. AUDIT

The Board shall appoint a duly qualified auditor in accordance with the Corporations Act. Each report of the auditor shall be submitted to the Members as required by law.

22. NOTICES

- (a) Any notice required by law or by or under these clauses to be duly given to any Member shall be given (where permitted by the Corporations Act) by delivery in person, by prepaid post or by electronic mail sent to his or her street address or electronic mail address (as the case may be) in the register of Members.
- (b) Where a notice is sent by post from within Australia, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected 3 business days after the date of posting. Where a notice is sent by electronic mail its delivery shall be deemed to have been effected on the day of the sending of the electronic mail.
- (c) Notice of every general meeting shall be given in the manner authorised by this Clause 22 to:
 - (i) every Member, except those Members who have not supplied an address to the Company for the giving of notices, and
 - (ii) the auditor of the Company, if required by law.

23. REVIEWS OF SCHEME

The Energy and Water Ombudsman Scheme established by this Constitution and the Charter shall be reviewed by the Board which shall develop proposals for its continued operation and improvement. The first review must be undertaken before 30 June 2006 and subsequent reviews at least every five years thereafter.

All reviews must be conducted in consultation with interested parties, including groups representing customers of electricity, gas and water services and community groups representing public interest issues relevant to such services.

24. WINDING UP

If upon the winding up or dissolution of the Company in accordance with the Corporations Act and after satisfaction of all of the Company's debts and

liabilities, there remains any amount whatsoever, the same shall be paid to or distributed to a society, association or club in Australia which is not carried on for the purpose of profit or gain of its individual members and is established for community service purposes (except political or lobbying purposes).

25. INDEMNITY

25.1 Indemnity to Officers

- (a) Subject to Clause 25.1(b), every Officer of the Company shall be indemnified out of the assets of the Company against all costs, losses, expenses and liabilities incurred by that Officer in the person's capacity as an Officer of the Company by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer of the Company.
- (b) An Officer of the Company is not entitled to be indemnified out of the assets of the Company for a liability:
 - (i) which arises out of conduct involving a lack of good faith
 - (ii) where the liability is to the Company or a related body corporate, or
 - (iii) where the liability is for a pecuniary penalty order under Section 1317G or a compensation order under Section 1317H of the Corporations Act.

25.2 Indemnity for proceedings

Without limiting Clause 25.1, every Officer of the Company shall be indemnified out of the assets of the Company against any liability for costs and expenses incurred by that person arising out of his or her duties as an Officer:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or
- (b) in connection with an application in relation to such proceedings in which the court grants relief to the person under the Corporations Act.

25.3 Liability as between Officers

Subject to the Corporations Act, an Officer is not liable for the negligence, default or breach of duty of any other Officer except to the extent of the Officer's own negligence, default or breach of duty.

25.4 Benefit to survive

The benefit of any indemnity given under this Clause 25 continues, despite any amendment to or deletion of this Clause 25, in respect of liability arising from acts or omissions occurring before the amendment or deletion. The indemnity shall continue to operate despite the resignation or removal of the relevant Officer from any office with the Company.

25.5 Insurance

The Board may authorise the Company to enter into any insurance policy for the benefit of any Officer, to the extent permitted by law and on such terms as the Board approves.

25.6 Taxation

The amount of any indemnity payment to an Officer must be calculated having regard to the impact of taxation laws upon the Officer in relation to payments required to be made by, or to, the Officer.

25.7 In this Clause 25 “Officer” means any of:

- (a) a Director or Secretary of the Company, or
- (b) the Ombudsman, and

references to “Officers” include references to former Officers.

26. AMENDMENTS

On the recommendation of the Board, the Members may amend this Constitution at a general meeting subject only to the prior consent of the Commission.