

17 May 2010

CONSTITUTION

Of

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

**A COMPANY LIMITED BY GUARANTEE AND
NOT HAVING SHARE CAPITAL**

CORPORATIONS ACT
CONSTITUTION
OF
ENERGY AND WATER OMBUDSMAN (VICTORIA) LIMITED

1 NAME

The name of the Company is ENERGY AND WATER OMBUDSMAN (VICTORIA) LIMITED.

2 INTERPRETATION

2.1 Definitions

In this Constitution and the Charter:

“**Annual Funding Figure**” in respect of a Financial Year means the figure to be contributed by the Participants towards the total funding of the Scheme for that Financial Year, approved by the members in general meeting in accordance with **clause 11.7** or determined by the Essential Services Commission in accordance with **clause 11.8** (as may have been varied under **clause 11.9**).

“**Annual Levy**” means the annual levy imposed on Participants 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 **clause 11.10**.

“**Budget Committee**” has the meaning specified in **clause 11.5**.

“**Charter**” has the meaning ascribed in **clause 17.1**.

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

“**Contracting Participant**” means an entity participating in one or more of the electricity, gas or water industries that has agreed to participate in the Scheme through executing an agreement with EWOV Limited in accordance with **clause 7.2**.

“**Corporate Representative**” means a person authorised to act as the representative of a corporation pursuant to section 250D of the Corporations Act.

“**Corporations Act**” means the Corporations Act 2001 (Cth).

“**Customer Numbers**” in respect of:

- (a) an Electricity Member will be calculated according to the following formula:

$$CN = \frac{EDC}{2} + \frac{ERC}{2}$$

(with any remainder being discarded), where: CN means Customer Numbers

EDC means the number of distribution customers in the State of Victoria of the Electricity Member; and

ERC means the number of retail customers in the State of Victoria of the Electricity Member;

(b) a Gas Member who:

(i) holds a Licence, will be calculated according to the following formula:

$$CN = \frac{GDC}{2} + \frac{GRC}{2}$$

(with any remainder being discarded),

where: CN means Customer Numbers;

GDC means that the number of distribution customers in the State of Victoria of the Gas Member;

GRC means the number of retail customers in the State of Victoria of the Gas Member; or

(ii) is an LPG Member, means the number of domestic customers the LPG Member has in the State of Victoria;

(c) a Water Member means the number of customers the Water Member has in the State of Victoria; and

(d) a Contracting Participant means the number of customers the Contracting Participant has in the State of Victoria for the services in relation to which the Contracting Participant has agreed to participate in the Scheme as a Contracting Participant.

“Defaulting Member” means any member who neglects or wilfully refuses to comply with the provisions of this Constitution, the Charter or any rules of EWOV Limited.

“Director” means any director of EWOV Limited for the time being and includes an alternate Director.

“EWOV Limited” means Energy and Water Ombudsman (Victoria) Limited.

“Electricity Members” means the members who hold retail, distribution or transmission licences under Part 2 of the Electricity Industry Act (Vic) 2000.

“**Essential Services Commission**” has the same meaning as under the Essential Services Commission Act 2001 (Vic).

“**Financial Year**” means a financial year of EWOV Limited, as described in **clause 21.3**.

“**Gas Members**” means the members who:

hold retail or distribution licences in force under the Gas Industry Act 2001 (Vic); or

are LPG Members. “**Licence**” means a retail, distribution or transmission licence in force under the Electricity Industry Act 2000 (Vic) or a retail or distribution licence in force under the Gas Industry Act 2001 (Vic) or retail licence under the Water Industry Act 1994 (Vic).

“**LPG**” means liquefied petroleum gas.

“**LPG Member**” means a member who is a signatory to the Victorian LPG Retail Code.

“**LPG Retailer**” means a person who sells LPG to retail customers and delivers that LPG to the customers’ premises.

“**member**” means any person for the time being admitted to membership of EWOV Limited, all of whom thereby contract to be bound by and come within the auspices of the Scheme.

“**month**” means calendar month.

“**Ombudsman**” means the Energy and Water Ombudsman appointed pursuant to **clause 18**.

“**Participant**” means a member or a Contracting Participant.

“**Scheme**” means the energy and water ombudsman scheme for the state of Victoria.

“**Seal**” means the Common Seal of EWOV Limited.

“**Secretary**” means any person appointed to perform the duties of Secretary of EWOV Limited and includes any person appointed to perform the duties of a Secretary of EWOV Limited temporarily.

“**Start-Up Levy**” means the initial levy paid by a member to cover establishment costs (including capital and other costs) which are incurred by EWOV Limited in setting up the office of the Ombudsman.

“**Water Members**” means:

- (a) members who hold retail licences under the Water Industry Act 1994 (Vic); or
- (b) members who are regional urban, rural urban or rural water authorities under the Water Act 1989 (Vic); and
- (c) Melbourne Water Corporation (for so long as it is a member).

“**Year**” means a period of 12 consecutive months.

2.2 Construction

Unless expressed to the contrary in this Constitution:

- (a) Words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender shall include the other genders; and
 - (iii) persons shall include companies, corporations, public bodies and any other bodies corporate.
- (b) References to “in writing” and “written” include 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.
- (c) 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.
- (d) A reference to a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable.
- (e) A reference to “gas” includes, where the context permits, a reference to LPG.
- (f) Terms defined in the Corporations Act have the same meaning when used in this Constitution.

2.3 Replaceable Rules

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

3 OBJECTS

The objects of EWOV Limited are to establish an energy and water ombudsman scheme and to appoint an energy and water ombudsman with power on behalf of EWOV Limited to receive, to investigate and to facilitate the resolution of:

- (a) complaints as to the provision or supply of (or the failure to provide or supply) electricity, gas or water services by a Participant to a customer as required by a Licence or agreement, under legislation or under an applicable industry code;
- (b) billing disputes;

- (c) the administration of credit and payment services in the circumstances of a particular customer;
- (d) disconnection, restriction and refundable advance complaints;
- (e) complaints from owners or occupiers of land or other property about the way in which a Participant has exercised its statutory powers in relation to that particular land or other property or in relation to neighbouring land or other property;
- (f) complaints referred by the Essential Services Commission in relation to the conduct of a Participant's electricity, gas or water services business; and
- (g) such other complaints as may by agreement with the Ombudsman and the complainant, be referred to the Ombudsman by a Participant.

4 POWERS

EWOV Limited has all of the powers of a natural person, as set out in **section 124(1)** of the Corporations Act.

5 INCOME & PROPERTY OF EWOV LIMITED

- 5.1 The whole of the income and property of EWOV Limited shall be applied solely towards the promotion of the objects of EWOV Limited as set out in this Constitution and no part shall be paid or transferred directly or indirectly to the members of EWOV Limited by way of dividend, bonus or otherwise provided that nothing in this Constitution shall prevent the payment in good faith of remuneration to any officers or employees of EWOV Limited or to any member of EWOV Limited in return for any goods supplied or services actually rendered in the ordinary and usual course of business or prevent the payment of interest at prevailing market rates on money borrowed from any member of EWOV Limited or reasonable and proper rent for premises let by any member to EWOV Limited.
- 5.2 True accounts shall be kept of all moneys received and expended by EWOV Limited, the matters in respect of which such moneys are received and expended, and of the property, credits and liabilities of EWOV Limited. Subject to any reasonable restrictions as to the time and manner of inspecting the same imposed in accordance with this Constitution and the Corporations Act, the accounts shall be open for inspection by the members. At least once in every year, the accounts of EWOV Limited shall be examined by a properly qualified auditor or auditors who shall report to the members in accordance with the provisions of the Corporations Act.

6 LIABILITY OF MEMBERS LIMITED

- 6.1 The liability of the members is limited.
- 6.2 Every member undertakes that in the event that EWOV Limited is wound up during the currency of the member's membership or within one year of the member ceasing membership, it will contribute to the property of EWOV Limited for:

- (a) payment of the debts and liabilities of EWOV Limited incurred before it ceased to be a member;
- (b) the costs, charges and expenses of winding up;
- (c) an adjustment of the rights of the contributories among themselves; and
- (d) such other amount as may be required

provided the sum of the amounts payable under paragraphs (a), (b), (c) and (d) shall not exceed one hundred dollars (\$100).

7 MEMBERS OF EWOV LIMITED AND CONTRACTING PARTICIPANTS

7.1 Members

The members of EWOV Limited shall consist of such persons who agree in writing to become members of EWOV Limited and who are admitted to membership pursuant to this Constitution from time to time.

7.2 Contracting Participants

- (a) Subject to any directions issued by the Board from time to time, the Ombudsman on behalf of EWOV Limited may enter an agreement with any entity participating in one or more of the electricity, gas or water industries for their participation in the Scheme in relation to some or all (as may be agreed) of the electricity, gas or water services the entity provides. The agreement must contain terms obliging the entity to comply with the Scheme and to make payments as stipulated in the agreement (including, without limitation, to make Annual Levy payments in accordance with **clause 9**), and such other terms as the Ombudsman considers appropriate.
- (b) A member may, in relation to electricity, gas or water services it provides and which would otherwise be outside the jurisdiction of the EWOV scheme, become a Contracting Participant in relation to those services (subject to EWOV Limited's agreement in accordance with **clause 7.2(a)**). References to members, Contracting Participants and Participants in this Constitution will apply to such a member in its capacity as a member and/or in its capacity as a Contracting Participant, as applicable. For the avoidance of doubt, a Participant which is both a member and a Contracting Participant will be obliged to make Annual Levy contributions under **clause 9** in both capacities.

8 MEMBERSHIP

8.1 A person shall be eligible to become a member only if the person:

- (a) is:
 - (i) the holder of a Licence;
 - (ii) a regional urban, rural urban or rural water authority under the Water Act 1989 (Vic);

- (iii) Melbourne Water Corporation; or
- (iv) an LPG Retailer who is a signatory to the Victorian LPG Retail Code;
- (b) completes an application for membership in the form prescribed by the Board at the time the application is made; and
- (c) complies with **clause 8.2** below.

8.2 Acceptance of Applications

- (a) When an application for membership by an eligible person is accompanied by an undertaking (in a form specified by the Board) to pay the Annual Levy and Start-Up Levy contributions determined in accordance with this Constitution and the Board is satisfied that the applicant is willing and able to meet the obligations of members under this Constitution including, without limitation, the obligations of members to make the payments required in **clauses 9 and 11** of this Constitution, then the Board shall accept the application. The Board is under no obligation to accept an application for membership unless the conditions of this clause have been satisfied.
- (b) A person shall become a member when their application is accepted by the Board.

8.3 Transferability

- (a) Except as provided in this clause, the rights and privileges of a member shall not be transferable.
- (b) If:
 - (i) a member (“**Transferor**”) has entered into an agreement to transfer a Licence to another person (“**Transferee**”);
 - (ii) the Transferee provides EWOV Limited with an application for membership in the form prescribed by the Board accompanied by:
 - (A) a copy of a Licence in its name which has been transferred to it by the Transferor; and
 - (B) an undertaking (in a form specified by the Board) by the Transferee to pay the Annual Levy and Start-Up Levy contribution determined in accordance with this Constitution;
 - (iii) the Transferor (and the Transferee if applicable) is not in breach of this Constitution; and
 - (iv) the Board is satisfied:
 - (A) as to those matters specified in **clause 8.2(a)** in respect of the Transferee; and

- (B) that proper arrangements have been made for the satisfaction of any claims against the Transferor by complainants or prospective complainants arising before or after the date of the transfer of the Licence,

then the Board may resolve:

- (c) if the Transferee is not already a member of EWOV Limited, to transfer the Transferor's membership of EWOV Limited to the Transferee and the Transferee shall become a member and the Transferor shall cease to be a member of EWOV Limited from the date of such transfer; and
- (d) to credit any amounts paid by the Transferor in respect of the Start-Up Levy and the Annual Levy for any unexpired period to the Transferee.

9 ANNUAL LEVIES

9.1 Each Participant must pay the Annual Levy in two tranches at six monthly intervals (or such other times as determined by the Board). The Annual Levy and the manner of payment shall be determined annually by the Board and shall be based on the amount required to fund the Annual Funding Figure for the relevant year.

9.2 The Annual Levy shall be allocated between the Participants on the following basis.

- (a) each Participant will contribute an amount based on its Customer Numbers at the commencement of the relevant Financial Year (or in the case of a participant which becomes a participant after the commencement of the current Financial Year, based on its Customer Numbers at the time it becomes a participant), as follows:

Customer Numbers			Amount
Electricity Participants and Gas Participants who hold a Licence	Water Participants	LPG Participants	
Less than 50,000	Less than 40,000	Less than 5,000	\$2,000
50,000 – 199,000	40,000 – 59,999	5,000-24,999	\$5,000
200,000 – 499,000	60,000-199,999	N/A	\$10,000
500,000 or more	200,000 or more	25,000 or more	\$20,000

- (b) the balance of the Annual Levy shall be allocated between the Participants on a users pay method as approved by the Board from time to time. If there is a significant change in the method, the Board will conduct prior consultation with the participants.

9.3 All Annual Levy contributions and related adjustments shall be due and payable on credit terms as approved by the Board from time to time.

9.4 If a Participant considers that the Board's decision as to the proportionate share of the Annual Levy that it must bear is unfair, that Participant may refer the matter to the Essential

Services Commission for it to decide the share on the basis of its opinion of the fairness of the proportion.

10 CESSATION OF MEMBERSHIP

- 10.1 Any member may withdraw from EWOV Limited (subject to the member complying with any requirements for such withdrawal imposed by law, Licence or any agreement with the Essential Services Commission) by giving to the Secretary not less than 12 months notice to that effect. A member's membership shall cease on expiry of such notice.
- 10.2 If any member ("**Defaulting Member**") neglects or wilfully refuses to comply with the provisions of this Constitution, the Charter, or any rules of EWOV Limited or ceases to be a person described in **clause 8.1(a)**, the Board may pass a resolution recommending the expulsion of the Defaulting Member from EWOV Limited. The Board must, within 21 days of resolution of the Board being passed, convene a meeting of members and the recommendation must be put before the members to determine whether or not to adopt the Board's recommendation and expel the Defaulting Member.
- 10.3 Any person who ceases to be a member of EWOV Limited shall forfeit all and any rights and privileges of membership as at the date of cessation of membership and shall have no further rights against or claim upon EWOV Limited or the property or funds of EWOV Limited, except rights or claim as a creditor (if any), and any right or claim arising from actions or omissions during the period of membership.
- 10.4 Any person who ceases to be a member shall:
- (a) continue to be liable for payment of monies due to EWOV Limited 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 of EWOV Limited under **clause 6.2** of this Constitution; and
 - (b) 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.

11 FUNDING

11.1 Special Levies

The Board may at any time and from time to time obtain money for the purposes of EWOV Limited in addition to the Annual Levy by raising a special levy from the members.

Start-Up Levy

- 11.2 Each member shall be obliged to contribute a start up levy of \$5,000 or such other amount as may be determined by the Board.

Loans

- 11.3 The Board may, by unanimous resolution, raise loans or borrowings from members or third parties.

Preparation by Ombudsman of Business Plans and draft Annual Funding Figures and Budgets

- 11.4 For each successive Financial Year, the Board shall require the Ombudsman to prepare a business plan for EWOV Limited and to submit it to the Board at least 90 days 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.

Annual Funding Figures and Budgets

- 11.5 The Board will, from time to time, appoint a committee to be known as the Budget Committee, comprising an equal number of Directors appointed by the members (not being the Chairperson of the Board) and Directors appointed from groups representing customers of electricity, gas or water services or raising public interest issues relevant to electricity, gas or water services.
- 11.6 The Budget Committee will, for each Financial Year, formulate a proposed Annual Funding Figure for EWOV Limited and proposed Budget in consultation with the Ombudsman, and submit them to the Board at least 60 days before the commencement of the Financial Year.
- 11.7 The Board will, for each Financial Year, produce a proposed Annual Funding Figure for EWOV Limited 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 EWOV Limited to be voted upon at least 30 days before the commencement of that Financial Year. 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 his or her functions under the Constitution.
- 11.8 If EWOV Limited in general meeting does not, at least 30 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 Essential Services Commission for determination.
- 11.9 Variations to Annual Funding Figures of EWOV Limited may be proposed by the Board but will only be effective once passed by EWOV Limited in general meeting, except that if a motion to accept such a variation is not passed when put to a general meeting of EWOV Limited, the Board may refer the proposed variation to the Essential Services Commission for determination.
- 11.10 If the Annual Funding Figure put by the Board to a general meeting of EWOV Limited in accordance with **clause 11.7** is passed by the meeting or if referred to the Essential Services Commission under **clause 11.8** is approved by the Essential Services Commission, the Board's proposed Budget will become the Budget for the relevant Financial Year. If the Essential Services Commission determines an Annual Funding Figure other than the one proposed by the Board, or if the Annual Funding Figure is varied in accordance **clause 11.9**, 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 and submit it to the Board. The Board shall then, as

soon as possible, approve a new Budget, taking into account the new Budget proposed by the Budget Committee.

11.11 EWOV Limited must not make any expenditure in excess of a current Budget. The Board may vary a current Budget but before doing so must consider the views of the Budget Committee.

11.12 Before:

- (a) the Budget for a particular Financial Year is implemented; or
- (b) any additional expenditure to that set out in a Budget approved by the Board is incurred;

the prior approval of the Board must be obtained. In deciding whether or not to approve any proposed Budget the Board must consider the views of the Budget Committee.

11.13 (a) If GST is payable by EWOV Limited on or in respect of any sale or supply (of goods, services or other things) made by EWOV to a member, the member must promptly pay to EWOV Limited an amount equal to the GST payable on or in respect of the sale or supply, after receipt from EWOV Limited of a valid tax invoice.

- (b) In this **clause 11.13** words and expressions which are not otherwise defined in this Constitution but which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 have the same meaning as in that Act.

12 GENERAL MEETINGS

12.1 Annual General Meetings of EWOV Limited 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**".

12.2 General Meetings may be convened by the Board whenever it thinks fit or by requisition as provided by the Corporations Act.

12.3 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 EWOV Limited. Such notice will, in the case of a member, specify the number of votes (as determined under **clause 13.7**) to which (as at the date of the notice) the member would be entitled on a poll.

12.4 For the purposes of **clause 12.3** all business that is transacted at a General Meeting and also all business that is transacted at an Annual General Meeting (with the exception of the consideration of the accounts, financial statements and the reports of the Board and Auditors) shall be special business.

- 12.5 Accidental omission to give notice of a General Meeting or Annual General Meeting by EWOV Limited 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.

13 PROCEEDINGS AT GENERAL MEETINGS

Quorum

- 13.1 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. Save as otherwise provided in this Constitution, six members shall constitute a quorum at any General Meeting. For the purpose of this **clause 13.1**, persons attending as a proxy or Corporate Representative shall be counted as members.
- 13.2 If within 30 minutes of the time appointed for a General Meeting a quorum is not present, 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 Chairperson may determine (being a day which is not more than 30 days after the originally scheduled date).

Adjourned Meetings

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

Chairperson

- 13.4 The Chairperson of the Board shall preside as Chairperson at General Meetings of EWOV Limited. If the Chairperson of the Board is not present within 30 minutes of the time appointed for holding a General Meeting or if the Chairperson of the Board is unable or unwilling to act, then the members present shall elect one of their number to be Chairperson of the General Meeting.
- 13.5 The Chairperson of any General Meeting may, with the consent of the majority of those members present at the General Meeting (being a Meeting at which a 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 this Constitution, it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned General Meeting.

Voting

- 13.6 At any General Meeting, a resolution put to the vote of the 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.

Unless a poll is so demanded, a declaration by the Chairperson 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 in the book containing the minutes of the proceedings of EWOV Limited 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.

- 13.7 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 Chairperson of the General Meeting directs. On a poll each member will have the number of votes equal to its Customer Numbers, except that:
- (a) every member will in any case have a minimum of one vote;
 - (b) SPI PowerNet Pty Ltd (for so long as it is a member) will always have a number of votes equal to the number obtained by multiplying the total number of votes the other Electricity Members have by 0.05 and discarding any remainder; and
 - (c) Melbourne Water Corporation (for so long as it is a member) will always have a number of votes equal to the number obtained by multiplying the total number of votes the other Water Members have by 0.05 and discarding any remainder.
- 13.8 The result of the poll shall constitute the resolution of the meeting at which the poll was demanded provided that a poll demanded on the election of a Chairperson of the General Meeting or on the question of adjournment shall be taken immediately.
- 13.9 In the case of an equality of votes on a show of hands or on a poll, the Chairperson of the General Meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote and the motion shall be lost.
- 13.10 A new member may vote in person, by proxy, by attorney or by Corporate Representative. On a show of hands, every member shall have one vote.

Proxies and Other Authorities

- 13.11 The instrument appointing a proxy shall be in writing and signed by the appointer or his or her duly authorised attorney or, if the appointor is a corporation, either under seal or under the hand of an officer or duly authorised attorney of the corporation. 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.
- 13.12 The instrument appointing a proxy may be in any common or usual form acceptable to the Board.
- 13.13 The instrument appointing a proxy for a member and a copy of the power of attorney or other authority under which it is signed or notarially certified (if any) shall be deposited at the registered office of EWOV Limited (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 shall at the discretion of the Chairperson of the General Meeting be invalid.

13.14 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 executed,

unless an indication in writing of such revocation has been received at the registered office of EWOV Limited before the commencement of the General Meeting at which the instrument is used.

13.15 Any corporation or other body corporate which is a member of EWOV Limited may authorise such person as it thinks fit to act as its Corporate Representative at any General Meeting of EWOV Limited. The person so authorised shall be entitled to exercise the same powers on behalf of the appointor as the appointor could exercise if it were a human member of EWOV Limited in accordance with his or her authority until his or her authority is revoked by the corporation or other body corporate.

Meetings by Electronic Means

13.16 If-

- (a) the members confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications,
- (b) all the members who for the time being are entitled to receive notice of a General Meeting receive notice of the conference and have access to the means by which the conference is to take place, and
- (c) each of the members taking part in the conference is able to hear each of the other members taking part in the conference,

then all the provisions of this Constitution relating to General Meetings and Annual General Meetings shall apply to the conference as if such conference were a meeting of members and as if the members taking part in the conference were physically present together at a meeting, and any resolution passed by such conference shall be deemed to have been passed at a General Meeting or Annual General Meeting (as the case may be) held on the day on which and at the time at which the conference was held.

The fact that a member is taking part in the conference shall be made known to all the other members taking part, and no member may disconnect or cease to have access to their means of communication or otherwise cease to take part in the conference unless they make known to all other members taking part that they are ceasing to take part in the conference. Until a member makes it known that they are ceasing to take part in the conference they shall be deemed to continue to be present and to continue to form part of the quorum.

14 DIRECTORS AND MANAGEMENT OF EWOV LIMITED

- 14.1 Subject to the Corporations Act and to this Constitution, EWOV Limited and the business, affairs and property of EWOV Limited shall be managed by a Board of Directors consisting of up to eleven Directors.

The Board

- 14.2 Each class of members (being the Electricity Members, the Gas Members and the Water Members) shall appoint one director to the EWOV Limited Board. A class of members may appoint more than one Director if agreed by the Board, provided that the number of directors appointed by members (excluding the Chairperson of the Board) shall not exceed five. The members in General Meeting shall appoint to the Board as a Director an independent Chairperson in accordance with **clause 14.3**. The Essential Services Commission shall after consultation with the Essential Services Commission's Customer Consultative Committee appoint to the Board as Directors three persons (or such greater number equal to the number of Directors of the EWOV Limited Board appointed by members but not exceeding five) from groups representing customers of electricity, gas or water services or raising public interest issues relevant to electricity, gas or water services. All voting by members under this **clause 14.2** will be conducted under a preferential voting system approved by the Board from time to time.

Chairperson

- 14.3 (a) The Directors appointed by the members shall, after consulting widely, and, in particular, with the Essential Services Commission, propose to the Board a person to be the independent Chairperson of the Board. The Board shall consider the proposed appointment and, if approved by the Board (with the Chairperson not being counted in any vote on the issue) the Board shall put the proposed appointment to a General Meeting of EWOV Limited to be voted upon. If the Board votes against the appointment, the procedure specified in this **clause 14.3(a)** shall be followed again until the Board approves of a proposed appointment.
- (b) If the General Meeting votes in favour of the appointment, the nominee will be appointed Chairperson of the Board for a term of 3 years. If the General Meeting votes against the appointment, the procedure specified in this **clause 14.3** shall be followed again until a nominee is appointed Chairperson. The same procedure shall also be followed to appoint a Chairperson to take office upon the expiry of the term of appointment of the incumbent Chairperson, unless a General Meeting of EWOV Limited resolves to re-appoint the incumbent Chairperson for a further term of 3 years. The independent Chairperson must not be associated with any Participant or Director of EWOV Limited.

Vacation of Office

- 14.4 The office of a Director shall become vacant if the Director:
- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;

- (b) becomes prohibited from holding the office of a director of a company 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 his or her office by notice in writing to EWOV Limited;
- (e) is absent from meetings of the Board for more than 6 months without permission of the Board;
- (f) holds any office of profit under EWOV Limited or receives any payment from EWOV Limited other than remuneration properly payable in accordance with this Constitution;
- (g) is removed by the Electricity Members, Gas Members or Water Members (as the case may be), in the case of Directors appointed by those classes of members; by the members in General Meeting after consultation with the Essential Services Commission, in the case of the Chairperson; or by the Essential Services Commission in the case of other Directors; or
- (h) (in the case of Directors appointed by the Electricity Members, Gas Members or Water Members, and for the avoidance of doubt excluding the Chairperson) ceases to be employed by or to be an officer of a member, unless otherwise resolved by the Electricity Members (in the case of Directors appointed by the Electricity Members), the Gas Members (in the case of Directors appointed by the Gas Members) or the Water Members (in the case of Directors appointed by the Water Members).

Remuneration

- 14.5 The members may in General Meeting approve a total annual figure for the remuneration of the Directors. 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 EWOV Limited, as remuneration for their ordinary services as Directors. Such remuneration must be the same for each Director, except that the Board may resolve that the independent Chairperson 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. 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.

15 POWERS AND DUTIES OF THE DIRECTORS

- 15.1 The business, affairs and property of EWOV Limited shall be managed by the Board who may pay all expenses incurred in promoting and registering EWOV Limited out of the funds of EWOV Limited and may exercise all the powers and do all the acts and things as may be exercised or done by EWOV Limited that are not required to be exercised by EWOV Limited in General Meeting, subject nevertheless, to this Constitution, the Charter, the provisions of the Corporations Act and to such regulations as are not inconsistent with

this Constitution, the Charter or provisions of the Act as may be prescribed by the Board or EWOV Limited in General Meeting.

Any rule, regulation or by-law made by the Board shall be circulated among members within one month of its coming into being.

15.2 Each officer of EWOV Limited (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):

- (a) he or she must at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office;
- (b) in the exercise of his or her powers and the discharge of his or her duties, 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 EWOV Limited'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 EWOV Limited; 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 EWOV Limited.

Each officer of EWOV Limited (including each Director) must also comply with all other obligations imposed by law on him or her.

15.3 The Board may exercise all EWOV Limited's borrowing powers, subject to **clause 11.3**.

15.4 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments drawn on bank accounts maintained by EWOV Limited and all receipts for money paid to EWOV Limited 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.

15.5 The Board shall cause Minutes to be made of:

- (a) all appointments of officers and senior personnel of EWOV Limited;
- (b) the names of Board members present at all General Meetings and meetings of the Board; and
- (c) all resolutions and proceedings at General Meetings and meetings of the Board.

Upon confirmation of any minutes made, the Chairperson of the meeting at which the proceedings are held or the Chairperson of the next succeeding meeting shall sign the minutes.

16 PROCEEDING OF THE DIRECTORS

- 16.1 The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Secretary shall on the requisition of a Director summon a meeting of the Board.

Voting

- 16.2 Subject to **clause 16.3** questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Board shall be deemed a determination of the Board.
- 16.3 Decisions of the Board in respect of levies and funding (other than loans) under **clauses 9 and 11** must be passed at a meeting of Directors by a majority of at least 75% of such Directors as, being entitled to do so, vote in person (or by their alternate) at that meeting. Decisions in respect of loan funding must, in accordance with **clauses 11.3** be passed unanimously.

Quorum

- 16.4 Subject to this Constitution, the number of Directors necessary for a quorum shall be four.
- 16.5 The Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to 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 16.4**.

Chairperson

- 16.6 If there is no Chairperson or if he or she is not present within 10 minutes after the time appointed for holding a meeting of the Board, then the Directors present may choose a Director to be Chairperson of the meeting.
- 16.7 The Chairperson of any meeting shall not have a casting vote at the meeting.

Committees

- 16.8 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 one or more committees consisting of such persons as the Board thinks fits. The Budget Committee and any committee so formed shall:
- (a) conform to any regulation that may be imposed by the Board; and
 - (b) have power to co-opt any person or persons provided that any person so co-opted shall not have a vote on such committee unless so authorised by the Board.
- 16.9 Subject to this Constitution, a committee may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting

shall be determined by a majority of votes of the committee members present and, in the event of an equality of votes, the Chairperson of the committee shall not have a second or casting vote, and the motion shall be lost.

16.10 All acts done by the Board, a committee or by any person acting as a Director or committee member shall be valid, notwithstanding that is subsequently discovered that:

- (a) there was some defect in the appointment of any Board or committee member or person so acting; or
- (b) a Board or committee member or any of them was disqualified,

as if every such person had been duly appointed and was qualified to hold their purported office.

Resolutions in Writing

16.11 A resolution in writing signed by all the Directors for the time being entitled to receive notice of meetings of the Board 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.

Meetings by Electronic Means

16.12 If-

- (a) the Directors confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications,
- (b) all the Directors who for the time being are entitled to receive notice of a meeting of the Directors receive notice of the conference and have access to the means by which the conference is take place, and
- (c) each of the Directors taking part in the conference is able to hear each of the other Directors taking part in the conference,

then all the provisions of this Constitution relating to meetings of the Board shall apply to the conference as if such conference were a meeting of the Board and as if the Directors taking part in the conference were physically present together at a meeting, and any resolution passed by such conference shall be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held.

The fact that a Director is taking part in the conference shall be made known to all the other Directors taking part, and no Director may disconnect or cease to have access to his or her means of communication or otherwise cease to take part in the conference unless he or she makes known to all other Directors taking part that he or she is ceasing to take part in the conference. Until a Director makes it known that he or she is ceasing to take part in the conference he or she shall be deemed to continue to be present and to continue to form part of the quorum.

Declarations of Interest

- 16.13 A Director may not be counted in a quorum considering any contract or proposed contract with EWOV Limited in which he or she is interested nor vote in respect of any such contract or proposed contract unless the Director discloses the existence and nature of that interest to the Board prior to voting and if he or she does so vote without making disclosure, his or her vote shall not be counted. Such Director may attest the affixation of the seal to such a contract.
- 16.14 In addition to the requirements of **clause 16.13**, 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.

Alternate Directors

- 16.15 With the prior approval of the Board (and, in the case of the Chairperson and the Directors appointed by the Essential Services Commission, following consultation with the Essential Services Commission), any Director may appoint:
- (a) any person or another Director to be an alternate or substitute Director in his or her place during such period as he or she thinks fit; and
 - (b) a second person or Director to be an alternate or substitute Director to replace the first appointed alternate or substitute Director if he or she is unable or unwilling to act.

Any alternate or substitute 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 or substitute director shall ipso facto vacate office if the appointor vacates or is removed from office. Any appointment or removal under this **clause 16.15** shall be effected by notice in writing signed by the appointor and delivered to the registered office of EWOV Limited.

- 16.16 Any 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 each alternate directorship held.

17 CHARTER

- 17.1 EWOV Limited shall operate in accordance with and observe the roles, functions, powers and obligations set out in the Energy and Water Ombudsman Charter ("**Charter**") annexed to this Constitution for the time being in force and as that document may be modified or amended from time to time.
- 17.2 In becoming a member of EWOV Limited each member agrees:
- (a) to be bound by and observe the terms of the Charter (to the extent that it is consistent with this Constitution); and
 - (b) that any amendments to the Charter shall be made in accordance with the terms of the Charter

for the time being in force.

18 OMBUDSMAN

- 18.1 The Board shall appoint the Ombudsman of the Scheme whose terms of appointment shall include an undertaking by the Ombudsman to be bound by the provisions of the Charter and such other terms as the Board may recommend.
- 18.2 The Ombudsman must not be associated with any Participant.
- 18.3 The Board may terminate the appointment of any person as the Ombudsman.
- 18.4 The Board shall require each member to use its reasonable endeavours to ensure that the Ombudsman complies with the Scheme.

19 SECRETARY

The Secretary shall be appointed by the Board for such term and upon such terms and conditions as the Board thinks fit. The Secretary may be removed by the Board. If the Secretary is also a Director of the Company, he or she shall not be entitled to receive any remuneration except as provided by this Constitution.

20 SEAL

The Board shall provide for the safe custody of the Seal which shall only be used by the authority of the Board or a committee of Directors authorised by the Board in that behalf. Every instrument to which the Seal is affixed shall be signed by a Director and shall be countersigned by the Secretary, a second Director or some other person appointed by the Board for that purpose.

21 ACCOUNTS

- 21.1 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.
- 21.2 Subject to the Corporations Act, the Board shall determine the times and places at which and the conditions and regulations upon which the accounting and other records of EWOV Limited shall be open for inspection by the members in accordance with **clause 5.2** of this Constitution.
- 21.3 The financial year of EWOV Limited shall be the period from 1 July in each year to the following 30 June.

22 AUDIT

A properly qualified auditor or auditors shall be appointed and its or their duties regulated in accordance with the Corporations Act. Each report of the auditor or auditors shall be submitted to the members as required by law.

23 NOTICES

- 23.1 Any notice required by law or by or under this Constitution to be duly given to any member shall be given (where permitted by the Corporations Act) by delivery in person,

by prepaid post, by facsimile transmission or by electronic mail sent to his or her street address, facsimile number or electronic mail address (as the case may be) in the register of members, and in the case of notice given by facsimile transmission or electronic mail, confirmed by prepaid post to the member's street address in the register of members, the confirmation being sent within one day after the sending of the facsimile transmission or electronic mail. 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 2 days after the date of posting. Where a notice is sent by facsimile transmission or electronic mail its delivery shall be deemed to have been effected on the day of the sending of the facsimile transmission or electronic mail.

23.2 Notice of every General Meeting shall be given in any manner authorised by this Constitution to:

- (a) every member except those members who have not supplied an address to EWOV Limited for the giving of notices; and
- (b) the auditor or auditors for the time being of EWOV Limited, if required by law.

23.3 No other person shall be entitled to receive notice of General Meetings.

24 REVIEWS OF SCHEME

The Board shall conduct reviews of the Scheme and develop proposals for its continued operation. All reviews shall be conducted in consultation with interested parties, including groups representing customers of electricity, gas or water services and community groups representing public interest issues relevant to electricity, gas or water services.

25 WINDING UP

If upon the winding-up or dissolution of EWOV Limited in accordance with the Corporations Act and after satisfaction of all its debts and liabilities, there remains any property whatsoever, the same shall be paid to or distributed to a charitable institution and/or a society, association or club which is not carried on for the purposes of profit or gain to its individual members and is established for community services purposes.

26 INDEMNITY

26.1 Definition of "Officer"

In this clause 26:

- (a) "Officer" means any of:
 - (i) a Director or secretary of EWOV Limited; or
 - (ii) the Ombudsman; and
- (b) references to "Officers" include references to former Officers.

26.2 Indemnity to Officers

- (a) Subject to **clause 26.2(b)**, every Officer of EWOV Limited shall be indemnified out of the assets of EWOV Limited against all costs, losses, expenses and liabilities incurred by that Officer in the person's capacity as an Officer of EWOV Limited 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 EWOV Limited.
- (b) An Officer or auditor of EWOV Limited is not entitled to be indemnified out of the assets of EWOV Limited for a liability:
 - (i) which arises out of conduct involving a lack of good faith;
 - (ii) where the liability is to EWOV Limited 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.

26.3 Indemnity for proceedings

Without limiting **clause 26.2**, every Officer of EWOV Limited shall be indemnified out of the assets of EWOV Limited 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 judgement 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.

26.4 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.

26.5 Benefit to survive

The benefit of any indemnity given under this **clause 26** continues, despite any amendment to or deletion of this **clause 26**, 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 EWOV Limited.

26.6 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.

26.7 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.

WE, the persons whose names and addresses are subscribed, hereby agree to the foregoing Constitution.

Names and Addresses of subscribers

Subscriber: **CITIPOWER LIMITED**
of Level 18, 15 William Street, Melbourne, 3000

THE COMMON SEAL of CITIPOWER LTD)
ACN 064 651 056, is affixed in accordance)
with its articles of association in)
the presence of)

Subscriber: **UNITED ENERGY LIMITED**
of 43-45 Centreway, Mt Waverley, 3149

THE COMMON SEAL of UNITED ENERGY)
LTD ACN 064 651 029, is affixed in accordance)
with its articles of association in)
the presence of)

Names and Addresses of subscribers

Subscriber: **POWERCOR AUSTRALIA LTD**
of Level 3, 77 Southbank Boulevard
South Melbourne, 3205

THE COMMON SEAL of **POWERCOR**)
AUST ACN 064 651 109, is affixed in)
accordance with its articles of association in)
the presence of)

Subscriber: **SOLARIS POWER LIMITED**
Of Level 12, 555 Lonsdale Street
Melbourne, 3000

THE COMMON SEAL of **SOLARIS POWER**)
LTD ACN 064 651 083, is affixed in accordance)
with its articles of association in)
the presence of)

