

**Constitution of Energy Consumers
Australia Limited**

ACN 603 931 326

Corporations Act 2001

Company Limited by Guarantee not having a Share Capital

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution:

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

Activities means the activities of the Company as outlined in article 4.2.

AEMC means the Australian Energy Market Commission established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* (SA).

AER means the Australian Energy Regulator established by section 44AE of the *Competition and Consumer Act 2010* (Cth).

AEMO means the Australian Energy Market Operator Limited ACN 072 010 327.

Annual Budget means a document prepared in accordance with article 18.3.

Annual General Meeting means the annual meeting of the Company required to be held in accordance with the provisions of the Act.

Annual Report means a document which outlines the following information in respect of the financial year to which it relates:

- (a) the Activities undertaken by the Company;
- (b) the outcomes achieved by the Company; and
- (c) such other matters as determined by the Board from time to time regarding the performance of the Company.

Auditor means the auditor or auditors of the Company.

Board means the board of directors of the Company.

Business Day means a weekday other than a public holiday in the place specified, or if no place is specified, in the Australian Capital Territory.

Business Plan means a document which outlines the following information in respect of the financial year to which it relates and the following 2 financial years:

- (a) the guiding principles for the Company;
- (b) the proposed main undertakings of the Company;
- (c) the performance measures for the Company, including specific and measurable consumer benefits, through which performance of the Company in relation to its Objects, Activities and undertakings is intended to be judged;
- (d) risk management strategies to be adopted by the Company; and
- (e) such other matters as determined by the Board from time to time.

Chairperson means the Director who is appointed to this office in accordance with article 9.2

Chief Executive Officer or CEO means, during the term of that appointment, the person appointed as the chief executive officer of the Company in accordance with this Constitution.

Company means Energy Consumers Australia Limited as that name is amended from time to time.

Constitution means this constitution, as amended from time to time.

Consumer means an End User of Energy that is a Retail Customer, in particular (but not limited to):

- (a) Residential Customer; or
- (b) Small Business Customer;

and includes such a customer located in a rural or regional area.

Directors means the members individually or collectively of the Board.

ECA Skills Matrix means the Board approved policy document setting out the role of the Board and the skills required of Directors, including the Chairperson, as amended from time to time.

End User in relation to electricity– has the same meaning given to that term in the National Electricity Law; and in relation to gas– has the same meaning given to that term in the National Gas Law.

Energy means electricity or gas or both.

Energy Ombudsman means anybody or person prescribed as an ‘energy ombudsman’ for the purposes of the National Energy Retail Law.

Extraordinary Meeting means a General Meeting of the Member other than an Annual General Meeting.

gas or natural gas means natural gas within the meaning given to that term in the National Gas Law.

General Meeting means an Annual General Meeting or an Extraordinary Meeting of the Company.

MCE has the same meaning as in the National Electricity Law.

Member means the person admitted to Membership in accordance with this Constitution.

National Electricity Law means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996 (SA)*, as in force from time to time.

National Electricity Rules means the National Electricity Rules as in force from time to time under the National Electricity Law.

National Energy Laws means the National Electricity Law, the National Gas Law and the National Energy Retail Law (and includes the rules and regulations made under or for the purposes of those Laws), as applying as law by legislation in force in a State or Territory or the Commonwealth.

National Energy Market means a market for Energy established or regulated by one of the National Energy Laws.

National Gas Law means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008 (SA)*, as in force from time to time.

National Gas Rules means the National Gas Rules as in force from time to time under the National Gas Law.

National Energy Retail Law means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011 (SA)*, as in force from time to time.

Objects means the objects for which the Company is established as set out in article 4.1.

Reference Committee means any Reference Group or Groups constituted under article 16.4.

Registered Office means the registered office of the Company.

Remuneration in relation to a Director:

- (a) includes salary, bonuses, fringe benefits and superannuation contributions provided by the Company; and
- (b) excludes a payment as compensation for loss of office or in connection with retirement from office and an indemnity under article 24.

Residential Customer has the same meaning given to that term in the National Energy Retail Law.

Retail Customer in relation to electricity– has the same meaning given to that term in the National Electricity Law; and in relation to gas– has the same meaning given to that term in the National Gas Law.

Secretary means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this Constitution.

Small Business Customer has the same meaning as a ‘small customer’ who is a ‘business customer’ within the meaning given to those terms in the National Energy Retail Law.

1.2 General Interpretation

In this Constitution, unless the context requires otherwise:

- (a) a ‘person’ includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and includes any executor, administrator or successor in law of the person and the Crown in right of the Commonwealth of Australia, a State of Australia, the Australian Capital Territory or the Northern Territory;
- (b) anything (including a right or obligation or concept) includes each part of it;
- (c) a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them and includes all legislative instruments made under that statute or provision, whether by a State, a Territory, the Commonwealth of Australia or otherwise;

- (d) this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- (e) an article, schedule or appendix is a reference to an article, schedule or appendix to this Constitution;
- (f) a word or phrase that is defined has the corresponding meaning in its other grammatical forms;
- (g) writing includes all modes of representing or reproducing words in a legible, permanent and visible form and includes any representation of words in a physical document or in an electronic communication or form or otherwise;
- (h) the singular includes the plural and vice versa;
- (i) a gender includes all other genders;
- (j) headings and sub headings are inserted for ease of reference only and do not affect the interpretation of this Constitution; and
- (k) a reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

1.3 Replaceable Rules Displaced

Each of the provisions of the Act that would apply to the Company as a replaceable rule set out in the Act but for this article, is expressly displaced and does not apply to the Company.

2. COMPANY LIMITED BY GUARANTEE

2.1 Company limited by guarantee

The Company is a company limited by guarantee and the liability of the Member is limited as provided in this Constitution.

2.2 Income of the Company

- (a) (deleted)
- (b) The Company will receive annual funding from the fees recovered or to be recovered by the AEMO in accordance with the National Electricity Rules and the National Gas Rules.
- (c) Nothing in this article 2.2 prevents the Company receiving additional funding or income from the Commonwealth, States and/or Territories or any other source.

2.3 No payment or transfer to the Member

The Company is to operate on a break even basis. All of the income and property of the Company must be applied solely towards the promotion of the Objects of the Company as set out in this Constitution. No portion of it may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the Member.

2.4 Payments in good faith

- (a) Notwithstanding article 2.3 and subject to article 2.4(b), the Company may make payments in good faith of remuneration to the Member, or an officer or employee of the Company in return for any services rendered to the Company or for goods supplied in the ordinary and usual course of business.
- (b) The Company must not make any payment to a Director for services rendered by that Director to the Company unless the provision of those services has the prior consent of the Board, the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.
- (c) The Company must not make any payment to a Director in his or her capacity as an employee of the Company, in return for any services

rendered by that employee to the Company, unless the terms of that employment have first been approved by a resolution of the Board.

3. NAME OF THE COMPANY

The name of the Company is Energy Consumers Australia Limited.

4. OBJECTS, ACTIVITIES AND POWERS

4.1 Objects

The object of the Company is:

- (a) To promote the long term interests of Consumers of Energy with respect to the price, quality, safety, reliability and security of supply of Energy services by providing and enabling strong, coordinated, collegiate evidence based consumer advocacy on National Energy Market matters of strategic importance or material consequence for Energy Consumers, in particular for Residential Customers and Small Business Customers.

4.2 Activities

Without limiting the effect of article 4.3, the Company will seek to achieve its objects through:

- (a) Effectively and objectively participating in National Energy Market issues and influencing regulatory activities and Energy market reform to benefit Consumers;
- (b) Frequently engaging and communicating with Consumers and consumer advocates to discuss, support, liaise, collaborate, educate, identify and to receive and provide updates on the National Energy Market and its policies, reforms, issues and general news;
- (c) Building national and jurisdictional expertise and capacity through research, knowledge development and consultation to advance the interests of Energy Consumers, in particular Residential Customers and Small Business Customers;
- (d) Undertaking robust research to build knowledge, engage and influence policy development and educate Consumers in the Energy markets;
- (e) Funding and managing grants to build knowledge and sectoral capacity supporting policy development and consumer education in the National Energy Market;
- (f) Creating and maintaining effective working relationships with key stakeholders including but not limited to: Consumers and consumer advocates, the AER, jurisdictional regulators, Energy market

participants, the AEMC, the AEMO, governments and Energy Ombudsmen; and

- (g) Developing an understanding of the distinct market differences between jurisdictions within the National Energy Market and applying these considerations when engaging, responding or initiating work on behalf of Energy Consumers' interests, and with jurisdictional bodies where appropriate;
- (h) Frequently and collaboratively engaging and communicating with representatives from the Energy industry on issues in the interest of Consumers to help inform the Company when performing the activities in this article 4.2; and
- (i) Doing all things as may be incidental or ancillary to achieving the Objects and performing the activities in this article 4.2.

In performing these Activities, the Company must have regard to any relevant objectives set out in the National Energy Laws.

4.3 Powers

The Company may exercise all powers, rights and privileges as a natural person may do or exercise, for the purpose of furthering the Objects set out above.

4.4 Activities funded by other sources

- (a) The Company must use funding provided from fees recovered in accordance with article 2.2(b) for Activities related to the National Energy Market.
- (b) Income generated from other sources in accordance with article 2.2(c) may be used by the Company to fund any one or more of the Activities for the benefit of any Australian jurisdiction.

5. MEMBERSHIP

5.1 Number of Members

The Company shall have only one Member.

5.2 Identity of the Member

The Member of the Company shall be the Minister of the Crown in right of the State of South Australia for the time being administering the National Energy Laws as applied by South Australia.

6. LIABILITY OF MEMBER

The liability of the Member is limited to the amount specified in article 25.1. The Member undertakes to contribute to the Company's property if the Company is

wound up while he or she is a Member or within one year after he or she ceases to be a Member, for payment of the Company's debts and liabilities contracted before he or she ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding the amount set out in article 25.1.

7. MEETINGS OF THE BOARD WITH MEMBER

7.1 Meeting with Member

The Board must hold an Annual General Meeting with the Member or a representative nominated by the Member at least once in each calendar year and within 6 months after the end of its financial year. The Member may invite outsiders to attend such meetings.

7.2 Extraordinary Meeting

The Board may convene an Extraordinary Meeting at such time and place as the Board thinks fit, but must be convened in accordance with the Act. The Member may also convene an Extraordinary Meeting, but only in accordance with the Act. The Member may invite outsiders to attend an Extraordinary Meeting.

7.3 Reports to be considered at the Meeting

At each meeting, referred to in article 7.1, the Board must present to the Member:

- (a) the financial report; and
- (b) the directors' report;

for the last financial year that ended before the meeting.

8. PROCEEDINGS AT MEETINGS WITH MEMBER

8.1 Single Member Company

The Company has only one Member. A written record of a decision to a particular effect signed by the Member or their attorney or representative nominated by the Member in writing to the Board counts as the passing by the Member of a resolution to that effect in General Meeting and has effect as minutes of that resolution.

9. DIRECTORS

9.1 Number and Qualifications of Directors

- (a) The number of Directors comprising the Board will be five (including the Chairperson).

- (b) A Director will not be a member of the Company.

9.2 Appointment of Directors

Directors, including the Chairperson, will be selected by a determination of the MCE in accordance with its own agreed procedures, and having regard to the matters contained in the ECA Skills Matrix. The Member will appoint (or reappoint) Directors (including the Chairperson) in accordance with a determination of the MCE.

9.3 Second and subsequent Boards

(deleted)

9.4 Term of Appointment

- (a) Subject to this article 9.4, each Director will hold office for a period of time, not exceeding four years, recommended by the Board and approved by the Member, that allows for the staggering of terms.
- (b) Upon expiry of a Director's term of appointment, the Director must retire from office but will be eligible for re-appointment in accordance with the process specified in article 9.2.
- (c) A Director may not serve more than eight consecutive years on the Board but may be eligible to serve a further term or terms at a later date.

9.5 Remuneration of Directors

- (a) The remuneration of the Directors will be determined by the Board in accordance with the relevant Board approved policy and the budget approved by the Member.
- (b) A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travel, accommodation and other expenses incurred when travelling to or from meetings of Directors or a committee or when otherwise engaged in the business of the Company. The Company will only be liable for such expenses to the extent they are consistent with any policy adopted by the Board from time to time.

9.6 Disqualification of Directors

The office of a Director will be vacated if:

- (a) the Director becomes bankrupt, insolvent under administration, or makes any arrangement or composition with his or her creditors;
- (b) the Director is not permitted by the Act (or an order made under the Act) to be a director;
- (c) the Director becomes disqualified from acting as a Director under the Act;
- (d) the Director dies or becomes of unsound mind, or physically or mentally incapable of performing the functions of that office;
- (e) without leave of the Board, the Director is absent from meetings of the Board for three consecutive Board Meetings, unless the Board makes a resolution to the contrary;

- (f) by notice in writing to the Company, the Director resigns from office;
- (g) the Director ceases to hold office by reason of any order made under the Act; or
- (h) the Director was appointed to the office for a specified period and that period expires.

9.7 Removal from Office

The Member, on agreement from the MCE, may by ordinary resolution remove a Director from office.

9.8 Casual Vacancies

- (a) The Board may appoint a replacement Director to any casual vacancy arising in the office of a Director.
- (b) Any Director so appointed will hold office until the Member fills the vacancy in accordance with article 9.9.
- (c) Decisions of the Board concerning the appointment of replacement Directors in accordance with article 9.8(a), will be taken by continuing Directors. For the purposes of appointing a replacement Director to a casual vacancy, the quorum requirement in article 15.1(f) does not apply.

9.9 Too few Directors

If the number of Directors is reduced below the number required by article 9.1:

- (a) the MCE must select one or more new Directors within 270 days in order that the number of Directors be returned to the number required by article 9.1. Such Director(s) will be appointed in accordance with article 9.2; and

- (b) The continuing Directors may act as the Board in all matters subject to the quorum requirement in article 15.1(f).

10. POWERS OF THE BOARD

10.1 Powers Generally

- (a) Except as otherwise required by the Act, any other applicable law, or this Constitution, the Board:
 - i. has power to manage the business of the Company and to carry into effect all or any of the Objects; and
 - ii. may exercise every right, power or capacity of the Company.
- (b) The Board has no power to assume any obligations or liabilities on behalf of the Member, the MCE, the Commonwealth or any State or Territory.

10.2 Exercise of Powers

A power of the Board can be exercised only:

- (a) by resolution passed, or treated by article 15 as passed, at a meeting of the Board; or
- (b) in accordance with a delegation of the power under article 10.3.

10.3 Power to delegate

- (a) The Board may delegate any of its powers to:
 - i. a committee of directors established under article 16.1; or
 - ii. a director; or
 - iii. an employee of the company; or
 - iv. any other person.
- (b) The delegation must be recorded in the company's minute book.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Board.
- (d) The Board may not delegate its power to delegate.

10.4 Borrowing

- (a) Subject to article 10.4(b), the Board may raise money in any manner it thinks fit including the borrowing of money on the security of the

Company's assets, the charging of any property or business of the Company and the issuing of a security for any other purpose.

- (b) Other than the support deed entered into between the Company and the Commonwealth of Australia on or about the date of incorporation of the Company, the Board may only raise money, provide any security or charge any property under article 10.4(a) in accordance with the Annual Budget approved by the Member.

10.5 Investment

- (a) Subject to article 10.5(b), the Board may invest funds of the Company in any manner consistent with the Objects set out in article 4.1 and for any period as it thinks fit.
- (b) The Board may only invest funds of the Company under article 10.5(a) in accordance with the Annual Budget approved by the Member.

10.6 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company will be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) for and on behalf of the Company, by two Directors or by one Director and some other officer authorised by the Board for that purpose or in any other manner as the Board may determine.

10.7 Activities requiring approval of the Member

The Directors must not undertake any of the following activities without the prior approval of the Member:

- (a) change the Company's name;
- (b) acquiring a business or making a material financial commitment towards starting a new business;
- (c) disposal of the Company or its business or any substantial part of the Company or its business;
- (d) merger or amalgamation of the Company with any other Company;
- (e) acquiring any debt or making any early repayment of any of its indebtedness;
- (f) undertaking any financial or capital restructuring of the Company;
- (g) lending money to any person (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or waiving repayment or forgiving loans, granting credit to any person or giving any guarantee, indemnity or security in respect of the obligations of any other person.

11. RESPONSIBILITIES OF THE BOARD

11.1 Responsibilities

Without limiting the responsibilities of the Board under the Act or any other applicable law or this Constitution, the responsibilities of the Board shall include:

- (a) setting an annual work program for the Company, after consultation with stakeholders;
- (b) representation by at least one Board member at Reference Committee forums;
- (c) developing the Company's strategic direction consistent with the Company's Objects and advocating these in discussions with regulators, government and the energy industry;
- (d) CEO appointment and performance management;
- (e) appointing the Company Secretary;
- (f) financial management, including receipt of an Annual Budget and Business Plan for approval;
- (g) engaging in advocacy issues where they relate to sensitive or high profile issues;
- (h) providing strategic input and guidance to the CEO and engaging on sensitive issues as required;
- (i) implementing the outcomes of the independent reviews of the Company commissioned by the MCE and developing proposals for its continued operation. The first review will be conducted after the first 3 years of the Company's operations, with subsequent reviews every 5 years or at the discretion of the MCE.

11.2 Voting and attendance restrictions on Directors

- (a) A Director who has a material personal interest in a matter that relates to the affairs of the Company must give other Directors notice of the interest in accordance with section 191 of the Act.
- (b) Where a Director has a material personal interest in the outcome of a vote, the participation of that Director, both in the vote and in the meeting at which the vote takes place, shall be governed by the procedures set out in section 195 of the Act.
- (c) A Director who has any interest that may represent a conflict of interest must disclose that interest to the other Directors and take such action as is reasonably determined by the other Directors to manage the risk related to any actual, potential or perceived conflict of interest. If the Board establishes a protocol for the management of conflicts of interest,

any interest disclosed by a Director under this article 11.2(c) must also be managed in accordance with that protocol.

12. OFFICERS ON THE BOARD

12.1 Appointment of Chairperson

(deleted)

12.2 Skills of the Chairperson

(deleted)

12.3 Term of Appointment of Chairperson

- (a) Subject to article 12.3(b), a Chairperson holds office for so long as he or she remains a Director.
- (b) A Chairperson can resign by providing one month's written notice to the Company.

12.4 Role of Chairperson

The Chairperson will:

- (a) undertake the responsibilities outlined in article 15.1 of this Constitution; and
- (b) perform the activities in respect of appointments of Directors as requested by the Member.

13. CHIEF EXECUTIVE OFFICER

13.1 Appointment of the CEO

The Board is responsible for recruiting, selecting and appointing a person to the office of Chief Executive Officer (CEO).

13.2 Termination and replacement of the CEO

- (a) Whether or not the appointment of the Chief Executive Officer is expressed to be for a specified term, the appointment of the Chief Executive Officer terminates if the Board removes the Chief Executive Officer from the office of Chief Executive Officer (which, subject to any contract between the Company and the Chief Executive Officer, the Board has power to do).

- (b) If the CEO's appointment is terminated or ceases for any reason, the Board must promptly follow the process in article 13.1 to identify a replacement CEO.

13.3 Remuneration of the CEO

The remuneration of the Chief Executive Officer will be determined by the Board.

13.4 Responsibilities of the CEO

- (a) The Chief Executive Officer will:
 - i. be the chief executive officer of the Company;
 - ii. act consistently with the Objects of the Company;
 - iii. use their best endeavours at all times to enhance the good name of the Company;
 - iv. insofar as the resources available permit, implement the policies of the Board;
 - v. prepare an Annual Report for the Board on the work and activities of the Company during the preceding 12 months ending on 30 June in each year; and
 - vi. exercise such other functions, duties and responsibilities as may be determined from time to time by the Board.
- (b) Without affecting the generality of the foregoing, the Chief Executive Officer is responsible for:
 - i. the effective and efficient day-to-day management of the organisation in accordance with the law, decisions made by the Board and the Company's Business Plan.
 - ii. advising the Directors and keeping them informed of material matters relating to their functions and powers, for instance concerning strategy, finance and reporting obligations.
 - iii. leading the development and execution of the Company's long and short term strategy and policy against performance targets.
 - iv. liaising between the Board and management.
 - v. communicating on behalf of the Company to employees, governments, officials, the media and other stakeholders as an official spokesperson.
 - vi. overseeing the employment and management of staff.
 - vii. motivating staff, building workplace culture and driving organisational change.
 - viii. ensuring the Company's organisational functions are effective, including financial, human resource, information systems and risk management, communications, marketing, asset management and reporting.

- ix. ensuring the Company's expenditure is within the authorised budget.
- x. leading by personal example and ensuring the Company maintains the highest standards of integrity and ethics.

14. SECRETARY

14.1 Appointment of Secretary

The Company must have at least one Secretary who is to be appointed by the Board.

14.2 Suspension and removal of Secretary

The Board may suspend or remove a Secretary from that office.

14.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Board. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board.

15. PROCEEDINGS OF THE BOARD

15.1 General

- (a) The Chairperson may at any time, and the Secretary must on request from the Chairperson, convene a Board meeting.
- (b) The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (c) (deleted).
- (d) The Board may at any time, and the Secretary will, on the request of the Chairperson, convene a meeting of the Board by reasonable notice served upon each Director.
- (e) The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by, a Director will not invalidate proceedings at a Board meeting.
- (f) A quorum for meetings of the Board is three (3) of the Directors or such higher number as may be determined by the Board, one of whom must be the Chairperson.
- (g) The Chairperson will be the Chairperson of the Board and chair Board meetings. If the Chairperson is not present within fifteen minutes after the time appointed for holding that meeting (or being present is unwilling

to act), the Board will appoint an acting Chairperson for the meeting from the Directors present.

- (h) Each Director present at any meeting of the Board will be entitled to one vote.
- (i) The Chairperson or acting Chairperson for the meeting will have a casting vote.
- (j) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another manner permitted by the Act, the Board must resolve the basis on which Directors are treated as present.
- (k) The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides.

15.2 Majority decisions

- (a) Where possible, the Board will make decisions by consensus.
- (b) Notwithstanding article 15.2(a), a resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

15.3 Out of session resolutions

- (a) Without limiting article 15.1(j), all significant matters with respect to the Company are to be considered by the Directors of the Company at Board meetings including matters relating to:
 - (i) the Business Plan,
 - (ii) the Annual Budget,
 - (iii) the appointment of the CEO;
 - (iv) the appointment of a replacement Director to any casual vacancy.
- (b) For less significant matters, the Directors of the Company may pass a resolution without a Board meeting being held if all the Directors 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.
- (c) Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- (d) The resolution is deemed to have been passed at a meeting of the Board held on the day and at the time the last Director entitled to vote on the resolution signs the document.

15.4 Adjourned meetings

A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

15.5 Voting by proxy

- (a) A Director ('Appointing Director') may participate in, and vote by, proxy at a Board meeting if the proxy:
 - i. is another Director; and
 - ii. has been appointed in writing signed by the Appointing Director.
- (b) The appointment may be general or for one or more particular meetings. A Director present as proxy for one or more Appointing Directors has:
 - i. one vote per Appointing Director for whom the Director is proxy and who would be entitled to vote if present at the meeting; and
 - ii. one vote in his or her own capacity as a Director if entitled to vote at the meeting.

15.6 Use of technology in conferencing

- (a) Subject to article 15.3 but without limiting the discretion of the Board to regulate their meetings, the Board may, if it thinks fit, confer by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication. A resolution passed by such a conference will, notwithstanding that the Directors are not present together in one place at the time of the conference, be deemed to have been passed at a meeting of the Board held on the day and at the time the conference was held.
- (b) The provisions of this Constitution regulating the proceedings of the Board apply so far as they are capable to such conferences.

15.7 Minutes to be kept

The Board must cause:

- (a) proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;
- (b) the minutes to be entered in books kept for that purpose; and
- (c) the minutes as accepted by each Director present at the meeting, to be signed by the Chairperson of the meeting or by the Chairperson of the next meeting.

15.8 Evidence of Proceedings and Resolutions

A minute that is recorded and signed in accordance with article 15.7 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

16. COMMITTEES AND PANELS

16.1 Board Committee

- (a) The Board may in its absolute discretion establish committees ('Board Committees') or working groups as deemed necessary including, for example and without limitation, a finance and audit committee.
- (b) Board Committees, with the exception of the committee established under article 16.4, must involve a majority of Directors, but the Board may at its discretion appoint expert advisors as needed to Board Committees.

16.2 Standing Committees/Expert Advisory Committees

The Company's Chief Executive Officer may establish standing and/or ad hoc advisory committees to undertake specific identified tasks in accordance with the Objects of the Company.

16.3 Procedures for Board and Advisory Committees

The meetings and proceedings of any committee or working group will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

16.4 Reference Committee

- (a) The Board must establish a Reference Committee to act as an advisory group to the Board on Consumer Energy issues.
- (b) The number of representatives on the Reference Committee will be determined by the Board but until otherwise determined shall be no more than 10.
- (c) The Reference Committee shall include at least one member from each of the participating National Energy Market States and Territories.
- (d) The responsibilities of the Reference Committee include the provision of effective advice to the Board on emerging Consumer issues and on the development of the Company's work program, and the sharing of grass roots Consumer feedback and research.
- (e) The Reference Committee shall meet and otherwise carry out their functions in accordance with procedures determined by the Board, subject to the proviso that no more than four meetings are to be held in any calendar year.
- (f) Reference Committee members shall be entitled to reimbursement of reasonable costs. These costs shall be in accordance with any policy approved by the Board from time to time.
- (g) A Director will be required to chair the meetings of the Reference Committee. Different Directors may chair the Reference Committee meetings from time to time.

17. DEFECTS IN APPOINTMENT

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director will not be invalidated by reason of:

- (a) any defect in the election, appointment or tenure of a Director or person acting on any such committee; or
- (b) the disqualification of any of them.

18. ACCOUNTS

18.1 Books of Account to be kept

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

18.2 Location of Books of Account

The books of account will be kept at the Registered Office or place or places as the Board thinks fit and will be open to the inspection of the Directors during usual business hours.

18.3 Business Plan and Annual Budget

- (a) Each year, no later than three months before the commencement of each financial year of the Company, the Board must prepare and submit to the Member:
 - i. a draft Business Plan relating to the upcoming financial year; and
 - ii. a draft Annual Budget relating to the upcoming financial year (Year 1) and two subsequent financial years.
- (b) The draft Annual Budget must contain the following information in relation to Year 1 and indicative information for the two subsequent financial years:
 - i. the projected income of the Company;
 - ii. the projected expenses of the Company, including details of all administrative costs, Directors' remuneration and any current or proposed grant programs;
 - iii. the projected cash flow of the Company; and
 - iv. such other matters as determined by the Board from time to time.

- (c) In relation to Year 1, the draft Annual Budget must separately allocate all expenses between:
 - i. performance of activities relevant to Consumers of electricity;
 - ii. performance of activities relevant to Consumers of natural gas; and
 - iii. performance of activities relevant to both Consumers of electricity and Consumers of natural gas, in which case the Annual Budget must specify a division of those costs between the two.
- (d) The Member may provide copies of, and consult with, the MCE in relation to the draft Business Plan and draft Annual Budget. The Member must provide any comments on the draft Business Plan and draft Annual Budget to the Board before the commencement of the Company's financial year.
- (e) The Board must consider any comments on the draft Business Plan and draft Annual Budget which are submitted by the Member to the Secretary within one month of the commencement of the Company's financial year.
- (f) Following consideration of the Member's comments under article 18.3(d) (which in the case of any comments regarding Year 1 of the Annual Budget must be adopted by the Board but which in the case of the remainder of the Annual Budget and the Business Plan may be adopted or rejected by the Board in its discretion), the Board must issue, within 3 months of the commencement of the financial year:
 - i. a final Business Plan and a final Annual Budget to the Member; and
 - ii. a final Annual Budget to AEMO for the purpose of AEMO providing funding to the Company as contemplated by article 2.2(b).
- (g) Subject to articles 10.4(b) and 10.5(b), neither the Business Plan nor the Annual Budget limits the powers or discretions of the Board. However the Board may have regard to the Business Plan and must have regard to the Annual Budget when exercising their powers and discharging their duties.

18.4 Inspection of Company books

The Member may at any time by written notice request, and the Board must take all reasonable steps to arrange, for the Member or a representative of the Member to inspect the financial records or books of the Company.

19. FINANCIAL REPORTING

The Board must cause the Company to prepare a financial report, Annual Report and a Directors' report that comply with the Act and must report to the Member no

later than four months after the end of the financial year or the deadline set by the Act (if earlier). The Member may provide a copy of the financial report, Annual Report and Directors report it receives from the Board to the MCE and may also make such reports publicly available.

20. AUDITOR

The Company must cause the Company's financial report for each financial year to be audited and obtain an Auditor's report.

The Company will observe the provisions of the Act in relation to the eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any), and resignation of the Auditor.

21. COMPANY SEALS

21.1 Common Seal

The Board:

- (a) may decide whether or not the Company has a common seal, and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt.

21.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with the Act.

21.3 Fixing seals to documents

The fixing of a Company seal to a document must be witnessed by two Directors or one Director and the Secretary.

22. NOTICES

22.1 Methods of giving notice

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:

- i. delivered personally; or
- ii. sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
- iii. sent by fax to the fax number (if any) nominated by that person; or
- iv. sent by electronic message to the electronic address (if any) nominated by that person.

22.2 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - i. by 5.00 p.m. (local time in the place of receipt) on a Business Day – on that day; or
 - ii. after 5.00 p.m. (local time in the place of receipt) on a Business Day, or on a day that is not a business day – on the next Business Day; and
- (b) if it is sent by mail:
 - i. within Australia – three Business Days after posting; or
 - ii. to a place outside Australia – seven Business Days after posting.

A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service.

22.3 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

23. REIMBURSEMENT OF EXPENSES

(deleted)

24. INDEMNITY

24.1 Definition of Liability and Officer

In this article 24:

- (a) Liability means costs, losses, liabilities and expenses.

- (b) Officer means a Director, Secretary or executive officer of the Company and includes a former Officer, but does not include an auditor or agent of the Company.

24.2 Indemnity of Officers

To the extent permitted by law, the Company indemnifies every person who is or has been an Officer of the Company, and may indemnify every person who is or has been an auditor of the Company, against:

- (a) any Liability incurred by that person in his or her capacity as a Director, Secretary, auditor or executive officer of the Company other than:
 - i. a Liability owed to the Company or a related body corporate; or
 - ii. a Liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Act; or
 - iii. a Liability for a pecuniary penalty order under section 224 of the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as applied under Subdivision A of Division 2 of Part XI of the *Competition and Consumer Act 2010*); or
 - iv. a Liability that is owed to someone other than the Company or a related body corporate which did not arise out of conduct in good faith; and
- (b) any Liability for legal costs incurred by that person in his or her capacity as a Director, Secretary, auditor or executive officer of the Company other than:
 - i. in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under article 24.2(a); or
 - ii. in defending or resisting criminal proceedings in which the person is found guilty; or
 - iii. in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (except in relation to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for a court order); or
 - iv. in connection with proceedings for relief to the person under the law in which the Court denies the relief.

24.3 Insurance

Subject to section 199B of the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

25. CONTRIBUTION ON WINDING-UP

25.1 Contribution

- (a) The Member undertakes to contribute to the property of the Company if it is wound up:
 - i. while that person is the Member; or
 - ii. within one year after that person ceases to be the Member;in respect of the debts and liabilities of the Company contracted before that person ceases to be the Member, in respect of the costs, charges and expenses of winding-up and for the adjustment of the rights of the contributories among themselves.
- (b) The amount to be contributed by the Member will not exceed ten dollars.

26. DISTRIBUTION OF PROPERTY ON WINDING-UP

- (a) If, upon the winding-up or dissolution of the Company after the satisfaction of all its debts and liabilities there remains any property, this property must not be paid to the Member.
- (b) Instead, this property must be given or transferred to some other institution or institutions having:
 - i. objects similar to the objects of the Company; and
 - ii. a Constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under article 2 of this Constitution.
- (c) This institution or institutions must be determined by:
 - i. a special resolution of the Member at or before the time of dissolution; or
 - ii. if no such special resolution is passed, by a Judge of the Supreme Court of South Australia or such other court of competent jurisdiction.