

ENERGY INDUSTRY OMBUDSMAN (WESTERN AUSTRALIA) LIMITED
ACN 109 054 426

CONSTITUTION

November 2008

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CONSTITUTION OF ENERGY INDUSTRY OMBUDSMAN (WESTERN AUSTRALIA) LIMITED

1 NAME

The name of the company is ENERGY INDUSTRY OMBUDSMAN (WESTERN AUSTRALIA) LIMITED (the "Company").

2 DEFINITIONS AND INTERPRETATION

DEFINITIONS

2.1 In this Constitution and the Charter:

"Annual Funding Figure" in respect of a Financial Year means the figure to be contributed by the Members towards the total funding of the Company for that Financial Year, approved by the Members in general meeting in accordance with clause 20.16 (as may have been varied under clause 20.17).

"Annual Levy" means the annual levy imposed on Members to cover operating costs of the Company.

"Applicant" has the meaning ascribed in clause 8.1.

"Authority" means the body responsible under legislation for licensing energy retailers and network operators.

"Budget" means the budget for each Financial Year set in accordance with clauses 20.14 to 20.20.

"Budget Committee" has the meaning ascribed in clause 20.14.

"Chairperson" means the Independent Director appointed as Chairperson of the Board pursuant to clause 12.4.

"Charter" has the meaning ascribed in clause 15.1.

"Company" means Energy Industry Ombudsman (Western Australia) Limited.

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

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

"Defaulting Member" has the meaning ascribed in clause 9.3.

"Director" means any director of the Company for the time being and includes, where appropriate, an alternate Director.

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

"Distribution Customers" means –

- (a) for the purposes of calculating Customer Numbers under clause 20.5(a), Gas Customers receiving gas, or entitled to receive gas, at an outlet point on a gas distribution system owned or operated by a Member holding a licence of a type referred to in paragraph (b) of the definition of Licence; and
- (b) for the purposes of calculating Customer Numbers under clause 20.5(b), Electricity Customers receiving electricity, or entitled to receive electricity, at a point of connection on an electricity distribution system owned or operated

by a Member holding a licence of a type referred to in paragraph (d) or (e) of the definition of Licence.

“EIO (WA) Scheme” means the Electricity Industry Ombudsman (WA) Scheme.

“Electricity Customers” has the meaning ascribed to 'customer' in section 90 of the *Electricity Industry Act 2004 (WA)*.

“Electricity Licensee” means a Member that is the holder of one or more of the licences of the type referred to in paragraphs (c), (d) and (e) of the definition of Licence.

“Electricity Marketing Agent” has the meaning ascribed in section 78 of the *Electricity Industry Act 2004*.

“Eligible” means, with respect to a person, that the person satisfies the criteria in clause 8.1.

“Energy Marketing Agent” means either:

- (a) a Gas Marketing Agent; or
- (b) an Electricity Marketing Agent.

“Financial Year” means a financial year of the Company, as described in clause 21.4 or 21.5.

“Founding Electricity Members” means Western Power Corporation, Alinta Sales Pty Ltd and Perth Energy Pty Ltd.

“Founding Members” means AlintaGas Networks Pty Ltd, Alinta Sales Pty Ltd and Wesfarmers Energy Limited.

“Gas Customers” has the meaning ascribed to 'customer' in section 11ZPX of the *Energy Coordination Act 1994 (WA)*.

“Gas Licensee” means a Member that is the holder of one or more licences of the type referred to in paragraphs (a) and (b) of the definition of Licence.

“Gas Marketing Agent” has the meaning ascribed in section 11ZPL of the *Energy Coordination Act 1994*.

“GIO (WA) Scheme” means the Gas Industry Ombudsman (WA) Scheme.

“Independent” means with respect to a Director or a nominee for election as a Director at a particular time, that the person is not currently nor has been within the last three Years, an employee or director of a Member, an Energy Marketing Agent, or a customer representative group.

“Joining Levy” means the levy paid by Members in accordance with clause 20.3;

“Licence” means:

- (a) a trading licence in force under the *Energy Coordination Act 1994*;
- (b) a distribution licence in force under the *Energy Coordination Act 1994*;
- (c) a retail licence in force under the *Electricity Industry Act 2004*, including a licence of this type deemed to be in force pursuant to section 46 of that Act;
- (d) a distribution licence in force under the *Electricity Industry Act 2004*, including a licence of this type deemed to be in force pursuant to section 46 of that Act; or

- (e) an integrated regional licence in force under the *Electricity Industry Act 2004* that authorizes either or both of the activities described in sections 4(1)(c) or (d) of that Act, including a licence of this type deemed to be in force pursuant to section 46 of that Act.

"Member" means any person for the time being admitted to membership of the Company whose name is entered into the Company's register of Members and includes the Founding Members and Founding Electricity Members.

"Month" means calendar month.

"Nomination Committee" means a committee:

- (a) established under and subject to clauses 14.10 and 14.11;
- (b) for the purpose of nominating, in accordance with clause 12.3(a)(iii), proposed Directors to represent the interests of gas and electricity customers; and
- (c) the composition, meetings and procedures of which will be determined by the Board from time to time subject to:
 - (i) the committee being chaired by the Chairperson; and
 - (ii) the members including representatives from the Office of Energy.

"Office of Energy" means the department, established under the *Public Sector Management Act 1994* (WA), that reports to the Minister for Energy (or his successor) and supports the performance of the statutory functions of the Coordinator of Energy.

"Ombudsman" means the Energy Ombudsman appointed pursuant to clause 16.

"Ordinary Resolution" means a resolution passed at a meeting of Members by a majority of the votes cast by Members entitled to vote on the resolution.

"Retail Customers" means:

- (a) for the purposes of calculating Customer Numbers under clause 20.5(a), Gas Customers buying gas from a Member holding a licence of a type referred to in paragraph (a) of the definition of Licence and having an arrangement to transport gas through the gas distribution network to its customers; and
- (b) for the purposes of calculating Customer Numbers under clause 20.5(b), Electricity Customers buying electricity from a Member holding a licence of a type referred to in paragraph (c) or (e) of the definition of Licence and having an arrangement to transport electricity through an electricity distribution system to its customers.

"Scheme" means the EIO (WA) Scheme, or the GIO (WA) Scheme, or both, as the context requires.

"Secretary" means, during the term of that appointment, any person appointed to perform the duties of secretary of the Company in accordance with this Constitution and includes any person appointed to perform the duties of secretary of the Company temporarily.

"Special Levy" means a levy raised pursuant to clause 20.1;

"Special Resolution" has the meaning ascribed by section 9 of the *Corporations Act 2001*.

"Start-Up Levy" means:

- (a) the initial levy paid by a Founding Member to cover establishment costs (including capital and other costs) which are incurred by the Company in setting up the office of the Ombudsman to achieve the objectives and perform the functions under the GIO (WA) Scheme; or
- (b) the initial levy paid by a Founding Electricity Member to cover establishment costs (including capital and other costs) which are incurred by the Company in setting up the office of the Ombudsman to achieve the objectives and perform the functions under the EIO (WA) Scheme,

as the context requires.

"Transferor" has the meaning ascribed in clause 8.3.

"Transferee" has the meaning ascribed in clause 8.3.

"Year" means a period of 12 consecutive Months.

CONSTRUCTION

2.2 In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have the corresponding meaning;
- (d) the word person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) a reference to writing includes typing, printing, lithography and any other mode of representing or reproducing words or figures in a visible form including words or figures displayed on an electronic screen;
- (f) a reference to legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) a reference to anything (including a right, obligation or concept) includes each part of it;
- (h) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (i) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (j) the word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (k) a reference to a power is also a reference to authority or discretion;
- (l) a power to do something includes a power, exercisable in like circumstances, to revoke or undo it;
- (m) where a word (other than a word defined in clause 2.1) is defined by the *Corporations Act 2001*, that word has the same meaning in this Constitution where it relates to the same matters for which it is defined in the *Corporations Act 2001*;

- (n) headings are for convenience only and do not affect interpretation;
- (o) where a word (other than a word defined in clause 2.1) is defined in *A New Tax System (Goods and Services Tax) Act 1999*, that word has the same meaning in this Constitution where it relates to the same matters for which it is defined in *A New Tax System (Goods and Services Tax) Act 1999*;
- (p) references to dollars or \$ are references to Australian dollars; and
- (q) all amounts payable or the value of other consideration provided in respect of a supply made under or in connection with this Constitution are exclusive of GST.

REPLACEABLE RULES

- 2.3 The replaceable rules contained in the *Corporations Act 2001* do not apply to the Company.

3 OBJECTS

The objects of the Company are to establish the Schemes, and to appoint an Ombudsman with power under the Schemes to receive, investigate and deal with disputes and complaints as contemplated by Part 2D and Schedule 2B of the *Energy Coordination Act 1994* and Part 7 and Schedule 2 of the *Electricity Industry Act 2004* (as the case may be), including complaints as to:

- (a) the provision or supply of (or the failure to provide or supply) gas services or electricity services (as the case may be) by a Member to a customer as required by a Licence or agreement or under legislation;
- (b) billing disputes;
- (c) the administration of credit and payment services in the circumstances of a particular customer;
- (d) the recovery of debts owed or allegedly owed by customers whether by Members, their agents or factors;
- (e) disconnection, restriction and refundable advances;
- (f) payments to customers for breaches of prescribed electricity service standards;
- (g) marketing of gas or electricity (as the case may be) for sale; and
- (h) the way in which a Member has exercised its statutory powers in relation to land or other property or in relation to neighbouring land or other property.

4 LEGAL CAPACITY AND POWERS

The Company has all of the powers of an individual and of a body corporate, including those set out in the *Corporations Act 2001*.

5 INCOME AND PROPERTY OF THE COMPANY

- 5.1 Subject to clauses 5.2 and 12.7, the entire income and property of the Company shall be applied solely towards the promotion of the objects of the Company as set out in this Constitution. No part shall be paid or transferred directly or indirectly to Members by way of dividend, bonus or otherwise.

- 5.2 Nothing in this Constitution prevents the payment or distribution by the Company:
- (a) in good faith of reasonable remuneration to any officers or employees of the Company or to any Member in return for goods supplied or services rendered in the ordinary course of business;
 - (b) of interest at a rate not exceeding the rate charged by Australian banks for overdrawn accounts on money borrowed from any Member or reasonable and proper rent for premises leased by any Member to the Company; or
 - (c) made in accordance with clause 25.

6 LIABILITY OF MEMBERS LIMITED

- 6.1 The Company is a public company limited by guarantee and the liability of the Members is limited as provided in this Constitution.
- 6.2 Every person who is or has been a Member undertakes that in the event that the Company is wound up during the currency of the person's membership or within one Year of the person ceasing to be a Member, they will contribute to the assets of the Company for:
- (a) payment of the debts and liabilities of the Company incurred before the person ceased to be a Member;
 - (b) the costs, charges and expenses of winding up;
 - (c) an adjustment of the rights of the contributories among themselves; and
 - (d) such other amount as may be required,
- up to a maximum of one hundred dollars (\$100).

7 MEMBERS OF THE COMPANY

Subject to clauses 9.1, 9.2 and 9.3, the Members of the Company shall consist of the Founding Members, the Founding Electricity Members and such other persons who are admitted to membership in accordance with this Constitution from time to time, until their membership of the Company ceases.

8 MEMBERSHIP

APPLICANTS

- 8.1 A person, or if more than one person collectively holds a Licence, then each of those persons collectively, (in either case the "Applicant") shall be Eligible to become a Member only if the Applicant:
- (a) is the holder of one or more Licences;
 - (b) completes an application for membership in the form prescribed by the Board at the time the application is made, thereby agreeing in writing to become a Member of the Company and to be bound by decisions and directions of the Ombudsman; and
 - (c) pays to the Company:
 - (i) the Applicant's Start-Up Levy or Joining Levy in accordance with clauses 20.2 and 20.3 as appropriate; and

- (ii) the first tranche of the Applicant's Annual Levy in accordance with clauses 20.4 and 20.5.

ACCEPTANCE OF APPLICATIONS

- 8.2 The Board must (subject to clauses 8.1, 9.3 and 11.24) accept an application for membership if the Applicant is Eligible. If the Board is not satisfied an Applicant is Eligible, it may reject or defer consideration of an application by that Applicant. If accepted, the Applicant is taken to be a Member from the date of acceptance.

TRANSFERABILITY

- 8.3 (a) Except as provided in this Constitution, 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 the Company 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 with the approval of the Authority where required by law; and
 - (B) an undertaking (in the form prescribed by the Board) by the Transferee to pay the Annual Levy and either the Start-Up Levy or the Joining Levy contributions 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 8.1 in respect of the Transferee; and
 - (B) that proper arrangements have been made for the satisfaction of any complaints and disputes 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:
- (i) if the Transferee is not already a Member of the Company, to transfer the Transferor's membership of the Company to the Transferee and the Transferee shall become a Member and the Transferor shall cease to be a Member of the Company from the date of such transfer; and
 - (ii) to credit any amounts paid by the Transferor in respect of the Annual Levy and either the Start-Up Levy or the Joining Levy for any unexpired period to the Transferee.

INFORMATION

- 8.4 In becoming a Member of the Company, each Member agrees that the Ombudsman may publish and make publicly available:

- (a) a list of the names of Members;
- (b) the number of complaints made against the Member; and
- (c) the number of complaints and disputes that were resolved by the Ombudsman making a decision or direction against the Member in favour of the Complainant.

9 CESSATION OF MEMBERSHIP

RESIGNING AS A MEMBER

- 9.1 Any Member may withdraw from membership of the Company by giving the Secretary not less than 12 Months' written notice to that effect and the Member's membership shall cease on expiry of such notice.

AUTOMATIC CESSATION

- 9.2 A person automatically ceases to be a Member if the person ceases to hold a Licence.

EXPELLING A MEMBER

- 9.3 (a) If any Member does not comply with the provisions of this Constitution, the Charter, or any rules, regulations or by-laws of the Company, the Directors may issue that Member with a notice requiring the non-compliance to be rectified within 7 days of the notice.
- (b) If any Member does not comply with a notice given under sub-clause 9.3(a) within the time specified in the notice, or ceases to be a person described in clause 8.1, the Directors may pass a resolution recommending the expulsion of that Member ("Defaulting Member") from the Company and the removal of the Defaulting Member's name from the Company's register of Members. The Directors must, within 21 days of such a resolution of Directors being passed:
- (i) convene a meeting of Members and a Special Resolution must be put before the Members to adopt the Directors' recommendation and expel the Defaulting Member; and
 - (ii) give a written notice to the Defaulting Member which states:
 - (A) the allegations against the Defaulting Member;
 - (B) the proposed resolution for the Defaulting Member's expulsion; and
 - (C) that the Defaulting Member has an opportunity at the meeting of Members to address the allegations orally or in writing.

The Company must expel the Defaulting Member and remove the Defaulting Member from the register of Members on the passing of the Members' Special Resolution. A person expelled in this way, even if otherwise Eligible, may not become a Member again unless the Members resolve by Special Resolution to accept an application from that person.

CEASING TO BE A MEMBER

- 9.4 Any person who ceases to be a Member shall:
- (a) forfeit all and any rights and privileges of membership as at the date of cessation of membership;

- (b) have no further rights against or claims upon the Company or the property or funds of the Company, except rights or claim as a creditor (if any), and any rights or claims arising from actions or omissions during the period of membership;
- (c) continue to be liable for payment of monies due to the Company by the Member and unpaid as at the date of cessation of membership and for any sum for which that person is liable as a Member under clause 6.2 of this Constitution; and
- (d) continue to be bound by (and shall discharge) any decision or direction of the Ombudsman made in respect of any complaint or dispute unresolved or outstanding at the date of cessation of membership.

10 GENERAL MEETINGS

- 10.1 Annual general meetings of the Company shall be held in accordance with the provisions of the *Corporations Act 2001*.
- 10.2 General meetings:
- (a) may be convened at any time by the Board or a Director; and
 - (b) must be convened when required by section 249D or 250N of the *Corporations Act 2001* or by order made under section 249G of the *Corporations Act 2001*.
- 10.3 Subject to the provisions of the *Corporations Act 2001* relating to Special Resolutions and consent to short notice, at least 21 days' written notice of a meeting of Members shall be given individually to persons entitled to receive such notice from the Company. Subject to any regulation made under section 249LA of the *Corporations Act 2001* the notice of meeting must comply with section 249L of the *Corporations Act 2001* and may be given in any manner permitted by section 249J(3) of the *Corporations Act 2001*.
- 10.4 Accidental omission to give notice of a general meeting or annual general meeting by the Company to, or the non-receipt of notice of a meeting by, any of those entitled to it shall not invalidate proceedings at a general meeting or annual general meeting.
- 10.5 Subject to sections 249D(5) and 250N of the *Corporations Act 2001*, the Board may:
- (a) postpone a meeting of Members;
 - (b) cancel a meeting of Members; or
 - (c) change the place for a general meeting,
- by written notice given individually to each person entitled to be given notice of the meeting of Members.
- 10.6 If a meeting of Members is postponed or adjourned for 1 Month or more, the Company shall give new notice of the resumed meeting.
- 10.7 This clause 10.7 applies only to:
- (a) a resolution proposed by Members to be considered at a general meeting of Members of the Company convened in accordance with section 249D, section 249E, section 249F or section 249G of the *Corporations Act 2001*; or

- (b) a resolution proposed by Members in accordance with section 249N of the *Corporations Act 2001* to be considered at a general meeting of Members.

A Member may, by giving at least 7 days' prior written notice to the Board, request the Board to consider whether any resolution proposed by Members to be put to the general meeting would, in the opinion of the Board, if approved, result or be likely to result in the Company doing any act or omission which is inconsistent with the objects set out in clause 3. If the Board determines that any resolution would result in the Company doing any act or omission which is inconsistent with the objects set out in clause 3, the majority required in order for the relevant resolution to be passed is, notwithstanding any other provision of this Constitution, approval without dissent, by all Members present (whether in person or by proxy, attorney or representative) and entitled to vote at that general meeting.

- 10.8 Nothing in clause 10.7 applies to a resolution for the removal of one or more persons from the office of Director.

11 PROCEEDINGS AT GENERAL MEETINGS

QUORUM

- 11.1 Except as otherwise provided in this Constitution, the quorum for a meeting of Members is 50% of Members, with at least 50% of Members who are Gas Licensees at the time of meeting required to be in attendance and at least 50% of Members who are Electricity Licensees at the time of the meeting required to be in attendance. For the purpose of this clause 11.1:
 - (a) if a Member has appointed a proxy or attorney or (in the case of a Member which is a body corporate) a representative to act at a meeting of Members, that proxy, attorney or representative may be counted towards the quorum;
 - (b) each individual present may only be counted once toward a quorum; and
 - (c) if a Member has appointed more than one proxy, attorney or representative, only one of them may be counted towards the quorum.

ADJOURNED MEETINGS

- 11.2 If within 30 minutes of the time appointed for a general meeting, a quorum is not present, the meeting shall:
 - (a) if convened in accordance with section 249D, section 249E or section 249F of the *Corporations Act 2001*, be dissolved; and
 - (b) 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). If a quorum is not present within 30 minutes of the time appointed for the adjourned meeting, the meeting shall be dissolved.
- 11.3 Subject to clause 10.6, the Chairperson of any general meeting at which a quorum is present:
 - (a) may; and
 - (b) must, if directed by Ordinary Resolution of that meeting,

adjourn the general meeting to another time and place. 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.

CHAIRPERSON

11.4 The Chairperson of the Board shall preside as Chairperson at general meetings of the Company. If:

- (a) there is no Director who the Board has appointed as Chairperson of the Board for the time being;
- (b) the Chairperson of the Board is not present within 30 minutes of the time appointed for holding a general meeting; or
- (c) the Chairperson of the Board is unable or unwilling to act,

then the Members present shall elect a Member present to be Chairperson of the general meeting.

ATTENDANCE AT MEETINGS

- 11.5
- (a) Every Member has the right to attend all meetings of Members.
 - (b) Every Director has the right to attend and speak at all meetings of Members.
 - (c) The auditor of the Company has the right to attend any meeting of Members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

VOTING

11.6 Subject to section 250A(4) of the *Corporations Act 2001*:

- (a) a Member is only entitled to vote on a matter relating to Part 2D or Schedule 2B of the *Energy Coordination Act 1994* if that Member is a Gas Licensee at the time of the vote;
- (b) a Member is only entitled to vote on a matter relating to Part 7 or Schedule 2 of the *Electricity Industry Act 2004* if that Member is an Electricity Licensee at the time of the vote;
- (c) every Member entitled to vote on a matter shall have one vote on a show of hands or a poll; and
- (d) a Member who is present and entitled to vote and is also a proxy, attorney or representative for another Member shall have one vote on a show of hands.

11.7 The Chairperson of a meeting of Members does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

11.8 If:

- (a) the *Corporations Act 2001* requires that some Members are not to vote on a resolution, or that votes cast by some Members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

those Members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those Members. If a proxy purports to vote in a way or in circumstances that contravenes section 250A(4) of the

Corporations Act 2001, on a show of hands the vote is invalid and the Company must not count it and on a poll clause 11.12(c) applies.

- 11.9 A Member or Director may challenge a person's right to vote at a meeting of Members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the Chairperson of the meeting of Members, whose decision is final.
- 11.10 A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under clause 11.11 either before or on the declaration of the results of the vote on a show of hands. Unless a poll is demanded, the declaration of a decision by the Chairperson of the meeting of Members is final.
- 11.11 A poll may be demanded on any resolution (except a resolution concerning the election of a Chairperson of a meeting of Members) by:
- (a) at least one Member entitled to vote on the resolution; or
 - (b) the Chairperson of the meeting of Members.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

- 11.12 If a poll is demanded:
- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately, and subject to clause 11.12(c), in the manner that the Chairperson of the meeting of Members directs;
 - (b) in all other cases, the poll must be taken at the time and place and, subject to clause 11.12(c), in the manner that the Chairperson of the meeting of Members directs;
 - (c) votes which section 250A(4) of the *Corporations Act 2001* requires to be cast in a given way must be treated as cast in that way;
 - (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
 - (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

PROXIES, ATTORNEYS AND REPRESENTATIVES

- 11.13 A Member may appoint a proxy to attend and act for the Member at a meeting of Members. An appointment of proxy must be made by written notice to the Company:
- (a) that complies with section 250A(1) or section 250A(1A) of the *Corporations Act 2001*; or
 - (b) in any other form and mode that is, and is signed or acknowledged by the Member in a manner, satisfactory to the Board.
- 11.14 A Member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of Members. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.
- 11.15 An appointment of a proxy or an attorney is not effective for a particular meeting of Members unless the instrument effecting the appointment and, if it is an appointment of proxy which is executed or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) or section 250A(1A) of the *Corporations Act 2001* by the appointor's attorney, a document

referred to in clause 11.15A is received by the Company in accordance with section 250B(3):

- (a) at least 24 hours before the time for which the meeting was called; or
- (b) if the meeting has been adjourned, at least 24 hours before the resumption of the meeting.

11.15A The Board may require evidence of:

- (a) in the case of a proxy form executed or otherwise authenticated by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it;
- (b) in the case of an attorney, the power of attorney or a certified copy of it;
- (c) in the case of a corporate representative of a Member or a proxy, the appointment of the representative in accordance with the *Corporations Act 2001*; or
- (d) in the case of any appointment under clauses 11.13 to 11.22 which is transmitted to the Company electronically, the identity of the person who transmitted the message containing the appointment.

11.16 A Member that is a body corporate may appoint an individual to act as its representative at meetings of Members as permitted by section 250D of the *Corporations Act 2001*.

11.17 A Member may appoint a proxy, attorney or representative to act at a particular meeting of Members or make a standing appointment and may revoke an appointment. A proxy, attorney or representative may, but need not be, a Member.

11.18 A proxy or attorney has no power to act for a Member at a meeting at which the Member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a Member at a meeting at which the Member is present by attorney.

11.19 If more than one attorney or representative appointed by a Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to clause 11.19(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

11.20 An appointment of proxy by a Member shall be revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Member which would result in there being more than one proxy of that Member entitled to act at a meeting. The appointment of proxy made first in time shall be treated as revoked or suspended by this clause.

11.21 An act done at a meeting of Members by a proxy, attorney or representative is valid even if, before the act is done, the appointing Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or insolvent under administration or is wound up; or
- (c) revokes the appointment or the authority under the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

11.22 A Member shall be entitled to instruct his proxy to vote in favour of, or against, any proposed resolution. Subject to section 250A(4) of the *Corporations Act 2001* and unless otherwise instructed, a proxy may vote as he thinks fit.

MEETINGS BY TECHNOLOGY

11.23 The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

MATTERS REQUIRED TO BE DEALT WITH BY MEMBERS

11.24 The following matters may only be effected by Special Resolution of the Members in general meeting:

- (a) an amendment to, or replacement of, this Constitution;
- (b) the expulsion of a Member under clause 9.3;
- (c) the acceptance of an application for membership made by a person previously expelled under clause 9.3; and
- (d) any proposal involving the Company:
 - (i) disposing of substantially the whole of its assets or undertaking;
 - (ii) acquiring or commencing any assets or undertaking outside the objects in clause 3;
 - (iii) entering into any partnership, joint venture or merger; or
 - (iv) being wound up.

11.25 Amendments to clause 12.3(a) of this Constitution require the prior written consent of every Member.

12 APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS

12.1 The Board shall consist of five Directors.

12.2 A Director need not be a Member. Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.

THE BOARD

12.3 (a) The composition of the Board shall at all times be as follows:

- (i) one Director whom must represent the gas retail and distribution industry and whom is nominated by Members who are Gas Licensees at the time of nomination;
- (ii) one Director whom must represent the electricity retail and distribution industry and whom is nominated by Members who are Electricity Licensees at the time of nomination;

- (iii) two Directors whom must represent the interests of gas and electricity customers and whom are nominated by the Nomination Committee, after consulting with customer representative groups; and
 - (iv) one Independent Director nominated by the Directors.
- (b) Subject to this Constitution (including, in particular, clauses 12.3(h) and 12.3(k)), section 201E of the *Corporations Act 2001* and to the number of Directors for the time being fixed under clause 12.1 not being exceeded, the Board may appoint a person to be a Director at any time except during a general meeting. Any Director so appointed automatically retires at the next annual general meeting and is eligible for re-election by that general meeting.

The Board cannot validly appoint a person under this clause as a Director unless the person has been nominated by the persons eligible to nominate such a Director under clause 12.3(a) and the Company receives a consent to act as a Director signed by the person.

- (c) Subject to this Constitution (including, in particular, clauses 12.3(h) and 12.3(k)), section 201E of the *Corporations Act 2001* and to the number of Directors for the time being fixed under clause 12.1 not being exceeded, the Company may elect Directors by Ordinary Resolution. A Director appointed to replace one removed from office under rule 12.6 must retire when the Director replaced would have been required to retire if not removed and is eligible for re-election.
- (d) The Company in a general meeting cannot validly elect a person as a Director unless:
- (i) the person retires under clause 12.3(b), 12.3(c) or 12.3(g) and seeks re-election; or
 - (ii) at least 28 days before the meeting at which the relevant resolution will be considered, the Company receives a nomination of the person by the persons eligible to nominate such a Director under clause 12.3(a) and a consent to act as a Director signed by the person.

The Company must notify Members of every nominee for election as a Director at least 21 days before the relevant general meeting.

- (e) Subject to clause 12.3(f), if, at a general meeting, there are more nominees:
- (i) under clause 12.3(a)(i) than positions available, the nominee with the highest number of votes is elected so that there is no more than one in total;
 - (ii) under clause 12.3(a)(ii) than positions available, the nominee with the highest number of votes is elected so that there is no more than one in total;
 - (iii) under clause 12.3(a)(iii) than positions available, the two nominees with the highest numbers of votes are elected so that there are no more than two in total; and
 - (iv) under clause 12.3(a)(iv) than positions available, the nominee with the highest number of votes is elected so that there is no more than one in total.

- (f) If, at a general meeting, there is more than one nominee for a position available, separate resolutions must be put on the election of each nominee and no person is elected unless he receives more than 50% of the votes cast in favour of the resolution for his election as Director. If:
 - (i) only one nominee receives more than 50% of the votes cast in favour of the resolution for his election as a Director, that nominee is elected;
 - (ii) more than one nominee receives more than 50% of the votes cast in favour of the resolutions for their election as Directors, the nominee with the highest number of votes will be elected and, in the event of two or more nominees having the same number of votes, the nominees will draw lots to determine who will be elected; and
 - (iii) no nominee receives more than 50% of the votes cast in favour of the resolution for his election as Director, no nominee will be elected and the Board must convene a further general meeting to again consider resolutions for the election of persons nominated as Directors. A previously unsuccessful nominee may be nominated again.
- (g) Subject to clauses 12.3(b), 12.3(h) and 12.3(k):
 - (i) a Director must retire at the third annual general meeting after the Director was elected or last re-elected; and
 - (ii) a Director who retires under this clause is eligible for re-election.
- (h) Subject to clause 12.3(i), a Director appointed to represent the interests of gas and electricity customers in accordance with clause 12.3(a)(iii) is only eligible for and may only seek re-election once.
- (i) Notwithstanding the operation of clause 12.3(h), any Director appointed to represent the interests of gas and electricity customers who has remained in office continuously since the incorporation of the Company (notwithstanding any simultaneous retirement and re-election at an annual general meeting) and who:
 - (i) holds office as at 30 September 2008; and
 - (ii) has previously been re-elected only once,
 is eligible to retire and offer himself or herself for re-election at the 2009 annual general meeting.
- (j) A Director's retirement under clause 12.3(b) or 12.3(g) takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.
- (k) Subject to clause 12.3(h), if, at any annual general meeting, as a result of the operation of clause 12.3(b) and/or clause 12.3(g), the two Directors who are appointed to represent the interests of gas and electricity customers in accordance with clause 12.3(a)(iii) are both required to retire, then:
 - (i) subject to clause 12.3(k)(ii), they may agree which one of them must retire at the annual general meeting and, if eligible, seek re-election. If they do not agree they must draw lots to determine which one of them must retire and, if eligible, seek re-election. The Director who does not retire will have his term of office

extended automatically (without the need for retirement and re-election) until the next following annual general meeting at which he must retire and may, if eligible, seek re-election; and

- (ii) if one of those Directors has had his term of office previously extended in accordance with clause 12.3(k)(i), that Director will be the Director required to retire at the annual general meeting and may, if eligible, seek re-election.

CHAIRPERSON

- 12.4 The nominee that is appointed to fill the position of the Independent Director in accordance with clause 12.3 (a)(iv) will be appointed Chairperson of the Board.

VACATION OF OFFICE

- 12.5 The office of a Director shall become automatically vacant if the Director:
 - (a) is not permitted by the *Corporations Act 2001* (or an order made under the *Corporations Act 2001*) to be a Director;
 - (b) becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* and is not given permission or leave to manage the Company under section 206F or 206G of the *Corporations Act 2001*;
 - (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
 - (d) resigns by notice in writing to the Company;
 - (e) is absent from meetings of the Board for more than 6 consecutive Months without permission of the Board;
 - (f) holds any office of profit under the Company or receives any payment from the Company other than remuneration properly payable in accordance with this Constitution;
 - (g) having been elected as an Independent Director, ceases to be Independent;
 - (h) is removed or not re-elected by Members in general meeting; or
 - (i) ceases to be employed by or to be an officer of a Member.
- 12.6 Whether or not a Director's appointment was expressed to be for a specified period, the Company may by Ordinary Resolution remove a Director from office. The power to remove a Director under this clause is in addition to section 203D of the *Corporations Act 2001*.

REMUNERATION

- 12.7 Subject to clauses 12.8, 12.9, and 26, the Company shall not pay fees or other remuneration to a Director.
- 12.8 With the approval of the Board, the Company will pay to a Director:
 - (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
 - (b) subject to clause 12.9, reasonable remuneration for any ordinary service rendered by the Director to the Company in his capacity as a Director;
 - (c) reasonable remuneration for any extra services or special exertions rendered by the Director to the Company at the request of the Board;

- (d) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
 - (e) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
 - (f) reasonable rent for premises leased by the Director to the Company.
- 12.9 The remuneration payable to the Directors under clause 12.8(b) shall not exceed in any Year in aggregate the amount last fixed by Ordinary Resolution for that purpose and must be allocated equally among the Directors appointed under clauses 12.3(a)(iii) and (iv), subject to the Board resolving that the Chairperson of the Board may receive a higher amount than the other Directors.

13 POWERS AND DUTIES OF THE DIRECTORS

13.1 Subject to:

- (a) the *Corporations Act 2001*;
- (b) any other applicable law;
- (c) this Constitution; and
- (d) such policies as may be prescribed by the Board or the Company in general meeting that are not inconsistent with the *Corporations Act 2001*, any other applicable law or this Constitution,

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

13.2 A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with clause 14; or
- (b) in accordance with a delegation of the power under clause 13.3.

13.3 (a) The Board may delegate any of its powers as permitted by section 198D of the *Corporations Act 2001*.

- (b) The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

(c) A delegation of powers under clause 13.3(a) may be made:

- (i) for a specified period or without specifying a period; and
- (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain such provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

- (d) Subject to the terms on which a power of the Board is delegated to a Board committee, the meetings and proceedings of Board committees are, to the greatest extent practical, governed by the clauses of this Constitution which regulate the meetings and proceedings of the Board.

- 13.4 The Board may exercise all the powers of the Company to borrow or raise money.
- 13.5 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments drawn on bank accounts maintained by the Company and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in the manner determined by the Board from time to time.
- 13.6 Each Director must comply with sections 180 to 183 of the *Corporations Act 2001* and with all other obligations imposed by law on him.
- 13.7 A Director is not disqualified by reason only of being a Director from:
- (a) holding any office or place of profit or employment other than that of the Company's auditor or any partner, director or employee of the auditor;
 - (b) being a member or creditor of any corporation (including the Company) or partnership other than the Company's auditor; or
 - (c) entering into any agreement with the Company.

14 PROCEEDINGS OF THE BOARD

- 14.1 The Board may meet together for the dispatch 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, convene a meeting of the Board.

NOTICE

- 14.2 The convener of each Board meeting:
- (a) shall give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to:
 - (i) each Director who is in Australia;
 - (ii) each alternate or substitute Director who is in Australia; and
 - (b) may give that notice orally (including by telephone) or in writing,
- but failure to give notice to, or non-receipt of notice by, a Director shall not result in a Board meeting being invalid.

VOTING

- 14.3 Subject to this Constitution, a resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote in person (or by their alternate or substitute Director) on the resolution.
- 14.4 Resolutions of the Board in respect of levies and funding (other than loans) of the Company under this Constitution, must be passed at a meeting of Directors by a majority of at least 75% of such Directors as are entitled to vote in person (or by their alternate or substitute Director) on those resolutions.
- 14.5 Resolutions in respect of loan funding for the Company must be passed unanimously at a meeting of Directors by all Directors who are entitled to vote in person (or by their alternate or substitute Director) on those resolutions.

QUORUM

- 14.6 Subject to this Constitution, the number of Directors necessary for a quorum shall be three Directors including at least one Director appointed in accordance with clause 12.3(a)(i) or clause 12.3(a)(ii), and at least one Director appointed in

accordance with clause 12.3(a)(iii). An alternate or substitute Director who is also a Director or a person who is an alternate or substitute Director for more than one appointor may only be counted once towards a quorum.

- 14.7 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 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 14.6.

CHAIRPERSON

- 14.8 If there is no Chairperson of the Board or if he is not present within 30 minutes after the time appointed for holding a meeting of the Board, then the Directors present may choose another Director to be Chairperson of the meeting.
- 14.9 The Chairperson of a Board meeting does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

COMMITTEES

- 14.10 The Board may delegate any of its powers (except powers imposed on the Directors by law which are incapable of delegation) to one or more committees consisting of such persons as the Board thinks fit. Any committee so formed shall:
- (a) conform to any policy 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.
- 14.11 Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a Board committee is valid, notwithstanding that it is subsequently discovered that:
- (a) there was a defect in the appointment of the person; or
 - (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

RESOLUTIONS IN WRITING

- 14.12 A resolution in writing signed by all the Directors for the time being entitled to receive notice of meetings of the Board and being entitled to vote on that resolution, shall be valid and effectual as if it had been passed at a duly convened meeting of the Board. Any such resolution is passed at the time when the last Director signs it. For the purpose of this clause:
- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, shall be treated as one document;
 - (b) signature of a document by an alternate or substitute Director is not required if the appointor of that alternate or substitute Director has signed the document;
 - (c) signature of a document by the appointor of an alternate or substitute Director is not required if that alternate or substitute Director has signed the document in that capacity; and
 - (d) a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent

to the Company is a document signed by that Director at the time of its receipt by the Company.

MEETINGS BY TECHNOLOGY

14.13 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 to 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 and at the place at which the greatest number of the Directors present is located (or, if an equal number of Directors is located in each of two or more places, at the place where the Chairperson of the meeting is located).

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 means of communication or otherwise cease to take part in the conference unless he makes known to all other Directors taking part that he is ceasing to take part in the conference. Until a Director makes it known that he is ceasing to take part in the conference he shall be deemed to continue to be present and to continue to form part of the quorum.

DECLARATIONS OF INTEREST

- 14.14 Each Director must comply with section 191 of the *Corporations Act 2001*.
- 14.15 Each Director must comply with section 195 of the *Corporations Act 2001* in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest.
- 14.16 Subject to clause 14.15, a Director may not be counted in a quorum at a Board meeting that considers, and may not vote on, any matter in which he has a material personal interest.

ALTERNATE DIRECTORS

- 14.17 Subject to clause 12.1, any Director (other than an alternate or substitute Director) may appoint:
 - (a) any person or another Director to be an alternate or substitute Director in his place for a specified period or each time the appointor is unable to attend a Board meeting or act as a Director; 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 is unable or unwilling to act.
- 14.18 Subject to clause 14.2, an alternate or substitute Director:
 - (a) shall be entitled to notice of Board meetings;

- (b) may attend and vote in place of his appointor at a Board meeting at which the appointor is not present;
- (c) if also a Director, has a separate right to vote as an alternate or substitute Director;
- (d) if an alternate or substitute Director for more than one appointor, has a separate right to vote in place of each appointor;
- (e) when acting as an alternate or substitute Director, is an officer of the Company and is subject to all the duties, and entitled to exercise all the powers and rights, of his appointor as a Director;
- (f) with the approval of the Board, is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or the Company or while otherwise engaged in the business of the Company on the same basis as other Directors but is not entitled to any other remuneration from the Company (but the appointor may further remunerate the alternate or substitute Director); and
- (g) who is an alternate or substitute Director for the Chairperson of the Board is not by that reason alone to act as Chairperson of the Board.

14.19 The appointor may at any time revoke the appointment of a person as an alternate or substitute Director whether or not that appointment is for a specified period. Any appointment of an alternate or substitute Director immediately ceases if:

- (a) the appointor ceases to be a Director; or
- (b) an event occurs which would cause the alternate or substitute Director to cease to be a Director under clause 12.5 if the alternate or substitute Director were a Director.

14.20 The appointor must appoint, and revoke the appointment of, any alternate or substitute Director in writing. The appointment or revocation is not effective until a copy is provided to the Company at its registered office.

15 CHARTER OF ENERGY INDUSTRY OMBUDSMAN (WESTERN AUSTRALIA) LIMITED

15.1 The Company shall operate in accordance with and observe the roles, functions, powers and obligations set out in the Charter of Energy Industry Ombudsman (Western Australia) Limited for the time being in force and as that document may be modified or amended from time to time ("the Charter").

15.2 In becoming a Member of the Company, each Member agrees:

- (a) to be bound by and observe the terms of the Charter insofar as those terms relate to the form of energy in respect of which the Member holds a Licence (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 provided that any amendment to the Charter which:
 - (i) is inconsistent with this Constitution; or
 - (ii) purports to deal with the internal management or membership of the Company,

shall not be binding on Members until an amendment is made to this Constitution in accordance with section 136(2) of the *Corporations Act*

2001, which provides for the same provision as was amended or included in the Charter to be amended or included in this Constitution.

16 OMBUDSMAN

16.1 The Board shall:

- (a) appoint the Parliamentary Commissioner for Administrative Investigations ("the Parliamentary Commissioner") pursuant to the *Parliamentary Commissioner Act 1971* (WA) to be the Ombudsman of the Schemes by entering into a service agreement or agreements with the Parliamentary Commissioner 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; and
- (b) appoint all subsequent Ombudsmen of the Schemes 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.

16.2 The Ombudsman must not be associated with any Member or any customer representative group or any Energy Marketing Agent.

16.3 The Board may terminate the appointment of any person as the Ombudsman in accordance with that person's service agreement.

16.4 The Board shall require each Member to use its reasonable endeavours to ensure that the Ombudsman complies with the Schemes.

17 SECRETARY

17.1 Subject to section 204C of the *Corporations Act 2001*, the Board:

- (a) shall appoint at least one individual; and
 - (b) may appoint more than one individual,
- to be a Secretary for a specified term or without specifying a term.

17.2 A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary. If the Secretary is also a Director, he shall not be entitled to receive any remuneration other than in accordance with this Constitution.

17.3 A person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the *Corporations Act 2001* (or an order made under the *Corporations Act 2001*) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* and is not given permission or leave to manage the Company under section 206F or 206G of the *Corporations Act 2001*;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under clause 17.4.

- 17.4 The Board may remove a Secretary from office whether or not the appointment was expressed to be for a specified term.

18 MINUTES

- 18.1 The Board shall cause minutes of:
- (a) proceedings and resolutions of meetings of the Members;
 - (b) the names of Directors present at each Board meeting or Board committee meeting;
 - (c) proceedings and resolutions of Board meetings (including meetings of a Board committee to which Board powers are delegated);
 - (d) resolutions passed by Directors without a meeting; and
 - (e) disclosures and notices of Directors' interests,
- to be kept in accordance with sections 191, 192 and 251A of the *Corporations Act 2001*.
- 18.2 A minute recorded and signed in accordance with section 251A of the *Corporations Act 2001* is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.
- 18.3 The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B of the *Corporations Act 2001*.

19 SEAL

- 19.1 The Company may have a common seal. If the Company has a common seal, it may also have a duplicate common seal. The Board must not authorise the use of a seal that does not comply with section 123 of the *Corporations Act 2001*.
- 19.2 The seal and duplicate seal shall only be used with the authority of the Board or a committee of Directors authorised by the Board for that purpose.
- 19.3 Every instrument to which the seal or duplicate seal is affixed must be signed either by:
- (a) two Directors;
 - (b) one Director and one Secretary; or
 - (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

EXECUTION WITHOUT SEAL

- 19.4 This clause does not limit the ways in which the Company may execute a document.

20 FUNDING

SPECIAL LEVIES

- 20.1 The Board may at any time and from time to time obtain money for the purposes of the Company in addition to the Annual Levy by raising a Special Levy from the Members. The terms of the Special Levy (including payment) will be determined by the Board in its absolute discretion and each Member must

pay its share of the Special Levy in the manner and at the times determined by the Board.

START-UP LEVY – FOUNDING MEMBERS

- 20.2 (a) Each Founding Member must contribute to the Start-Up Levy as agreed between the Founding Members.
- (b) Each Founding Electricity Member must contribute to the Start-Up Levy as agreed between the Founding Electricity Members.

JOINING LEVY

- 20.3 (a) As and when further Applicants become Members of the Company, they shall contribute towards the Joining Levy by making a contribution of \$5,000 or such other reasonable amount as may be determined by the Board. For the avoidance of doubt, this clause 20.3(a) does not apply to the Founding Members or the Founding Electricity Members.
- (b) The contributions made by new Members towards the Joining Levy under clause 20.3(a) will be used to reduce the amount of the ongoing Annual Levy payable by all Members.

ANNUAL LEVY

- 20.4 Each Member must pay its share of the Annual Levy in three tranches at four monthly intervals (or such other times as determined by the Board). The Annual Levy and the manner of payment shall be redetermined annually by the Board and shall be based on the amount required to fund the Annual Funding Figure for the relevant Financial Year. The amounts shown in the tables in clauses 20.5(a) and 20.5(b) are to be amended to reflect a change in the Annual Levy (if any) following a redetermination by the Board under this clause 20.4.
- 20.5 The Annual Levy shall be allocated by the Board between the Members on the following basis:
- (a) each Member holding a licence of a type referred to in paragraphs (a) or (b) of the definition of Licence will contribute an amount based on:
- (i) its Customer Numbers at the commencement of the relevant Financial Year (or in the case of a Member which becomes a Member after the commencement of the relevant Financial Year, based on its Customer Numbers at the time it becomes a Member), as follows:

Customer Numbers	Amount
Less than 1000	\$1,000
1000 to 2000	\$5,000
More than 2000	\$20,000

and

- (ii) the number of complaints and disputes involving each Member supplying gas during the previous Financial Year.
- (b) each Member holding a licence of a type referred to in paragraphs (c), (d) or (e) of the definition of Licence will contribute an amount based on:
- (i) its Customer Numbers at the commencement of the relevant Financial Year (or in the case of a Member which becomes a

Member after the commencement of the relevant Financial Year, based on its Customer Numbers at the time it becomes a Member), as follows:

Customer Numbers	Amount
Less than 1,000	\$1,000
1,000 to 5,000	\$20,000
5,001 to 50,000	\$50,000
More than 50,000	\$90,000

and

- (ii) the number of complaints and disputes involving each Member supplying electricity during the previous Financial Year.

For the purposes of this clause 20.5, "Customer Numbers" in respect of a Member is the greater of:

- (i) the number of Distribution Customers of the Member; or
- (ii) the number of Retail Customers of the Member,

except where the number of Distribution Customers of the Member is equal to the number of Retail Customers of the Member, in which case "Customer Numbers" will be the number of Distribution Customers of the Member.

- 20.6 All Annual Levy contributions shall be due and payable 30 days after the date on which the Member is notified in writing of the amount to be paid by the Board.
- 20.7 The Board must, in allocating the Annual Levy between Members under clause 20.5, endeavour to ensure that the allocated share of each member is fair and reasonable.

DISPUTE COSTS

- 20.8 Each Member will pay the costs for all complaints or disputes involving the Member. The Company will determine these costs, which must be approved by the Board.
- 20.9 The dispute costs will accumulate and be billed by the Company on a monthly basis to each Member.
- 20.10 Payment of dispute costs is required within 14 days of the issue of the invoice by the Company to the Member.

LOAN FUNDS

- 20.11 The Board may, by unanimous resolution, seek to raise loan funds from Members or third parties for particular purposes except that any such loan may not be raised without the approval of the Company in general meeting if the amount of the loan together with the amount of all other loans raised under this clause exceeds \$250,000.

PREPARATION BY OMBUDSMAN OF BUSINESS PLANS AND DRAFT ANNUAL FUNDING FIGURES AND BUDGETS

- 20.12 For each Financial Year, the Board shall require the Ombudsman to provide input into the preparation of:
 - (a) a business plan;

- (b) the Annual Funding Figure; and
 - (c) the Budget,
- for the Company.

20.13 The Ombudsman must provide the input referred to in clause 20.12 to the Board at least 90 days before the commencement of that Financial Year.

ANNUAL FUNDING FIGURES AND BUDGETS

20.14 The Board will, from time to time, appoint a committee to be known as the Budget Committee, comprising an equal number of Directors from those appointed in accordance with clauses 12.3(a)(i), (ii) and (iii).

20.15 The Budget Committee will, for each Financial Year, formulate a proposed Annual Funding Figure for the Company and a proposed Budget in consultation with the Ombudsman, and submit them to the Board at least 60 days before the commencement of that Financial Year.

20.16 The Board will, for each Financial Year, produce a proposed Annual Funding Figure for the Company and a proposed Budget, taking into consideration the proposed Annual Funding Figure and proposed Budget formulated by the Budget Committee, and will ensure that the Board's proposed Annual Funding Figure is put before a general meeting of the Company to be voted upon at least 30 days before the commencement of that Financial Year. In producing a proposed Annual Funding Figure and a proposed Budget, the Board will seek to ensure that the level of funding is such that the Ombudsman is able to carry out his functions under this Constitution and the Charter.

20.17 Variations to Annual Funding Figures of the Company may be proposed by the Board but will only be effective once passed by the Company in general meeting.

20.18 If the Annual Funding Figure put by the Board to a general meeting of the Company in accordance with clause 20.16 is passed by the meeting, the Board's proposed Budget will become the Budget for the relevant Financial Year. If the Annual Funding Figure is varied in accordance with clause 20.17, 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.

20.19 Subject to clause 20.20, the Company 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.

20.20 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 or any additional expenditure, the Board must consider the views of the Budget Committee.

21 ACCOUNTS

21.1 The Board shall cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

- 21.2 The Board must cause the Company to prepare a financial report and a Directors' report that comply with Part 2M.3 of the *Corporations Act 2001* and must report to Members in accordance with section 314 of the *Corporations Act 2001* not later than the deadline set by section 315 of the *Corporations Act 2001*.
- 21.3 Subject to the *Corporations Act 2001* and clause 18.3, the Board shall determine the times and places at which and the conditions and regulations upon which the financial and other records of the Company shall be open for inspection by the Members.
- 21.4 The Financial Year of the Company shall be the period from 1 July in each Year to the following 30 June.
- 21.5 The first Financial Year of the Company shall be the period from the date of registration to the following 30 June (both inclusive).
- 21.6 Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

22 AUDIT

The Board shall cause the Company's financial report for each Financial Year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by the *Corporations Act 2001*.

23 NOTICES

- 23.1 Any notice required by law or under this Constitution to be given to any person is properly given by the Company 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 given; and
 - (c) either:
 - (i) delivered in person to that person's address;
 - (ii) sent by prepaid post (by airmail, if the addressee is overseas) to that person's address;
 - (iii) sent by facsimile transmission to the facsimile number nominated by that person; or
 - (iv) sent by electronic mail to the electronic mail address nominated by that person.

23.2 In the case of notice given by facsimile transmission or electronic mail, such notice must be confirmed by prepaid post to the Member's registered address in the register of Members, the confirmation being sent within one business day after the sending of the facsimile transmission or electronic mail.

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

- (a) if it is delivered personally or sent by facsimile transmission or electronic mail:
 - (i) by 5pm (local time in the place of receipt) on a business day – on that day; or
 - (ii) after 5pm (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 post:
 - (i) within Australia – one business day after posting; or
 - (ii) to a place outside Australia – three business days after posting.

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

23.4 For the purposes of clauses 23.2 and 23.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

23.5 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 shall be counted in reckoning the period.

23.6 If:

- (a) on two or more consecutive occasions a notice served on a Member in accordance with clause 23 is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that the Member is not at the address shown in the register of Members,

the Company may give effective notice to the Member by exhibiting the notice at the Company's registered office for at least 48 hours.

This clause 23.6 ceases to apply if the Member gives the Company notice of a new address.

23.7 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 the Company for the giving of notices;
- (b) the auditor for the time being of the Company, if required by law;
- (c) every Director; and
- (d) every alternate or substitute Director.

No other person shall be entitled to receive notice of general meetings.

24 REVIEWS OF GIO (WA) SCHEME AND EIO (WA) SCHEME

The Board shall conduct reviews of the Schemes and develop proposals for their continued operation in accordance with regulation 8 of the *Energy*

Coordination (Ombudsman Scheme) Regulations 2004 and regulation 9 of the *Electricity Industry (Ombudsman Scheme) Regulations 2005* (as applicable). These reviews must consider the objectives of the GIO (WA) Scheme as stated in Schedule 2B of the *Energy Coordination Act 1994* and the objectives of the EIO (WA) Scheme as stated in Schedule 2 of the *Electricity Industry Act 2004* (as relevant).

25 WINDING UP

If upon the winding-up or dissolution of the Company in accordance with the *Corporations Act 2001* and after satisfaction of all its debts and liabilities, there remains surplus assets available for distribution, they must be divided among the Members in proportion to each Member's total contribution to the Company's fee income that has been paid in accordance with clauses 20.1 to 20.5, as may be applicable to the Members.

26 INDEMNITY

DEFINITION OF "OFFICER"

26.1 In clause 26 "Officer" means a Director or Secretary of the Company.

INDEMNITY TO OFFICERS

- 26.2 (a) Subject to clause 26.2(b), to the extent permitted by law and without limiting the powers of the Company, every Officer of the Company shall be indemnified, to the extent that the Officer is not otherwise indemnified, against any liability which results from facts or circumstances relating to the person serving or having served as an Officer of the Company or its subsidiaries.
- (b) An Officer of the Company is not entitled to be indemnified by the Company for a liability:
- (i) which arises out of conduct involving a lack of good faith by the Officer;
 - (ii) where the liability is owed to the Company or a related body corporate; or
 - (iii) where the liability is for a pecuniary penalty order under section 1317H of the *Corporations Act 2001*.

INDEMNITY TO THE OMBUDSMAN

26.3 Indemnity to the Ombudsman and its employees may be provided for in the service agreement.

INDEMNITY FOR PROCEEDINGS

- 26.4 Without limiting clause 26.2, every Officer of the Company shall be indemnified by the Company against any liability for costs and expenses incurred by that person arising out of his duties as an Officer:
- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
 - (b) in connection with an application in relation to such proceedings in which the court grants relief to the person under the *Corporations Act 2001*.

LIABILITY OF OFFICERS

- 26.5 Subject to the *Corporations Act 2001*, 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.

BENEFIT TO SURVIVE

- 26.6 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.

INSURANCE

- 26.7 The Directors 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 Directors approve.

TAXATION

- 26.8 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.

FORMER OFFICERS

- 26.9 The indemnity in favour of Officers under clause 26 is a continuing indemnity. It applies in respect of all acts done by a person while an Officer of the Company or one of its subsidiaries even though the person is not an Officer at the time the claim is made.

DEEDS

- 26.10 Subject to the *Corporations Act 2001*, without limiting a person's rights under this clause 26, the Company may enter into an agreement with a person who is or has been an Officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this clause 26 on any terms and conditions that the Board thinks fit.

27 REGISTER OF MEMBERS

- 27.1 The Company must set up and maintain a register of Members. In accordance with the *Corporations Act 2001*, the register must contain the following information:
- (a) the name and address of each Member;
 - (b) the date on which the entry of the Member's name in the register is made;
 - (c) the name and details of each person who stopped being a Member within the last seven Years;
 - (d) the date on which the person stopped being a Member; and
 - (e) an index of Members' names if the Company has more than 50 Members and the register itself is not kept in a form that operates effectively as an index.

28 AMENDMENTS

- 28.1 This Constitution may only be amended in accordance with the *Corporations Act 2001*.

29 GST**PAYMENT OF GST**

- 29.1 If a party (being either the Company or any Member) makes a supply to another party under or in connection with this Constitution, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is exclusive of GST, and in addition to paying that consideration the recipient must:
- (a) pay to the supplier an amount equal to any GST for which the supplier is liable on that supply, without deduction or set-off of any other amount; and
 - (b) make that payment as and when the consideration or part of it must be paid or provided, except that the recipient need not pay unless the supplier has issued to the recipient a tax invoice (or an adjustment note) for that supply.

REIMBURSEMENTS

- 29.2 If, under this Constitution, one party is required to reimburse or compensate the other party for any cost or liability incurred by that other party, the amount to be reimbursed or compensated excludes any GST component of that cost or liability for which that other party is entitled to claim an input tax credit.