



# Constitution

## Energy & Water Ombudsman (NSW) Limited

**ABN 21 079 718 915**

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### Energy & Water Ombudsman NSW

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# 1. Introduction

## 1.1 EWON's objects are:

- a) to provide and promote, in accordance with the Charter, an independent complaints handling service for Energy or Water Services that is available to Complainants;
- b) to assist in the reduction and avoidance of Complaints; and
- c) to do anything incidental to those purposes.

## 1.2 In this Constitution, unless the context otherwise requires the following expressions have the following meanings:

*"Adoption Date"* means 1 July 2012;

*"Applicable Law"* means the National Electricity Law, National Electricity Rules, National Energy Retail Law, National Energy Retail Rules, Electricity Supply Act, AER (Retail) Exempt Selling Guideline, AER Exempt Network Service Provider – Registration Exemption Guideline, Water Industry Competition Act and any other relevant legislation, regulation or code that may apply to the functions of EWON or its Members;

*"Board"* means EWON Board constituted in accordance with Clause 10;

*"Board Chair"* means the Chair of the Board from time to time;

*"Charter"* means the Charter of EWON as amended from time to time in accordance with this Constitution;

*"Community Director"* means a Director who is appointed to be a Community Director for the purposes of Clause 10.1c);

*"Complaint"* means an expression of dissatisfaction by a Complainant about Energy or Water Services and includes:

- a) complaints by consumers of Energy or Water Services about issues relating to marketing, sales, contracts, billing, credit and payment services, disconnection, service restrictions and customer service issues; and
- b) complaints by other persons directly affected by the provision or supply of Energy or Water Services or the manner in which the Member has carried on its business of providing Energy or Water Services;

*"Complainant"* means a person, club, incorporated body or other entity making a Complaint to the Scheme;

*"Consultative Council meeting"* means a meeting of stakeholders held in accordance with Clause 17;

*"Corporations Act"* means the Corporations Act 2001;

*"Customer"* means a person or organisation that is provided with Energy or Water Services for residential or small business purposes;

*"Customer Bandwidth"* means the relevant range of Customer Numbers in the table of Annual Customer Number Fees as set out in the Schedule of Member Fees and Levies;

*"Customer Number"* means the number of Customers that a Member has in New South Wales. If a Member operates in more than one of the three Industry Sectors and has the same Customer in more than one sector, the Customer will be counted separately in relation to each sector. If a Member operating in a sector provides a Customer with both gas and electricity services in that sector, the Customer will be counted separately for each of those services. The Customer Number is based on the customer numbers reported by the Member



to EWON in relation to a date specified by the Board, subject always to the right of EWON to verify or, in its absolute discretion, determine the Customer Number in respect of that Member;

*“Director”* means a member of the Board from time to time;

*“Energy or Water Services”* means:

- a) the product or service provided to satisfy an energy demand or need in New South Wales and includes the transmission, distribution, connection, supply and retailing of the energy source; and/or
- b) the supply in New South Wales of water, sewerage or stormwater services to supply a demand or need of customers and includes distribution, connection to a water supply system, sewerage system or stormwater system, but does not include the discharge of trade wastewater to a sewer, and

commercial arrangements associated with these activities;

*“EWON”* means Energy & Water Ombudsman (NSW) Limited;

*“EWON Binding Decision”* means an EWON decision made in accordance with paragraph 11 of the Charter that has been accepted by the Complainant;

*“Exempt Entity”* means a person or organisation that is granted or deemed to have an exemption under Applicable Law;

*“Hybrid General Meeting”* has the meaning given to that term in Clause 8.1(b);

*“Industry Director”* means a Director who is appointed to be an Industry Director for the purposes of Clause 10.1(b);

*“Industry Sectors”* means the energy retail sector, energy network sector and water sector;

*“Member”* means each person or organisation that:

- a) is a provider of Energy or Water Services in one or more of the Industry Sectors; and
- b) has applied and been accepted as a Member of EWON and has met all application requirements including agreeing to be bound by the terms of this Constitution and the Membership Agreement.

For the avoidance of doubt, "Member" does not include third party agents;

*“Membership Agreement”* means the agreement entered into by EWON and a Member that specifies the terms of membership in EWON;

*“Monetary Limit”* means the maximum amount that EWON is able to award where an EWON Binding Decision is made, this maximum amount being equal to the relevant monetary limit applicable to the NCAT (plus GST if GST applies);

*“Month”* means calendar month;

*“NCAT”* means New South Wales Civil and Administrative Tribunal;

*“Network”* includes the supply, distribution, connection and transmission of energy or water;

*“Ombudsman”* means the Energy & Water Ombudsman NSW appointed in accordance with Clause 15;

*“Schedule of Member Fees and Levies”* means the schedule that is determined by the Board and specifies the fees, levies and other payments to be paid by Members to EWON for the complaints handling and other services provided by EWON;

*“Secretary”* means the Company Secretary appointed in accordance with Clause 13;



“*Special Resolution*” has the meaning given to that term in the Corporations Act;

“*Virtual General Meeting*” has the meaning given to that term in Clause 8.1(c);

“*WICA*” means the Water Industry Competition Act 2006 (NSW); and

“*WICA Provider*” means an organisation that provides water services in accordance with the WICA and is required by the Independent Pricing & Regulatory Tribunal to be a member of EWON.

- 1.3 In this Constitution:
- a) headings do not affect the construction or interpretation of clauses;
  - b) the singular includes the plural unless expressed otherwise; and
  - c) a reference to a statute includes regulations and other statutory instruments under it and amendments or replacements of any of them.
- 1.4 The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to EWON.

## 2. Company limited by guarantee

- 2.1 EWON is a company limited by guarantee.
- 2.2 If EWON is wound up during the currency of the Member’s membership or within one year of its membership ceasing, the Member undertakes to contribute to the property of EWON for:
- a) payment of EWON’s debts and liabilities contracted before the Member’s membership ceased;
  - b) the costs, charges and expenses of winding up;
  - c) an adjustment of the rights of contributors among themselves; and
  - d) such other amounts as may be required, provided any such amount shall not exceed \$100.00.
- 2.3 The rights and privileges of a Member are not capable of transfer to another person.

## 3. Income and Property of EWON

- 3.1 The whole of the income and property of EWON must be used solely to further the objects of EWON as set out in this Constitution and no part shall be paid or transferred directly or indirectly to the Members by way of dividend, bonus or otherwise.
- 3.2 Notwithstanding Clause 3.1, EWON may make a payment to any Member as genuine compensation for any goods supplied or services rendered in the ordinary course of business.

## 4. Application for Membership

- 4.1 A provider of Energy or Water Services may apply in writing to EWON to become a Member by completing and signing EWON’s application documentation, including the Membership Agreement, and fulfilling any other application requirements. Each legal entity is limited to one membership of EWON.
- 4.2 EWON must accept an application where the applicant has fulfilled all application requirements as published by EWON, unless the Board is not satisfied that the applicant is



willing and able to meet the obligations of Members. EWON is under no obligation to accept an application where the Board is not so satisfied.

- 4.3 For a specified and renewable term, the Board may delegate to the Ombudsman the responsibility for approval of applications for membership by Exempt Entities and WICA Providers.
- 4.4 An applicant's membership of EWON will commence from the date of EWON's approval of the applicant's application or, if later, the date on which the Member completes all application requirements.
- 4.5 EWON must maintain a public register of Members.

## 5. Obligations of Members

- 5.1 Each Member:
  - a) must at all times comply with this Constitution, the Charter and the Membership Agreement entered into by the Member and EWON;
  - b) must operate a bona fide internal complaints handling service in relation to its Energy or Water Services for the benefit of Complainants and publicise to users of their Energy or Water Services the availability of that service;
  - c) must inform consumers of their Energy or Water Services that EWON is available to provide them with a free complaints resolution service;
  - d) must appoint a contact person for EWON and provide EWON with the name and contact details of that person and any replacement contact person appointed from time to time;
  - e) must comply with any EWON Binding Decision that finds that the Member should undertake remedial action;
  - f) consents to EWON making public:
    - i. any failure by the Member to comply in whole or in part with an EWON Binding Decision; or
    - ii. the termination of the Member's participation in EWON; and
  - g) consents to the provision by EWON to a government Minister or regulator of any information concerning the Member.

## 6. Member Fees and Charges

- 6.1 A Member agrees to pay EWON any fees or other charges levied by EWON on the Member. EWON will calculate these in accordance with the Schedule of Member Fees and Levies set by the Board and revised from time to time.
- 6.2 Where EWON needs information from the Member about its business in order to calculate any levy or other charge, EWON may request the Member to provide information that is directly relevant and reasonably required by EWON and the Member must promptly provide and certify that information as requested by EWON. EWON's calculation of the amount of any levy or other charge payable by the Member will, in the absence of manifest error, be final and binding upon the Member.
- 6.3 EWON may invoice a Member for a fee or charge at the time and in the manner it considers appropriate, for example, in advance, in arrears, by instalments or, where the fee is referable to EWON's receipt and consideration of a Complaint, at a time that is proximate to the Complaint. Where a fee is levied in advance, EWON may estimate the fee payable by a Member for the period of time to which the fee is referable and then make any necessary adjustment following the end of that period.



- 6.4 A Member must make payment to EWON within the timeframe specified in the Schedule of Member Fees and Levies for each fee or charge or, if no timeframe is specified there, not later than 30 days after receipt of an invoice from EWON requesting payment of the amount. If payment is made after the due date, EWON may charge interest at the rate of interest equal to the Reserve Bank Target Cash Rate as at the due date plus 2%.
- 6.5 The Ombudsman may recommend to the Board that any fee required to be paid by a Member or prospective Member in accordance with the Schedule of Fees and Levies should be varied or a form of payment plan agreed.

## 7. Termination of Membership

- 7.1 A Member may terminate their membership of EWON by giving EWON at least 12 months' written notice.
- 7.1.1 Notwithstanding Clause 7.1, the Board has discretion to allow a Member to terminate their membership of EWON by giving a different period of written notice.
- 7.1.2 The termination of membership will take effect upon expiry of the notice period pursuant to either Clause 7.1 or Clause 7.1.1.
- 7.2 EWON may, by written notice to the Member at any time, immediately terminate their membership if, in the opinion of the Board, the Member:
- has not paid any fee or charge invoiced by EWON pursuant to Clause 6.4 within 3 months of the date of the invoice;
  - breaches, or fails to perform, any obligation of the Member under the Constitution, the Charter or its Membership Agreement; or
  - acts in a way that brings the Member or EWON into disrepute.
- 7.3 Termination of membership, whether by the Member at the expiry of notice in accordance with Clause 7.1 or by EWON giving notice in accordance with Clause 7.2:
- does not entitle the Member to repayment of the whole or any part of any fee or charge previously paid by it to EWON;
  - is without prejudice to the Member's liability to pay any fee or charge which has become due and payable to EWON; and
  - is without prejudice to the Member's obligations (including to pay fees or charges to EWON) in respect of any Complaint made or referred to the Ombudsman before the date of termination of membership.
- 7.4 Clause 7.3 survives the termination of membership in EWON.

## 8. Convening General Meetings

- 8.1 Subject to any applicable law, a general meeting may be held:
- at a single physical location;
  - in two or more physical locations facilitated by the use of any one or more technologies permitted by the Corporations Act (**Hybrid General Meeting**); or
  - virtually or remotely using one or more technologies permitted by the Corporations Act (**Virtual General Meeting**).
- 8.1.1 Subject to any applicable law, the Board will determine which of the methods set out in Clause 8.1 a general meeting will be conducted in.



8.1.2 Where there is not a single physical location for a general meeting, the technologies used to conduct the meeting must give all persons entitled to attend the meeting a reasonable opportunity to hear and participate in the meeting (irrespective of where they are physically present).

- 8.2 The Board may, when it thinks fit, convene a general meeting and must do so if required under the Corporations Act.
- 8.3 Notice of a general meeting must be given in accordance with the Corporations Act.
- 8.4 The Ombudsman is entitled to attend a general meeting of Members. The Board may also invite other people to attend and speak at a general meeting.

## 9. Proceedings at General Meetings

9.1 A Member may be present at a general meeting in person, by proxy or attorney or, in the case of a Member that is a body corporate, by a duly authorised representative and may thereby vote on resolutions at the meeting.

9.1.1 Subject to any applicable law, if a number of Members equal to or exceeding a quorum for that meeting is able to hear the proceedings of the general meeting using any technologies permitted by the Corporations Act, there is a meeting and that meeting is quorate.

9.1.2 Subject to any applicable law, all persons participating in a general meeting by way of any technologies permitted by the Corporations Act are taken to be present in person at the meeting while so participating.

9.1.3 A Member participating at a Hybrid General Meeting or a Virtual General Meeting is entitled to exercise all rights as a Member at the meeting including the right to vote (as applicable) on a show of hands or a poll.

- 9.2 A general meeting must be chaired by the Board Chair or, in that person's absence, by a person chosen by the Directors present at the general meeting.
- 9.3 In order to have a quorum at a general meeting, there must be:
  - a) at least ten Members present at the meeting; or
  - b) in the case of an adjourned meeting – at least five Members present at the meeting.A Member whose right to vote is suspended in accordance with Clause 9.10 must not be counted for the purposes of determining whether a quorum exists.
- 9.4 No business may be transacted at a general meeting unless there is a quorum of Members at the time when the meeting proceeds to business. If within 30 minutes of the time appointed for the general meeting, there is not a quorum of Members, the meeting is terminated or adjourned as the chair of the general meeting determines.
- 9.5 Only unfinished business is to be transacted at a general meeting resumed after an adjournment.
- 9.6 A resolution put to the vote of the general meeting must be decided:
  - a) on a poll if:
    - a. the meeting is a Hybrid General Meeting or a Virtual General Meeting; or
    - b. a poll is demanded in accordance with Clause 9.6.1; or
  - b) otherwise on a show of hands.



- 9.6.1 A poll may be demanded by:
- a) the Chair of the general meeting; or
  - b) a Member having the right to vote at the general meeting.
- 9.6.2 The poll will be taken in the manner that the Chair directs.
- 9.7 For all resolutions put to the vote of the general meeting whether on a show of hands or a poll, each Member present is, subject to Clause 9.10, entitled to cast that number of votes which is equal to the midpoint of the Customer Bandwidth into which the Member falls, or another measure as outlined in Clause 9.7.3. Unless the resolution is a Special Resolution as defined in the Corporations Act, the resolution is carried if there are more votes in favour of the resolution than against the resolution.
- 9.7.1 Despite anything to the contrary in this Constitution, the Directors may decide that at any general meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' includes a vote delivered by post, fax or other electronic means approved by the Directors.
- 9.7.2 The Directors may prescribe regulation, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.
- 9.7.3 Members not subject to the Customer Bandwidth in the Schedule of Member Fees and Levies, as notified by EWON, will be entitled to cast the number of votes based on the measure set out in the Schedule of Member Fees and Levies for that type of Member.
- 9.8 Unless a poll is properly demanded, a declaration of the Chair of the meeting that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the general meeting, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against a resolution.
- 9.9 A poll is taken in the manner the Chair of the general meeting directs. The result of a poll is a resolution of the general meeting at which the poll is taken.
- 9.10 A Member's right to vote is suspended if and for so long as the Member:
- a) is in default in payment of a fee or charge due to EWON;
  - b) has a liquidator, provisional liquidator, receiver, manager or administrator appointed;
  - c) enters into any composition with or scheme or arrangement with creditors; or
  - d) is otherwise dealt with under insolvency laws.
- 9.11 A Hybrid General Meeting or Virtual General Meeting is taken to be held at the place determined by the Chair of the meeting.
- 9.12 If, before or during a general meeting, any technical difficulty occurs which precludes a Member from having a reasonable opportunity to participate, the Chair may either adjourn the meeting until the technology gives Members a reasonable opportunity to participate or continue the meeting (in which case no Member may object to the meeting being held or continuing).

## 10. Membership of the Board

- 10.1 The Board comprises:



- a) an independent Board Chair;
- b) 5 Industry Directors who have experience in either the energy industry or the water industry; and
- c) 5 Community Directors.

10.2 Subject to clause 10.17, all Industry Directors and Community Directors will be elected or appointed (as the case may be) for a term of four years and are eligible to seek re-election or reappointment (as the case may be) for a further term of four years, subject to clause 10.11, but must not serve more than two consecutive terms.

#### **Board Chair**

10.3 The Board (including the retiring Board Chair) must appoint a person to be a Director and the independent Board Chair.

10.4 The Board Chair must not have a material interest or an existing association or relationship that conflicts with his or her duties as Board Chair.

10.5 In appointing the Board Chair, the Board must consider past associations or relationships and satisfy itself that they do not present any significant conflict to the role of Board Chair.

10.6 The Board Chair must be appointed for a specified term not exceeding four years and is eligible for re-appointment for further term of up to four years but, subject to clause 10.11, must not serve more than two consecutive terms.

10.7 If the Board Chair is unavailable, the Board may appoint a Director to be the Acting Chair for all or part of the time the Board Chair is unavailable.

10.8 The Board can appoint up to two Deputy Chairs from amongst its members, of which one Deputy Chair must be an Industry Director and one a Community Director. The role of Deputy Chair is to assist the Chair upon request in the conduct of his or her responsibilities.

#### **Industry Directors**

10.9 The Industry Directors are elected by the Members. A person is not eligible for election as an Industry Director unless a consent to nomination, signed by that person, has been given to EWON at least 45 business days before the relevant annual general meeting, with the exception of:

- a) a retiring Industry Director (whether previously elected by the Members or appointed by the Board to fill a casual vacancy) who wishes to stand for re-election in accordance with Clause 10.2; or
- b) a person who is nominated by the Board for election-

##### **10.9.1**

- a) If there is more than one individual who is nominated to be elected or otherwise proposes to stand for election as an Industry Director for an Industry Director vacancy then the Board Chair may call an election by ballot or poll.
- b) If there is only one individual who is nominated to be elected or otherwise proposes to stand for election as an Industry Director for one Industry Director vacancy, the election of that person may be submitted for approval by Members at a general meeting.
- c) The vote will be conducted in accordance with clause 9.6, taking into account those votes of Members present at the annual general meeting, those votes validly received by proxy and those cast under the direction of the Chair pursuant to 9.7.1 and 9.7.2.

10.10 The Industry Directors must comprise:



- a) two directors who were nominated by a Member in the energy retail sector;
- b) one director who was nominated by a Member in the energy network sector;
- c) one director who was nominated by a Member in the water sector; and
- d) one director nominated by a Member in accordance with Clause 10.16(b).

10.11 Notwithstanding Clause 10.9, if an Industry Director ceases to hold office in accordance with Clause 10.18, the Board must seek nominations for appointment of a Director to maintain the composition of the Industry Directors in accordance with Clause 10.10. The Board must then appoint a Director from those nominations to hold office until the completion of the previous Director's term. Terms of office served to fill a casual vacancy in this way do not count towards the limitation of two consecutive terms for the purpose of Clause 10.2 unless they exceed 18 months, in which case they are deemed to have served one full term.

### **Community Directors**

- 10.12 The Community Directors are appointed by the Board (including continuing and retiring Community Directors). A person appointed to be a Community Director must have experience in and knowledge about consumer and/or small business interests relating to some aspect of the complaints handling service provided by EWON.
- 10.13 If a Community Director ceases to hold office in accordance with Clause 10.18, the Board must appoint a replacement Community Director in accordance with Clauses 10.14 to 10.16.

### **Nominations Committee**

- 10.14 The Board must establish a Nominations Committee as a committee of the Board, comprising the Board Chair and equal numbers of Industry Directors and Community Directors.
- 10.15 The Nominations Committee must:
- a) invite nominations for possible election or appointment to fill a Board vacancy, other than the Board Chair; and
  - b) recommend to Members (or in relation to Community Directors, the Board) the name or names of the nominees whom it considers are the most well-suited to fill the vacancy on the basis of their knowledge, skills and experience.
- Nominees who have not been recommended by the Committee may nevertheless choose to stand for election by Members.
- 10.16 Invitations to nominate candidates for directorships must be sent by the Nominations Committee:
- a) in the case of vacancies for an Industry Director under Clause 10.10(a)-(c), to all Members in the relevant Industry Sector;
  - b) in the case of vacancies for the position of Industry Director under Clause 10.10(d), to all Members together with a written description of the experiences and skills that it considers most appropriate to complement those of the Industry Directors who are continuing in office; and
  - c) in the case of vacancies for the position of Community Director, to relevant community organisations, especially those that have been represented at Consultative Council meetings.

### **Transitional Board Arrangements**

- 10.17 Clause 10.2 applies to the first or second term of any person elected or appointed (as the case may be) as an Industry Director or a Community Director from July 2025 onwards, and Clause 10.6 applies to any appointment or reappointment of the Board Chair from 2024



onwards. However, neither Clause 10.2 nor Clause 10.6 will operate to extend the current term of any director or Chair elected or appointed prior to these times.

## General

- 10.18 A Director may resign by written notice to the Board. A Director automatically ceases to hold office if he or she:
- becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
  - becomes prohibited from holding the office of director of a company under the Corporations Act;
  - becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the laws relating to mental health;
  - has been absent for 3 consecutive meetings without permission of the Board Chair (or in the case of the Board Chair, the majority of the other Directors) from the meetings of the Board held during that period;
  - is convicted of an indictable offence; or
  - commits any act of dishonesty whether relating to EWON or otherwise or is guilty of serious misconduct or any conduct tending to bring EWON or himself or herself into serious disrepute.
- 10.19 EWON remunerates the Board Chair and Community Directors on terms decided upon by the Industry Directors. The Board Chair and Community Directors are also entitled to be reimbursed travelling, accommodation and other expenses reasonably and properly incurred by them in connection with the business of the Board. The Industry Directors do not receive either remuneration or expense reimbursement, unless any Industry Director performs a service which in the opinion of the Board is outside the scope of the ordinary duties of a director.

## 11. Responsibilities of the Board

- 11.1 In any addition to carrying out their specific responsibilities under the Corporations Act and this Constitution, the Board is responsible for:
- approving EWON's corporate plan;
  - appointing, suspending or removing the Ombudsman in accordance with Clauses 11.2 and 15;
  - overseeing the performance of the Ombudsman's duties;
  - reviewing and amending the Schedule of Member Fees and Levies from time to time in accordance with Clause 6.1;
  - overseeing the financial management of EWON including establishing financial delegations, approving EWON's annual budget and overseeing EWON's financial reporting;
  - approving any loan facility entered into by EWON;
  - overseeing EWON's risk management arrangements;
  - overseeing the stakeholder liaison plan;
  - monitoring the effectiveness of the Charter and this Constitution; and
  - amending or replacing the Charter in accordance with Clause 21.
- 11.2 The Board has the power:
- to delegate any of its powers and/or functions (except powers conferred and duties imposed on the Directors by law which are incapable of delegation) to one or more persons or to one or more committees consisting of such persons as the Board thinks fit;
  - to suspend or to remove the Ombudsman at any time in its absolute discretion;



- c) if the Ombudsman is unable to carry out his or her duties, to appoint a deputy or substitute for the Ombudsman for the period and on the terms the Board thinks fit; and
- d) subject to clauses 10.1, 10.2, 10.9 to 10.11 and 10.16 to 10.18, to prescribe regulation, rules and procedure in relation to the conduct of Industry Director elections.

## 12. Proceedings of the Board

- 12.1 The Board must meet as necessary to perform the Board's functions but no less regularly than quarterly. Board members may meet together in person or by telephone or video conference and adjourn and otherwise regulate their meetings and carry out their responsibilities as they think fit.
- 12.2 The Secretary must at the request of a Director convene a meeting of the Board.
- 12.3 At all meetings of the Board, there must be a quorum of seven Directors present including at least three Industry Directors and three Community Directors. If there are vacancies that reduce the number of Directors so that a quorum cannot be achieved, the continuing Directors may act only for the purpose of filling the Board vacancies.
- 12.4 Questions arising at a Board meeting, except as set out in Clause 12.5, are to be decided by a majority of votes of Board members present and voting.
- 12.5 A decision by the Board to:
  - a) appoint, remove or suspend the Ombudsman;
  - b) amend the Schedule of Member Fees and Levies;
  - c) amend or replace the Charter;
  - d) borrow funds; or
  - e) prescribe any regulation, rule or procedure in relation to the conduct of Industry Director elections pursuant to clause 11.2(d),

requires the support of 75% of Directors present and voting including at least two Industry Directors and two Community Directors.

- 12.6 In addition to his or her deliberative vote, the Board Chair does not have a casting vote.
- 12.7 A resolution in writing signed or assented to by letter, facsimile or any other electronic written communication or printed message by all the members of the Board (whether on one or more separate documents) has effect as if passed at a meeting of the Board duly convened and held.
- 12.8 All acts done by the Board are valid, notwithstanding that it is afterwards discovered that there was a defect in the appointment of a Director or that a Director was not qualified to act.
- 12.9 The Board must cause minutes to be made and signed by the Board Chair:
  - a) of the names of members of the Board present at meetings of the Board; and
  - b) of proceedings at meetings of the Board.

## 13. Company Secretary

- 13.1 The Board must appoint a Company Secretary.

## 14. Common Seal



14.1 EWON may have a common seal to be used only with the authority of the Board.

## 15. Appointment and Removal of the Ombudsman

- 15.1 The Ombudsman is appointed by the Board to hold office for an initial period of three years at the remuneration and on the other terms and conditions of engagement determined by the Board. The Ombudsman may be reappointed at the expiry of any period of office.
- 15.2 The Ombudsman must not have a material interest or an existing association or relationship that conflicts with his or her duties of Ombudsman.
- 15.3 In appointing the Ombudsman, the Board must consider past associations or relationships and satisfy itself that they do not present any significant conflict to the role of Ombudsman.
- 15.4 Without limiting Clause 11.2, the Board will remove the Ombudsman from office if the Ombudsman:
- a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
  - b) becomes prohibited from holding the office of director of a company under the Corporations Act;
  - c) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the laws relating to mental health;
  - d) is convicted of an indictable offence; or
  - e) commits any act of dishonesty whether relating to EWON or otherwise or is guilty of serious misconduct or conduct tending to bring EWON or himself or herself into serious disrepute.

## 16. Responsibilities of the Ombudsman

- 16.1 The Ombudsman is responsible for managing the day to day operations of EWON including:
- a) preparing a corporate plan for the Board's consideration;
  - b) promoting EWON and its complaints handling service;
  - c) providing advice to Members on the development and maintenance of good complaint-handling practices;
  - d) the exercise of all of the powers and responsibilities of EWON under the Charter;
  - e) developing for the Board's approval a comprehensive stakeholder liaison plan and implementing that plan (including by the convening of Consultative Council meetings);
  - f) making recommendations to the Board as to the amendments that should be made to the Charter and this Constitution;
  - g) financial management including ensuring that proper financial records are kept, Member fees are collected, EWON liabilities are met when due, an annual budget is prepared for the Board's approval and annual audited financial statements are prepared for the Board's approval; and
  - h) staff and resources management.
- 16.2 The Ombudsman must receive notice of and is entitled to attend and participate in (but not to vote at) every meeting of the Board, except where the Board otherwise decides.
- 16.3 Subject to the Charter, the Ombudsman may, with the approval of the Board, delegate any of his or her powers and discretions under the Charter to any employee or contractor engaged by EWON. A delegate must exercise their delegated authority in accordance with the Charter and with any directions or restrictions that may from time to time be imposed



by the Ombudsman. The exercise by a delegate of a power is valid as if the power were exercised personally by the Ombudsman.

- 16.4 The Ombudsman must establish an operational advisory group comprised of representatives of Exempt Entities and WICA Providers, which will operate at least until the 2021 annual general meeting.

## 17. Consultative Council meetings

- 17.1 At least twice per year, EWON must convene a Consultative Council meeting chaired by the Board Chair. A Consultative Council meeting must be a forum open to consumer and small business representatives and to all Members. The purpose of a Consultative Council meeting is:
- a) to provide EWON with an opportunity to update and consult with its key stakeholders;
  - b) to provide EWON's key stakeholders with an opportunity to raise issues and to provide their views; and
  - c) to contribute to EWON's forward planning.
- 17.2 The Ombudsman must attend each Consultative Council meeting. At least one Consultative Council meeting each year must be a joint session with the Directors.
- 17.3 The Ombudsman must ensure that the next Board meeting after a Consultative Council meeting receives a written report that summarises the key issues and views raised by stakeholders.

## 18. Indemnity

- 18.1 In this Clause 18:
- a) "Officer" means any of:
    - i. a Director or Secretary of EWON; or
    - ii. the Ombudsman; and
  - b) references to "Officers" includes references to former Officers.
- 18.2 Subject to Clause 18.3, every Officer of EWON shall be indemnified out of the assets of EWON against all costs, losses, expenses and liabilities incurred by that Officer in the person's capacity as an Officer of EWON by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer of EWON.
- 18.3 An Officer of EWON is not entitled to be indemnified out of the assets of EWON for a liability:
- a) which arises out of conduct involving a lack of good faith;
  - b) where the liability is to EWON or a related body corporate;
  - c) where the liability is for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Corporations Act; or
  - d) where otherwise prohibited by the Corporations Act.
- 18.4 Without limiting Clauses 18.2 and 18.3, every Officer of EWON shall be indemnified out of the assets of EWON against any liability for costs and expenses incurred by that person arising out of his or her duties as an Officer:
- a) in defending proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or
  - b) in connection with an application in relation to such proceedings in which the court grants relief to the person under the Corporations Act.



- 18.5 Subject to the Corporations Act, an Officer is not liable for the negligence, default or breach of duty of any other Officer except to the extent of the Officer's own negligence, default or breach of duty.
- 18.6 The benefit of any indemnity given under this Clause 18 continues, despite any amendment to or deletion of this Clause 18, in respect of liability arising from acts or omissions occurring before the amendment or deletion. The indemnity shall continue to operate despite the resignation or removal of the relevant Officer from any office with EWON.
- 18.7 The Board may authorise EWON to enter into any insurance policy for the benefit of any Officer, to the extent permitted by law and on such terms as the Board approves.
- 18.8 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.

## 19. Notices

- 19.1 A notice may be given by one party to the other party either by serving it personally or by sending it by post, facsimile transmission or email to the other party's current address or, in the case of a Member, the address notified to EWON from time to time.
- 19.2 Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter of notice, and the notice is deemed to have been served two days after the date of its posting.
- 19.3 Where a notice is sent by facsimile transmission or email, service of the notice is deemed to be effected by properly addressing the facsimile transmission or email and the notice is deemed to have been served on the date of its despatch.

## 20. Review of EWON

- 20.1 If the Monetary Limit for an EWON Binding Decision increases to an amount in excess of \$50,000 as a result of increases in the NCAT jurisdictional limit, the Board must review the Monetary Limit to determine whether the linkage to the NCAT jurisdictional limit continues to be appropriate.
- 20.2 EWON must commission an independent review of EWON's complaint handling service and the operations of the office at least every five years, or more frequently if the Board so decides, in accordance with the Benchmarks for Industry Based Customer Dispute Resolution.
- 20.3 EWON must commission an independent review of the effectiveness of EWON governance at least every five years, or more frequently if the Board so decides.
- 20.4 The Reviewer/s, appointed under section 20.2 and 20.3 must prepare and present to the Board a written report of findings and recommendations and may include recommendations about improvements to any aspect of EWON's operations or governance.
- 20.5 An appropriate summary of the reviewer/s recommendations must be published on EWON's website.
- 20.6 The Board and the Ombudsman must consider and respond to the findings of the Reviewer/s.



## 21. Changes to the Charter and the Constitution

- 21.1 If the Board wishes to change, modify or replace the Charter or this Constitution, the Board must first take reasonable steps to consult with the Ombudsman, the Members, relevant industry and consumer advocacy organisations and other interested organisations and persons.
- 21.2 If the Board wishes to change:
- a) the definition in the Charter of “Monetary Limit”;
  - b) or
  - c) paragraph 5 of the Charter,
- the Board may only do this if the Members agree to this by Special Resolution and, in the case of a change to the definition in the Charter of “Monetary Limit”, if the Members also agree to make a corresponding modification to the definition of that term in the Constitution. Otherwise, after undertaking consultation in accordance with Clause 21.1, the Board may by resolution passed in accordance with Clause 12.5 decide to modify or replace the Charter.
- 21.3 Modification or repeal of this Constitution requires a Special Resolution of Members in accordance with section 136 of the Corporations Act.

## 22. Distribution of Assets on Winding-Up

- 22.1 If upon the winding up of EWON, any surplus remains after the satisfaction of all its debts and liabilities, the surplus must be given or transferred to an institution, body, entity or organisation:
- a) that is charitable at law;
  - b) whose governing documents prohibit the distribution of its income and property among its members to an extent at least as great as is imposed on EWON under this Constitution; and
  - c) which has similar objects to EWON,
- such institution, body, entity or organisation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of New South Wales for determination.