

**CONSTITUTION**  
**of**  
**ENERGY & WATER**  
**OMBUDSMAN (NSW) LIMITED**

**A company limited by guarantee  
and not having share capital**

**CORPORATIONS LAW**

**MEMORANDUM OF ASSOCIATION**

**of**

**ENERGY & WATER OMBUDSMAN (NSW) LIMITED**

**1. NAME**

There shall be a company called ENERGY & WATER OMBUDSMAN (NSW) LIMITED (“EWON Limited”).

**2. OBJECTS**

The Objects of EWON Limited are to establish an independent energy and water industries ombudsman scheme in New South Wales, the principal purposes of which are:

- i) to receive, investigate and facilitate the resolution of complaints and disputes, and
- ii) to assist in the avoidance of complaints and disputes;

in the provision of energy and water services to domestic and small business customers in New South Wales.

**3. CONSTITUTION**

The Objects shall be pursued and the ombudsman scheme shall be conducted in accordance with the provisions of the document entitled “Energy & Water Ombudsman (NSW) Constitution” which is annexed to the Articles of Association of EWON Limited.

**4. POWERS**

EWON Limited has all of the powers of a natural person, as set out in section 124 of the Corporations Law.

**5. INCOME AND PROPERTY OF EWON LIMITED**

- 5.1 The whole of the income and property of EWON Limited shall be applied solely towards the promotion of the objects of EWON Limited as set out in this Memorandum of Association and no part shall be paid or transferred directly or indirectly to the members of EWON Limited by way of dividend, bonus or otherwise; provided that nothing in this Memorandum of Association shall prevent the payment in good faith of remuneration to any officers or employees of EWON Limited or to any member of EWON Limited in return for any goods supplied or services actually rendered in the ordinary and usual course of business or prevent the payment of interest at prevailing market rates on money borrowed from any

member of EWON Limited or reasonable and proper rent for premises let by any member to EWON Limited.

- 5.2 True accounts shall be kept of all moneys received and expended by EWON Limited, the matters in respect of which such moneys are received and expended, and of the property, credits and liabilities of EWON Limited. Subject to any reasonable restrictions as to the time and manner of inspecting the same imposed in accordance with the Articles of Association of EWON Limited and the Corporations Law, the accounts shall be open for inspection by the members. At least once in every year, the accounts of EWON Limited shall be examined by a properly qualified auditor or auditors who shall report to the members in accordance with the provisions of the Corporations Law.

## **6. LIABILITY OF MEMBERS LIMITED**

6.1 The liability of the members is limited.

6.2 Every member undertakes that in the event that EWON Limited is wound up during the currency of the member's membership or within one year of the member ceasing membership, it will contribute to the property of EWON Limited for:

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

provided any such amount shall not exceed one hundred dollars (\$100).

## **7. WINDING UP**

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

**WE** the persons whose names addresses and occupations are subscribed, wish to be formed into a company pursuant to this Memorandum of Association.

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Name and Address of Subscribers

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Subscriber: ADVANCE ENERGY  
P.O. Box 172  
BATHURST NSW 2795

THE COMMON SEAL of ADVANCE ENERGY  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

Subscriber: AUSTRALIAN INLAND ENERGY  
P.O. 800  
BROKEN HILL NSW 2880

THE COMMON SEAL of AUSTRALIAN INLAND ENERGY  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

Subscriber: ENERGYAUSTRALIA  
G.P.O. Box 4009  
SYDNEY NSW 2001

THE COMMON SEAL of ENERGYAUSTRALIA  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

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Name and Address of Subscribers

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Subscriber: GREAT SOUTHERN ENERGY  
PO Box 438  
QUEANBEYAN NSW 2620

THE COMMON SEAL of GREAT SOUTHERN ENERGY  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

Subscriber: INTEGRAL ENERGY AUSTRALIA  
P.O. Box 6366  
BLACKTOWN NSW 2148

THE COMMON SEAL of INTEGRAL ENERGY AUSTRALIA  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

Subscriber: NORTHPOWER  
P.O. Box 786  
PORT MACQUARIE NSW 2444

THE COMMON SEAL of NORTHPOWER  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

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Name and Address of Subscribers

---

Subscriber: TRANSGRID  
PO BOX A1000  
SYDNEY SOUTH NSW 2000

THE COMMON SEAL of TRANSGRID  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

**CORPORATIONS LAW**

**ARTICLES OF ASSOCIATION**

**OF**

**ENERGY & WATER OMBUDSMAN (NSW) LIMITED**

**1. INTERPRETATION**

**1.1 Definitions**

In these Articles:

“**Annual Levy**” means the annual levy imposed on members to cover operating costs of the Scheme.

“**Articles**” means these Articles of Association as amended from time to time.

“**Authorisation**” means a distribution or retail authorisation in force under the *Gas Supply Act 1996*.

“**Budget**” means the budget for each Year approved by the Board in accordance with the Constitution.

“**Constitution**” has the meaning ascribed in Article 11.8. Expressions defined in this clause 1.1 shall have the same meanings in the Constitution.

“**Corporate Representative**” means a person authorised to act as the representative of a corporation pursuant to section 249(3) of the Corporations Act 1989.

“**Council**” has the meaning ascribed in Article 11.1.

“**Defaulting Member**” means any member who neglects or wilfully refuses to comply with the provisions of the Memorandum or these Articles, the Constitution, or any Rules of EWON Limited.

“**Director**” means any director of EWON Limited for the time being and includes 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.

“**EWON Limited**” and “**the Company**” each means Energy & Water Ombudsman (NSW) Limited.

**“Energy Services”** means the product or service provided to satisfy an energy demand or need, and includes the transmission, distribution, connection and supply of the energy source.

**“Joining Fee”** means the fee fixed by the Board in accordance with Article 5.3.

**“Licence”** means an Electricity Distributor’s licence or an energy Retail Supplier’s licence or a Network Operator’s authorisation in force under the *Electricity Supply Act 1995* (NSW); or an authorisation or licence under the Gas Supply Act 1996; or a licence under the *Sydney Water Act 1994* (NSW) or *Hunter Water Act 1994*(NSW) or *State Water Corporation Act 2004* (NSW) or *Water Management Act 2000* (NSW) or *Water Industry Competition Act 2006* (NSW);

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

**“Memorandum”** means the Memorandum of Association of EWON Limited.

**“Month”** means calendar month.

**“Ombudsman”** means the Energy & Water Ombudsman appointed pursuant to Article 12.

**“Rules”** means any rules, regulations or by-laws made by the Board in accordance with Article 9.1.

**“Scheme”** means the Energy & Water Ombudsman (NSW) Scheme, provided for in these Articles and the Constitution.

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

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

**“Water Services”** means supply 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 and commercial arrangements associated with these activities; but for the purposes of the Scheme does not include the discharge of trade wastewater to a sewer.

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

## 1.2 Construction

Unless expressed to the contrary in these Articles:

- (a) Words importing:
  - (i) the singular include the plural and vice versa;



- (ii) any gender shall include the other genders; and
- (iii) persons shall include companies, corporations, public bodies and any other bodies corporate.
- (b) References to “in writing” and “written” include typing, printing, lithography and any other mode of representing or reproducing words or figures in a visible form including words or figures displayed on an electronic screen.
- (c) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (d) Terms defined in the Corporations Law have the same meaning when used in these Articles.

## **2. MEMBERS OF EWON LIMITED**

The members of EWON Limited shall consist of the subscribers to the EWON Memorandum, and such other persons who agree in writing to become members of EWON Limited and who are admitted to membership pursuant to these Articles from time to time.

## **3. MEMBERSHIP**

3.1 A person is eligible to be a member only if the person:

- (a) (i) is the holder of a retail, distribution or transmission licence under the *Electricity Supply Act 1995(NSW)*, or  
(ii) is the holder of an authorisation or licence under the *Gas Supply Act 1996 (NSW)*, or  
(iii) is the holder of a licence under the *Sydney Water Act 1994 (NSW)* the *Hunter Water Act 1994 (NSW)*, the *State Water Corporation Act 2004 (NSW)*, the *Water Management Act 2000 (NSW)*, or the *Water Industry Competition Act 2006 (NSW)*;  
or  
(iv) is a Council or County Council that provides water, sewerage or drainage services under the provisions of the *Local Government Act 2003 (NSW)* and
- (b) completes an application for membership in the form prescribed by the Board at the time the application is made, and
- (c) complies with Article 3.2 below.

### **Acceptance of Applications**

3.2 An application for membership made by an eligible person must be accompanied by an undertaking:

- to participate in the Scheme in accordance with the provisions of the Constitution, and

- to pay the Joining Fee and the Annual Levy as determined by the Board,

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

### **Transferability**

3.4 The rights and privileges of a member shall not be transferable without the approval of the Board, which may approve a transfer of membership to an entity which is the successor to the energy services or water services business of a member on such terms and conditions as the Board considers appropriate.

## **4. CESSATION OF MEMBERSHIP**

4.1 Any member may withdraw from EWON Limited by giving to the Secretary not less than 12 months notice to that effect and its membership shall cease on expiry of such notice.

4.2 If any member (“**Defaulting Member**”) neglects or wilfully refuses to comply with the provisions of the Memorandum or these Articles, the Constitution, or any rules of EWON Limited the Directors may pass a resolution recommending the expulsion of the Defaulting Member from EWON Limited. The Directors must, within 42 days of the resolution of Directors being passed, convene a meeting of members and the recommendation must be put before the members to determine whether or not to adopt the Directors’ recommendation and expel the Defaulting Member.

4.3 Any person who cease to be a member of EWON Limited shall forfeit all and any rights and privileges of membership as at the date of cessation of membership and shall have no further right against or claim upon EWON Limited or the property or funds of EWON Limited, except rights or claim as a creditor (if any), and any right or claim arising from actions or omissions during the period of membership.

4.4 Any person who ceases to be a member shall:

- (a) continue to be liable for payment of moneys due to EWON Limited by the member and unpaid as at the date of cessation of membership and in addition for any sum for which that person is liable as a member of EWON Limited under clause 6.2 of the Memorandum;
- (b) continue to be bound by (and shall discharge) any determination of the Ombudsman made in respect of any complaint unresolved or outstanding at the date of cessation of membership.

## **5. FUNDING**

Any funding from the Members shall be raised in such a way as to not unfairly or unreasonably discriminate between members.

### **Special Levies**

- 5.1 The Board may at any time obtain money for the purposes of EWON Limited in addition to the Annual Levy by raising a special levy from the members or, where Article 5.6 applies, a particular member.

### **Joining Fee**

- 5.3 Any person seeking to become a member of EWON Ltd shall be required to pay a joining fee in accordance with the Schedule of Fees which shall be determined by the Board from time to time. Such fee shall be paid at the time of application for membership but shall be refunded in the event that membership of EWON Ltd is not approved by the Board.

### **Annual Levies**

- 5.4 Each member agrees to pay the Annual Levy in two payments at six monthly intervals (or such other times as determined by the Board). The Annual Levy and the manner of payment shall be determined annually by the Board and shall be based on the amount required to fund the Budget for the relevant year.
- 5.5 The Annual Levy shall be allocated between each Member taking into account their usage of the Scheme.
- 5.6 On receiving an application for membership, the Board shall estimate the amount of the applicant's Annual Levy required to cover the period from becoming a member until the next 30 June and discuss that estimate with the applicant with a view to agreeing the amount of that Levy, but if agreement is not reached an applicant may accept the decision of the Board or may withdraw its application.
- 5.7 All Levies shall be due and payable 30 days after the date on which the member is notified of the amount to be paid.

### **Adjustments**

- 5.8 The Ombudsman shall within 12 weeks of the end of 30 June (or such other date as may be determined by the Board) in each year reconcile the actual number of complaints against each member as a proportion of the total number of complaints (weighted in accordance with a system approved by the Board from time to time made against all members and handled by the Ombudsman against the numbers estimated under Article 5.5).
- 5.9 If as a result of the information provided by the Ombudsman under Article 5.8 the Board determines that:

- (a) a member has paid a greater share of the Annual Levy than it should have, the amount of the excess shall (if not already paid) be credited against the Annual Levy to be paid by that member in the forthcoming year, or (if the Annual Levy has been paid) refunded to the member; or
- (b) a member has paid a lesser share of the Annual Levy than it should have, the amount of the shortfall shall (if not already paid) be added to the Annual Levy to be paid by that member in the forthcoming year, or (if the Annual Levy has been paid) levied against the member for payment to EWON Limited.

5.10 Any levies not paid by the due date shall carry interest computed from the due date until payment at a rate of interest equivalent to the Reference Rate quoted by the Colonial State Bank as at the due date plus 2%.

### **Loans**

5.11 The Board may, by unanimous resolution, raise loan funds from members or third parties for particular purposes.

### **Business Plans and Budgets**

5.12 The Board shall set total funding limits for EWON Limited, the Ombudsman and the Council within which the budgets for each shall be finalised.

- 5.13
- (a) The Board shall require the Ombudsman to prepare the budget and business plans for the Ombudsman Scheme each year having regard to the budgetary framework determined by the Board.
  - (b) The Ombudsman shall submit each such budget and business plan to the Council for its consideration and shall take into account any comments and recommendations made by the Council as a result of its consideration.

5.14 Before:

- (a) the budgets of EWON Limited, the Ombudsman and the Council are implemented;  
or
- (b) any additional expenditure to that set out in a budget approved by the Board is incurred,

the prior approval of the Board must be obtained. In deciding whether or not to approve any proposed budget the Board shall be entitled to consider:

- (a) the on-going financial stability or viability of EWON Limited; but
- (b) otherwise shall only be concerned to ensure that the particular budget comes, or is likely to come, within the limits set by the Board.

- 5.15 The Board shall not otherwise take into consideration the business decisions of the Ombudsman or Council (as the case may be) in determining how those funds should be allocated within any particular budget. Nothing in this Article shall preclude the Board from seeking or receiving information about the budget and expenditures, both past and projected, to assist the Board in setting funding limits appropriate to the operation of the Scheme.
- 5.16 In setting total funding limits or approving budgets and additional expenditure as set out in Article 5.14 the Board will use its best endeavours to ensure that the level of funding is such that the Ombudsman and the Council are able to carry out their functions under the Constitution.

## **6. GENERAL MEETINGS**

- 6.1 Annual General Meetings of EWON Limited shall be held in accordance with the provisions of the Corporations Law. All General Meetings other than Annual General Meetings shall be called General Meetings.
- 6.2 General Meetings may be convened by the Board whenever it thinks fit or by requisition as provided by the Corporations Law.
- 6.3 Subject to the provisions of the Corporations Law relating to special resolutions and consent to short notice, at least 21 days' notice (exclusive of the day on which the notice is served or received or deemed to be served or received and exclusive of the day for which notice is given) specifying the place, the day and the time of meeting and, in the case of special business, the general nature of that business, shall be given to persons entitled to receive such notices from EWON Limited.
- 6.4 For the purposes of Article 6.3, all business that is transacted at a General Meeting and also all business that is transacted at an Annual General Meeting (with the exception of the Consideration of the accounts, financial statements and the reports of the Board and Auditors) shall be special business.
- 6.5 Accidental omission to give notice of a General Meeting or Annual General Meeting by EWON Limited to, or the non-receipt of notice of a meeting by, any member shall not invalidate proceeding at a General Meeting or Annual General Meeting.

## **7. PROCEEDINGS AT GENERAL MEETINGS**

### **Quorum**

- 7.1 No business shall be transacted at a General Meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as otherwise provided in these Articles, a majority of the number of Members shall constitute a quorum at any General Meeting. For the purpose of this Article, persons attending as a proxy or Corporate Representative shall be counted as Members.

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

### **Adjourned Meetings**

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

### **Chairperson**

- 7.4 The Chairperson of the Board shall preside as Chairperson at General Meetings of EWON Limited. If the Chairperson of the Board is not present within 30 minutes of the time appointed for holding a General Meeting or if the Chairperson of the Board is unable or unwilling to act, then the members present shall elect one of their number to be Chairperson of the General Meeting.
- 7.5 The Chairperson of any General Meeting may, with the consent of the majority of those members present at the General Meeting (being a Meeting at which a quorum is present) adjourn the General Meeting. No business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place. Except as otherwise provided by the Articles, it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned General Meeting.

### **Voting**

- 7.6 At any General Meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded before or on the declaration of the result of the show of hands by any member present in person, by proxy, by attorney or by Corporate Representative and who is entitled to vote.

Unless a poll is so demanded, a declaration by the Chairperson of the General Meeting that a resolution has been carried, carried unanimously, carried by a particular majority or lost on a show of hands and an entry to that effect made in the book containing the minutes of the proceedings of EWON Limited, shall be conclusive evidence of the fact of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

- 7.7 If a poll is duly demanded, it shall be taken either at once or after an interval or adjournment and in such manner as the Chairperson of the General Meeting directs. Each member shall be entitled to one vote. The result of the poll shall constitute the resolution of the meeting at which the poll was demanded provided that a poll demanded on the election of a Chairperson of the General Meeting or on the question of adjournment shall be taken immediately.

- 7.8 In the case of an equality of votes on a show of hands or on a poll, the Chairperson of the General Meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote and the motion shall be lost.
- 7.9 A member may vote in person, by proxy, by attorney or by Corporate Representative. On a show of hands, every member shall have one vote.
- 7.11 If a member is in default in payment of levies or has a liquidator, provisional liquidator, receiver, manager or administrator appointed or enters into any composition with or scheme of arrangement with creditors or is otherwise dealt with under the insolvency laws, that member's right to vote is suspended until such levies have been paid or the insolvency matters finalised, as the case may be.

#### **Proxies and Other Authorities**

- 7.12 The instrument appointing a proxy shall be in writing and signed by the Chairman, Chief Executive Officer or other duly authorised nominee of the Member. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A member shall be entitled to instruct their proxy to vote in favour of or against any proposed resolution. Unless otherwise instructed, a proxy may vote as they think fit.
- 7.13 The instrument appointing a proxy may be in any common or usual form acceptable to the Directors.
- 7.14 The instrument appointing a proxy for a member shall be deposited at the registered office of EWON Limited (or such other place within the State as is specified for that purpose in the notice convening the General Meeting) not less than 24 hours before the General Meeting or adjourned General Meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. In default of the foregoing requirements, the instrument of proxy shall at the discretion of the Chairperson of the General Meeting.
- 7.15 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding:
- (a) revocation of the instrument; or
  - (b) revocation of the authority under which the instrument was executed,

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

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

## **8. DIRECTORS AND MANAGEMENT OF EWON LIMITED**

- 8.1 Subject to the Corporations Law and to these Articles, EWON Limited and the business, affairs and property of EWON Limited shall be managed by a Board of Directors consisting of up to ten Directors.

### **The Board**

- 8.2 The Board will consist of one director appointed by each of:

AGL Retail Energy Ltd;  
Australian Inland Energy;  
Country Energy  
EnergyAustralia;  
Integral Energy Australia;  
TransGrid; and  
Sydney Water

for so long as they are members of EWON Limited.

- 8.2.1 The appointment of a director or the withdrawal of the appointment of a director by those organisations mentioned in Article 8.2 shall be deemed sufficient and final if submitted to the Secretary in writing signed by the Chief Executive Officer or Chairman of the organisation concerned.
- 8.2.2 Additionally, three other directors from nominations received from the members (excluding those organisations mentioned in Article 8.2) may be appointed by the members voting in General Meeting.
- 8.2.3 The members may by special resolution at a General Meeting (held in accordance with Article 20), increase or reduce the number of directors and otherwise vary the provisions of this Article 8.2.
- 8.2.4 Consistent with Article 18, the Board shall review the structure and working of the Scheme with a view to allowing Board membership for any Member who makes a substantial financial contribution to the Company through their annual levies or otherwise.



### **Vacancy of Office**

- 8.3 The office of a Director shall become vacant if the Director:
- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
  - (b) becomes prohibited from holding the office of a director of a company under the Corporations Law;
  - (c) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
  - (d) resigns his or her office by notice in writing to EWON Limited;
  - (e) is absent from meetings of the Board for more than 3 consecutive meetings without permission of the Board;
  - (f) holds any office of profit under EWON Limited or receives any payment from EWON Limited other than remuneration properly payable in accordance with the Memorandum and Articles; or
  - (g) is removed by the member appointing him or her, or that member ceases to be a member of EWON Limited.
- 8.4 Where the office of a director who is the appointed nominee of a member pursuant to Article 8.2 is vacated by the operation of Article 8.3, that member may by notice in writing to the Board appoint another person to be its nominee director.

### **Remuneration**

- 8.5 No Director shall in the normal course be entitled to be paid out of the funds of EWON Limited, as remuneration for their ordinary services as director. If any Director performs a service which, in the opinion of the Board, is outside the scope of the ordinary duties of a Director, he or she may be paid a sum determined by the Board, by way of special remuneration.

## **9 POWERS AND DUTIES OF THE DIRECTORS**

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

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

- 9.2 The Board may exercise all EWON Limited's borrowing powers.
- 9.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments drawn on bank accounts maintained by EWON Limited and all receipts for money paid to EWON Limited shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in the manner determined by the Board from time to time.
- 9.4 The Board shall cause Minutes to be made of:
- (a) all appointments of officers and employees of EWON Limited;
  - (b) the names of Board members present at all General Meeting and meetings of the Board; and
  - (c) all resolutions and proceedings at General Meetings and meetings of the Board.

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

## **10. PROCEEDINGS OF THE BOARD**

- 10.1 The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. The Secretary shall on receipt of a requisition signed by four or more directors summon a meeting of the Board.

### **Voting**

- 10.2 Subject to Article 10.3, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Board shall be deemed a determination of the Board.
- 10.3 Decisions of the Board in respect of levies and funding (other than loans) under Article 5 must be passed at a meeting of Directors by a majority of at least 75% of such Directors as, being entitled to do so, vote in person (or by their alternate) at that meeting. Decisions in respect of loan funding must, in accordance with Article 5.11, be passed unanimously.

### **Quorum**

- 10.4 Subject to these Articles, a majority of the number of directors shall constitute a quorum.

- 10.5 The Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as a quorum of the Board, the Directors may only act for the purpose of calling a General Meeting and seeking such amendments to these Articles as would be desirable in the circumstances to enable sufficient Directors to be appointed to constitute a quorum, or to amend Article 10.4.

### **Chairperson**

- 10.6 The Directors may appoint any of their number to act as Chairperson of Directors by ordinary resolution. The Chairperson's tenure shall be for one year. The Directors may remove a Chairperson appointed under this Article 10.6 at any time and appoint another in his or her place by ordinary resolution. If there is no Chairperson or if he or she is not present within 10 minutes after the time appointed for holding a meeting of the Board, then the Directors present may choose a Director to be Chairperson of the meeting.
- 10.7 The Chairperson of any meeting shall not have a casting vote at that meeting

### **Committees**

- 10.8 The Board may delegate any of its powers and/or functions (except powers conferred and duties imposed on the Directors by law which are incapable of delegation) to one or more committees consisting of such persons as the Board thinks fit. Any committee so formed shall 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.
- 10.9 A committee may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee members present and, in the event of an equality of votes, the Chairperson of the committee shall not have a second or casting vote, and the motion shall be lost.
- 10.10 All acts done by the Board, a committee or by any person acting as a Director or committee member shall be valid, notwithstanding that it is subsequently discovered that:
- (a) there was some defect in the appointment of any Board or committee member or person so acting; or
  - (b) a Board or committee member or any of them was disqualified;

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

### **Resolutions in Writing**

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

### **Meetings by Electronic Means**

- 10.12 If:
- (a) the Directors confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications,
  - (b) all the Directors who for the time being are entitled to receive notice of a meeting of the Directors receive notice of the conference and have access to the means by which the conference is 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 these Articles relating to meetings of the Board shall apply to the conference as if such conference were a meeting of the Board and as if the Directors taking part in the conference were physically present together at a meeting, and any resolution passed by such conference shall be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held.

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

### **Declarations of Interest**

- 10.13 A Director may not be counted in any quorum considering any contract or proposed contract with EWON Limited in which he or she or, in the case of director appointed by a member pursuant to Article 9.2, that member, has an interest; nor vote in respect of any such contract or proposed contract.

### **Alternate Directors**

- 10.14 Subject to the approval of the Board (which shall not be unreasonably withheld) any Member may appoint:
- (a) an alternate or substitute Director during such period as the Member thinks fit; and
  - (b) a second person or Director to be an alternate or substitute Director to replace the first appointed alternate or substitute Director if he or she is unable or unwilling to act.
- 10.15 Any alternate or substitute director shall be entitled to notice of meetings of Directors, to attend and vote at such meeting and to exercise all the powers of the appointor in his or her place. An alternate or substitute director shall ipso facto vacate office if the appointor vacates or is removed from office. Any appointment or removal under this Article 10.15 shall be effected by notice in writing signed by the appointor and delivered to the registered office of EWON Limited.
- 10.16 An alternate director who is also a Director in his or her own right shall be entitled to vote in his or her own capacity as Director and again for each alternate directorship held.

## **11. COUNCIL AND CONSTITUTION**

### **Council**

- 11.1 There shall be established a Council, comprising ten people in addition to an independent Chairperson, which will be responsible for:
- (a) developing the policy and procedures of the Scheme, in consultation with the Ombudsman;
  - (b) maintaining the independence of the Ombudsman; and
  - (c) acting as an intermediary between the Ombudsman and the Board.
- 11.2.1 The Board shall, on the recommendation of the Minister for Fair Trading, appoint to the Council five persons from nominations provided to the Minister by organisations which represent the interests of domestic and small business consumers of energy and water services.
- 11.2.2 The Board shall appoint to the Council five persons to represent the interests of the members of EWON Ltd. The representatives of EWON Ltd shall be persons who have the requisite knowledge and skills to adequately represent the interests of members of EWON Ltd. At least one of the persons shall be a representative of a member that provides water services.

- 11.2.3 In addition the Board shall appoint an independent Chairperson in accordance with Article 11.6.
- 11.3 All Councillors, except for the Chairperson, will be appointed for two years. The Board shall make arrangements for completion of a term of appointment should a Council member be unable or unwilling to continue as a member. All Councillors shall be eligible for re-appointment. In their capacity as Councillors, all persons appointed to the Council must act in the interests of EWON Limited and the Scheme.
- 11.4 No Director may be appointed to the Council during his or her term as a Director.
- 11.5 Any Councillor may seek the appointment of an alternate for such period as the Councillor thinks fit. Any alternate shall be entitled to notice of meetings of the Council, to attend and vote at such meeting and to exercise all the powers of a Councillor. Any alternate must be formally appointed in advance by the Board; and where the alternate will replace a Councillor representing the interests of domestic or small business consumers, following consultation with the Minister for Fair Trading.

### **Chairperson**

- 11.6 The Board shall, after consulting with the Minister for Fair Trading, appoint an additional person for a term of 3 years to be the independent Chairperson of the Council. The Chairperson shall be eligible to be re-appointed for a further term after the expiry of 3 years. The Chairperson must not be an employee, contractor or share holder of any member of EWON Limited. Further appointments after the first three year period of operation of the scheme shall be for a period of 2 years.

### **Council Proceedings**

- 11.7 The Board shall, on the advice of the Council, establish provisions relating to the proceedings of the Council, including quorum arrangements.

### **Constitution**

- 11.8.1 EWON Limited shall operate in accordance with and observe the roles, function, powers and obligations set out in the Energy & Water Ombudsman (NSW) Constitution (“**Constitution**”) annexed to these Articles for the time being in force and as that document may be modified or amended from time to time.
- 11.8.2 In becoming a member of EWON Limited each member agrees:
- (a) to be bound by and observe the terms of the Constitution (to the extent that it is consistent with these Articles); and
  - (b) that any amendments to the Constitution shall be made in accordance with the terms of the Constitution for the time being in force.

### **Remuneration of Council Members**

- 11.9 Members of the Council shall be entitled to reimbursement of expenses associated with their participation in work of the Council. Other remuneration may be paid at the discretion of the Board.

### **Remuneration of Council Chairperson**

- 11.10 The Chairperson shall be entitled to remuneration in accordance with the determination of the Board.

## **12. OMBUDSMAN**

- 12.1 The Board shall, on the recommendation of the Council, appoint the Ombudsman of the Scheme, whose terms of appointment shall include an undertaking by the Ombudsman to be bound by the provisions of the Constitution.
- 12.2 The Ombudsman must not be an employee, contractor or share holder of any member of EWON Limited.
- 12.3 The Board shall, only on the recommendation of the Council, terminate the appointment of any person as the Ombudsman.
- 12.4 The Board shall require each member to use its reasonable endeavours to ensure that the Ombudsman complies with the scheme.

### **Acting Ombudsman**

- 12.5 The Board shall, on the recommendation of the Council, appoint an acting Ombudsman. Such an appointment may only be made where the Ombudsman is absent (for whatever reason) or there is a vacancy in the position.
- 12.6 Any appointment of an acting Ombudsman shall be for a specified period, and in accordance with such conditions, as the Board determines on the recommendation of the Council.

## **13. SECRETARY**

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

**14. SEAL**

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

**15. ACCOUNTS**

- 15.1 The Board shall cause proper accounts and other records to be kept and shall distribute copies of financial statements and related documents as required by law.
- 15.2 Subject to the Corporations Law, the Board shall determine the times and places at which and the conditions and regulations upon which the accounting and other records of EWON Limited shall be open for inspection by the members in accordance with Clause 5.2 of the Memorandum.

**16. AUDIT**

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

**17. NOTICES**

- 17.1 Any notice required by law or by or under these Articles to be duly given to any member shall be given by sending it by post to his or her address in the register of members. Where a notice is sent by post from within Australia, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and to have been effected 2 days after the date of posting.
- 17.2 Notice of every General Meeting shall be given in any manner authorised by these Articles to:
- (a) every member except those members who have not supplied an address to EWON Limited for the giving of notices; and
  - (b) the auditor or auditors for the time being of EWON Limited, if required by law.
- 17.3 No other person shall be entitled to receive notice of General Meetings.



**18. REVIEWS OF SCHEME**

- 18.1 The Council shall conduct reviews of the Scheme and develop proposals for its continued operation. Such reviews shall be undertaken at least within the first eighteen months of operation of the Scheme or as soon as possible thereafter; and by the third anniversary of the commencement of operation of the Scheme. All reviews shall be conducted in consultation with interested parties, including groups representing customers of energy services and community groups representing public interest issues relevant to energy services.
- 18.2 The Board shall consider any recommendation made at any time by the Council resulting from a review of the operations of the Energy & Water Ombudsman scheme, and shall consult with the Council. The Board may at any time refer aspects of the Scheme's operation to the Council for review.

**19. ALTERATIONS**

- 19.1 The Memorandum and Articles of EWON Ltd shall not be altered or rescinded unless by resolution of the Annual General Meeting or General Meeting; such resolution shall be passed by not less than a three-fourths majority of Members voting (including proxies).
- 19.2 Proposals for alteration of the Memorandum and Articles shall be submitted in precise terms and shall be given to Members on notice of not less than two weeks prior to the matter being dealt with by a Meeting.
- 19.3 Alterations of the Memorandum and Articles, duly passed by a Meeting, are subject to lodgement and acceptance of such alterations in accordance with the requirements for registration under Corporations Law.

**20. WINDING UP**

The provisions of clause 7 of the Memorandum relating to the winding-up or dissolution of EWON Limited shall have effect and be observed as if the same were repeated in these Articles.

**21. INDEMNITY**

Every Director, Secretary, Councillor, Ombudsman and other officer for the time being of EWON Limited shall be indemnified out of the assets of EWON Limited to the maximum extent permitted by the Corporations Law, against any liability incurred by him or her in bringing or defending any proceedings, whether civil or criminal arising out of the execution of the duties of his or her office in which judgement is given in his or her favour. EWON Limited is hereby expressly authorised to pay, to the extent permitted by the Corporations Law, premiums on directors and officers liability insurance policies for the benefit of officers and directors.

**EWON**  
**Articles of Association**

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WE, the persons whose names and addresses are subscribed, being the subscribers to the Memorandum, hereby agree to the foregoing Articles of Association.

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Name and Address of Subscribers

---

Subscriber: ADVANCE ENERGY  
P.O. Box 172  
BATHURST NSW 2795

THE COMMON SEAL of ADVANCE ENERGY  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

Subscriber: AUSTRALIAN INLAND ENERGY  
P.O. 800  
BROKEN HILL NSW 2880

THE COMMON SEAL of AUSTRALIAN INLAND ENERGY  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

Subscriber: ENERGYAUSTRALIA  
G.P.O. Box 4009  
SYDNEY NSW 2001

THE COMMON SEAL of ENERGYAUSTRALIA  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

---

Name and Address of Subscribers

---

Subscriber: GREAT SOUTHERN ENERGY  
PO Box 438  
QUEANBEYAN NSW 2620

THE COMMON SEAL of GREAT SOUTHERN ENERGY  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

Subscriber: INTEGRAL ENERGY AUSTRALIA  
P.O. Box 6366  
BLACKTOWN NSW 2148

THE COMMON SEAL of INTEGRAL ENERGY AUSTRALIA  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

Subscriber: NORTHPOWER  
P.O. Box 786  
PORT MACQUARIE NSW 2444

THE COMMON SEAL of NORTHPOWER  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

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Name and Address of Subscribers

---

Subscriber: TRANSGRID  
PO BOX A1000  
SYDNEY SOUTH NSW 2000

THE COMMON SEAL of TRANSGRID  
was affixed this 1997  
in accordance with the Memorandum and Articles  
of Association in the presence of:

.....  
DIRECTOR

.....  
WITNESS

**ENERGY & WATER OMBUDSMAN (NSW)  
CONSTITUTION**

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**ENERGY & WATER OMBUDSMAN (NSW) LIMITED  
CONSTITUTION**

**A: INTRODUCTION**

**1. THE SCHEME**

The NSW Energy & Water Ombudsman Scheme has been established by means of a company limited by guarantee, the Energy & Water Ombudsman (NSW) Limited (EWON Limited). The Memorandum and Articles of Association of the company establish:

- a Board of Directors vested with corporate governance responsibilities;
- a Council, composed of an equal representation of member representatives and of customer interests, chaired by an independent Chairperson, and with responsibility for:
  - policy associated with the handling of complaints by the staff of the EWON Limited;
  - maintaining the independence of the Ombudsman; and
  - acting as an intermediary between the Ombudsman and the Board; and
- an Energy & Water Ombudsman vested with authority under this Constitution to receive, investigate and facilitate the resolution of complaints.

**2. MEMBERS**

- 2.1 Members of the Scheme shall be holders of Licences under the *Electricity Supply Act 1995*, or an authorisation under the *Gas Supply Act 1996*, or a licence under the *Sydney Water Act 1994* or *Hunter Water Act 1994*, who, in accordance with the Articles of Association of EWON Limited, have been accepted as members.
- 2.2 The Ombudsman shall ensure that an accurate and up-to-date list of all members is readily available to the public.

**B: THE ENERGY & WATER OMBUDSMAN**

**3. FUNCTIONS OF THE OMBUDSMAN**

- 3.1 The functions of the Ombudsman are to receive, to investigate and to facilitate the resolution of:
- (a) complaints as to the provision or supply of (or failure to provide or supply) energy or water services by a member to a customer as required by a licence or agreement;
  - (b) billing disputes;
  - (c) the administration of credit and payment services in the circumstances of a particular customer;
  - (d) disconnection, service restriction or security deposit complaints;
  - (e) complaints from owners or occupiers of land or other property about the way in which a member has exercised its statutory powers in relation to that particular land or other property or in relation to neighbouring land or other property;
  - (f) such other complaints as may, by agreement with the Ombudsman and the complainant, be referred to the Ombudsman by a member.
- 3.2 Complaints may be made to the Ombudsman by consumers of energy or water services and by persons directly affected by the provision or supply of (or the failure to provide or supply) such services provided by Scheme members.
- A Complaint may be made to the Ombudsman on behalf of a complainant by an authorised representative of the complainant
- 3.3 A complaint must have arisen from events which became known to the complainant less than one (1) year prior to the complaint being lodged. However, the Ombudsman has a discretion to investigate any complaint arising from earlier events.
- 3.4 To avoid doubt, the Ombudsman has jurisdiction to investigate and determine complaints involving the conduct of members' employees, servants, officers, contractors or agents, and may make a determination binding the member in relation to such complaints.

**4. JURISDICTION OF THE OMBUDSMAN**

- 4.1 The jurisdiction of the Ombudsman extends to the functions enumerated in Section 3.
- 4.2 The functions of the Ombudsman do not extend to:
- (a) the setting of prices or tariffs or determining price structures;
  - (b) matters which are within the functions of the Independent Pricing and Regulatory Tribunal (IPART);

- (c) commercial activities which are outside the scope of the member's licence;
- (d) the content of Government policies, legislation, licences and codes;
- (e) complaints which are the subject of incomplete proceedings before any court, tribunal or arbitrator; unless the parties to such proceedings have agreed to, or are required by the court, tribunal or arbitrator to have some or all of the issues determined by the Ombudsman;
- (f) any action specifically required by legislation (including subordinate legislation or rules), codes, licences, and orders made in accordance with the law;
- (g) complaints relating to customer contribution to the cost of capital works where those works are subject to any contestable or tender process; or
- (h) complaints or disputes between any Members of the Company;

## **5. PROCEDURES OF THE OMBUDSMAN**

5.1 The Ombudsman, in handling complaints, must pursue them in a fair, just, informal and expeditious manner. In consultation with the Council, the Ombudsman is responsible for developing procedures which best achieve this objective. However, these procedures must include the following:

- (a) The Ombudsman on receiving a complaint, will verify with an officer designated by the member concerned whether the member has had the opportunity to consider the complaint;
- (b) The Ombudsman may proceed to investigate the complaint only after the member has had this opportunity, subject to reasonable time limits to avoid undue delay in dealing with the complaint, and the member has been notified that the Ombudsman intends to investigate the complaint;

5.2 Upon receiving notification of an investigation by the Ombudsman, the member concerned shall provide to the Ombudsman all documentation relevant to the complaint other than documentation containing confidential information of a third party, who despite the reasonable efforts of the member, has refused to consent to disclosure of the information to the Ombudsman.

If a dispute arises in relation to the provision of documents under this clause, the Ombudsman in his or her absolute discretion is to determine whether the documents or any of them are to be produced;

5.3 With respect to all information concerning or relating to a complaint, the Ombudsman must act in accordance with accepted privacy principles.

5.4 In complying with any subpoena for production of documents, the Ombudsman must notify the person who has provided the information which is the subject of the subpoena so that the



person concerned is afforded the opportunity to appear in court to oppose production of the documents.

## **6. POWERS OF THE OMBUDSMAN**

### **Binding Decisions**

6.1 After completion of an investigation and in the absence of a conciliated settlement of a complaint, the Ombudsman shall resolve a complaint:

- (a) (i) by making a determination that the member the subject of investigation pay compensation to a complainant;
- (ii) by directing a member to provide an energy or water service;
- (iii) by directing a member to amend, or not to impose, a charge in relation to a service;
- (iv) by directing a member to supply goods or services the subject of the complaint or undertake any necessary corrective or other work to resolve the complaint;
- (v) by directing a member to make an appropriate correction, deletion or addition to a record;
- (vi) by directing a member to attach to a record a statement provided by the complainant of a correction, deletion or addition sought by the complainant, and/or
- (vii) by directing a member to do, not to do, or to cease doing, an act;

provided that the total of such determinations or directions in relation to an individual complaint, or in relation to claims against any one member as a result of any one event or series of related contemporaneous events, does not exceed in value \$20,000; or

- (b) by dismissing the complaint.

In addition to the above, the Ombudsman, with the consent of the member, may make a determination or direction the value of which exceeds \$20,000 but does not exceed \$50,000.

- 6.2 All decisions by the Ombudsman under paragraph 6.1 shall be automatically binding upon members. However, the complainant may elect whether or not to accept the decision of the Ombudsman within twenty-one (21) days of the Ombudsman's decision. If the complainant accepts the decision of the Ombudsman, the complainant shall fully release the member from all claims, actions etc., in relation to the complaint. In the event that the complainant does not accept the decision of the Ombudsman, the complainant may pursue their remedies in any other forum the complainant may choose and the member is then fully released from the Ombudsman's decision.
- 6.3 In exercising the powers of determination or recommendation under paragraph 6.1, the Ombudsman shall not make a determination or recommendation which, when given effect, would involve a member contravening any code, licence, regulation or law of the Commonwealth or of a State. Where there is a dispute between the Ombudsman and a member about the effect of the law or of regulatory instruments, the Ombudsman may refer the matter to Senior Counsel or the courts for authoritative advice or determination, as the case may be, at the member's expense.

#### **Reasons**

- 6.4 The Ombudsman shall provide complainants and members with written reasons in support of a decision under paragraph 6.1.

#### **Discretion not to Investigate**

- 6.5 The Ombudsman has the discretionary power to decline to investigate a complaint if in the opinion of the Ombudsman:
- (a) the complaint is frivolous or vexatious or was not made in good faith;
  - (b) the complainant does not have a sufficient interest in the subject matter of the complaint;
  - (c) an investigation, or further investigation, is not warranted; or
  - (d) the complaint is more appropriately or effectively dealt with by any other body.

#### **Other Powers**

- 6.6 The Ombudsman also has the power:
- (a) to delegate such of the Ombudsman's functions as may be convenient for the efficient day-to-day operation of the Scheme, other than the power:
    - (i) to make binding decisions under paragraph 6.1, and
    - (ii) to provide written reasons under paragraph 6.4.

- (b) to make a report to a member where, in the Ombudsman's opinion, the general energy policy or commercial practices of a member:
  - (i) have contributed to a complaint; or
  - (ii) have been identified as the source of a number of similar complaints; or
  - (iii) have impeded the investigation or handling of a particular complaint;
- (c) to take appropriate action to ensure that the Ombudsman's determinations are implemented, or that requests for information are met by a member. This action could include referral of the matter to the Chief Executive Officer of the member, referral to the Council, or referral to Minister for Fair Trading.

## **7. OTHER DUTIES/FUNCTIONS OF THE OMBUDSMAN**

7.1 The Ombudsman is responsible for:

- (a) the overall performance of the Scheme including, but not limited to, meeting such objectives as are determined by the Council from time to time;
- (b) managing the day to day operations of the Scheme, including but not limited to, the appointment and termination of employment of staff;
- (c) attending, in a non-voting capacity, meetings of the Council at the invitation of the Council;
- (d) Liaising with members to assist them in developing better customer relations;
- (e) Liaising with the Department of Fair Trading and other relevant government authorities and, in consultation with the Council, developing working procedures with these bodies where appropriate;
- (f) in consultation with the Council, developing procedures for the fair, just, informal and expeditious handling of complaints;
- (g) in consultation with the Council, promoting the Scheme and its complaint handling procedures;
- (h) making recommendations to the Council on the Constitution;
- (i) in consultation with the Council, preparing financial budgets and business plans and any subsequent amendments thereto;

- (j) submitting proposed financial budgets and business plans and any subsequent amendments thereto to the Council for referral to the Board with recommendations and/or comments as the Council thinks fit;
- (k) controlling and monitoring expenditure within the agreed budget and for providing regular reports to the Council and the Board on expenditure;
- (l) preparing the annual report of the Ombudsman;
- (m) at the Ombudsman's discretion, making ad hoc confidential reports to members, the Minister for Energy, the Minister for Fair Trading and the Council;
- (n) at the Ombudsman's discretion, making general observations about the operation of the Scheme in any public forum;
- (o) acting as an interface with the public for the receipt and referral of complaints;
- (p) keeping adequate data on complaints or requests for information, both for reporting purposes and to identify the sources of practices giving rise to similar complaints;
- (q) ensuring that an accurate and up-to-date list of all members in the Scheme is readily available to the public; and
- (r) promoting the Scheme to the public.

## **8. BUDGETS**

8.1 It is the function of the Board to:

- (a) set total limits for funding; and
- (b) approve budgets and any additional expenditure not provided for in the current budget.

Total limits for funding will initially be set by the Board following preparation of a business plan by the Ombudsman.

8.2 In deciding whether or not to approve any proposed budget, the Board shall be entitled to consider:

- (a) the ongoing financial stability or viability of EWON Limited; but
- (b) otherwise shall only be concerned to ensure that the particular budget comes, or is likely to come, within the total limits it has set.

- 8.3 The Board shall not otherwise take into consideration the business decisions of the Ombudsman or Council (as the case may be) in determining how those funds should be allocated within any particular budget. Nothing shall preclude the Board from seeking or receiving information about the budget and expenditures, both past and projected, to assist the Board in setting funding limits appropriate to the operation of the Scheme.
- 8.4 Because the Ombudsman has responsibility for managing the day-to-day operation of the Scheme, the Ombudsman is responsible for the preparation of financial budgets and business plans and any subsequent amendments, in consultation with the Council. The Ombudsman must submit proposed budgets, plans and/or amendments to the Council. The Ombudsman is responsible for controlling and monitoring expenditure within the agreed budget and for providing regular reports to the Council and the Board on expenditure.

The Council must consider the proposed budget plans and/or amendments submitted by the Ombudsman. The Council must refer these to the Board with such comments and/or recommendations as the Council thinks fit.

## **C: THE COUNCIL**

### **9. MEMBERSHIP OF THE COUNCIL**

- 9.1 In accordance with the Articles the Board shall appoint the Council, including the independent Chairperson.

### **10. ROLE AND RESPONSIBILITIES OF THE COUNCIL**

- 10.1 The primary responsibilities of the Council are the oversight of the Scheme and the maintenance of the independence of the Ombudsman. The Council is to act as an intermediary between the Ombudsman and the Board. The Council's role is complementary to that of the Ombudsman. While the Ombudsman will have responsibility for the day to day operation of the scheme, it is the function of the Council to provide advice to the Ombudsman on policy and procedural matters.

Councillors are selected for their knowledge of customer interests and customer service issues within the context of the energy and water industries. These resources will assist the Council in fulfilling its role of providing policy and procedural advice to the Ombudsman.

- 10.2 Specifically, the duties of the Council are:
- (a) To recommend to the Board the appointment and termination of appointment of the Ombudsman in accordance with the Memorandum and Articles of Association of the Energy & Water Ombudsman (NSW) Limited and the Ombudsman's contract of employment.

- (b) To recommend to the Board the appointment of an acting Ombudsman.
- (c) Within the framework of the Constitution, to determine policies and practices relating to the administration of the Scheme.
- (d) To monitor the Constitution and, from time to time, recommend to the Board amendments to the Constitution as the Council thinks fit.
- (e) To receive and consider recommendations from the Ombudsman for amendments to the Constitution.
- (f) To provide advice to the Ombudsman on the allocation of resources within the framework of global resources approved by the Board.
- (g) To receive and consider financial budgets and business plans (and any subsequent amendments thereto) prepared by the Ombudsman.
- (h) To refer the financial budgets, plans or amendments to the Board and to comment and/or make recommendations to the Board as the Council thinks fit.
- (i) To make recommendations to the Board as to the appropriateness, scope and effectiveness of the Scheme, and, in particular, to review the Scheme at least:
  - within the first 18 months of operation or as soon as possible thereafter; and
  - by the third anniversary of the commencement of Scheme's operation.
- (j) To provide advice to the Ombudsman on the promotion of the Scheme and the preparation of the Annual Report.

## **11. RELATIONSHIP BETWEEN THE COUNCIL AND THE OMBUDSMAN**

The Council acts as intermediary between the Ombudsman and the Board and in this way ensures the independence of the Ombudsman. The Council has prime responsibility for policy matters and oversight of the Scheme's operation. The Ombudsman has responsibility for the day to day operation of the Scheme and the resolution of individual complaints. These roles are complementary and, as a general rule the Ombudsman would attend Council meetings as an observer.

## **12. RELATIONSHIP BETWEEN THE COUNCIL AND THE BOARD**

- 12.1 The Board is responsible for the formal administration of the Company, EWON Limited, and exercises final authority in relation to the financial affairs of the Company. These matters are most appropriately exercised by Directors. Responsibility for complaint handling, policy matters and the day to day administration of the Scheme rests with the Council and the Ombudsman, and not the Board.
- 12.2 From time to time, and particularly as noted in Clause 10.2(i) above, the efficacy of the Scheme will need to be reviewed. It is the role of the Council, in consultation with the Ombudsman, to prepare recommendations to the Board in relation to the amendment of the Scheme and Constitution. Final authority for approval of amendments to the Scheme and Constitution rests with Board, after consultation with the members.
- 12.3 It is the responsibility of the Board to endeavour, by using the funding powers set out in the Articles, to procure sufficient funding for the operation of the Scheme. Appropriate funding will be established in accordance with the principles set out in clause 8 of this Constitution. It is the joint responsibility of the Council and the Ombudsman to ensure the Scheme is operated efficiently within the total limits for funding set by the Board.
- 12.4 It is not intended by clause 12.3 to impose any level of liability on the Directors, who shall not under any circumstances have any personal liability for any shortfalls in funding from time to time, nor in respect of any failure by any member to pay any levies to the Company.

## **13 AMENDMENTS TO CONSTITUTION**

13. This Constitution is an annexure to the Articles of Association, and may be amended in accordance with the Articles, following consultation with the Council.