

# Constitution

Australian Energy Market Operator Limited “**Company**”

A company limited by guarantee

A handwritten signature in dark ink, appearing to read "Dren Chan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

(As amended up to and including the changes made at the Special General Meeting on 2 July 2021)

# Constitution

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# Constitution

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## 1 Definitions and interpretation

### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Annual Budget** means a document outlining the following information in respect of the Financial Year to which it relates:

- (a) the projected income and expenses of the Company;
- (b) the projected cash flow of the Company; and
- (c) such other matters as determined by the Directors from time to time.

**Annual Directors Remuneration Pool** means a pool of funds, the amount of which is to be determined from time to time by resolution of the Company in general meeting, out of which the Directors are to be remunerated in accordance with this Constitution.

**Board Selection Panel** means the body established by the Ministerial Council on Energy under the MCE Protocol, and includes any other body that may replace it or assume responsibility for its functions.

**Business Day** means a day that is not:

- (a) Saturday or Sunday; or
- (b) observed as a public holiday on the same day in each State or Territory in Australia.

**Chair** means the Director nominated as Chair from time to time by the Ministerial Council on Energy under article 7.4A and where the context permits, includes the chair of a meeting.

**Committee** means a committee of Directors constituted under article 8.8.

**Company** means Australian Energy Market Operator Limited (ACN 072 010 327).

**Constitution** means this constitution as amended from time to time, and a reference to an article is a reference to an article of this Constitution.

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

**Date of Adoption** means the date on which the resolution to adopt this Constitution was passed by a special resolution of Members.

**Director** means a person holding office as a director.

**Directors** means all or some of the Directors acting as a board.

**Financial Year** has the meaning given in the Corporations Act.

**Government Class** means the class of Member referred to in article 4.9(a).

**Government Member** means a person entered in the register of members as a member of the Government Class.

**Independent Director** means a Director who is independent, having regard to Schedule 2.

**Industry Experience** means the level of relevant experience described in Schedule 2.

**Industry Class** means the class of Member referred to in article 4.9(b).

**Industry Member** means a person entered in the register of members as a member of the Industry Class.

**Managing Director** means a person appointed as a managing director under article 8.10.

**MCE Protocol** means the document entitled “Appointments Protocol for MCE Appointments to Boards and Panels”, as amended by the Ministerial Council on Energy from time to time.

**Member** means a Government Member or an Industry Member.

**Membership Eligibility Criteria** means:

- (a) in the case of an applicant for admission as a Government Member:
  - (i) being the Crown in right of the Commonwealth of Australia, a State of Australia, the Australian Capital Territory or the Northern Territory; and
  - (ii) having conferred on the Company at least one function relating to the objects of the Company; and
- (b) in the case of an applicant for admission as an Industry Member, being a person who is registered with AEMO pursuant to a requirement or entitlement in a statute or legislative instrument (or in an agreement or rules contemplated by a statute or legislative instrument), as a participant in an energy market or information service that the Company operates.

**Ministerial Council on Energy** means the body by that name established on 8 June 2001, being the Council of Ministers with primary carriage of energy matters at a national level comprising the Ministers representing the Commonwealth, the States, the Australian Capital Territory and the Northern Territory, and includes any other body that may replace it or assume responsibility for its functions.

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

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

**Natural Gas Services Bulletin Board** has the meaning given in the National Gas Law.

**Part** means a Part of this Constitution.

**Remuneration Adviser** means a person or firm appointed by the Directors to advise on matters relating to the remuneration of Directors.

**Registered Office** means the registered office of the Company.

**Representative** means a person appointed to represent a Member at a general meeting of the Company in accordance with the Corporations Act.

**Secretary** means a person appointed under Part 10 as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Statement of Corporate Intent** means a document outlining the following information in respect of the Financial Year to which it relates:

- (a) the proposed main undertakings of the Company;
- (b) the accounting policies to be applied by the Company;
- (c) the performance measures by which the performance of the Company in relation to its objectives and undertakings is intended to be judged;
- (d) the risk management strategies to be adopted by the Company; and
- (e) such other matters as determined by the Directors from time to time.

## 1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body, an association, an authority, or the Crown in right of the Commonwealth of Australia, a State of Australia, the Australian Capital Territory or the Northern Territory;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(meaning not limited)** a reference to the words “include”, “including”, “for example” or “such as”, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (e) **(regulations)** a reference to a law includes regulations and instruments made under the law;



- (f) **(references to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision and includes all legislative instruments made under that law or provision, whether by a State, a Territory, the Commonwealth of Australia, or otherwise;
- (g) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State, Territory or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;
- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (j) **(currency)** a reference to \$ is a reference to the lawful currency of Australia.

### 1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

### 1.4 Headings and Parts

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

This Constitution is divided into Parts as indicated by its Contents.

### 1.5 Replaceable rules not to apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

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## 2 Objects of Company

The objects of the Company are:

- (a) to perform such functions and exercise such powers as are conferred on the Company under the National Gas Law and the National Electricity Law;

- (b) to perform such other functions and exercise such other powers as are conferred on the Company by:
  - (i) a statute or legislative instrument;
  - (ii) an agreement or rules contemplated by a statute or legislative instrument; or
  - (iii) a direction or request of the Ministerial Council on Energy from time to time;
- (c) to carry out the functions performed by the following entities as at 30 June 2009, provided those functions have been conferred on the Company under statute or other legislative instrument, or have otherwise been assumed by the Company:
  - (i) the National Electricity Market Management Company Limited (ACN 072 010 327);
  - (ii) the Victorian Energy Networks Corporation continued under Part 8 of the *Gas Industry Act 2001* (Vic);
  - (iii) the Gas Market Company (ACN 095 400 258) in New South Wales and the Australian Capital Territory;
  - (iv) the Gas Retail Market Operator appointed under section 257A of the *Gas Supply Act 2003* (Qld);
  - (v) the Retail Energy Market Company Limited (ACN 103 318 556) in South Australia; and
  - (vi) the Electricity Supply Industry Planning Council established under section 6C of the *Electricity Act 1996* (SA);
- (d) to perform the functions of advisor to the National Gas Emergency Response Advisory Committee;
- (e) to perform consultancy and other services related to the matters set out in articles 2(a) to 2(d), provided that such services are not inconsistent with, and do not compromise the Company's functions under, the National Gas Law, the National Electricity Law, any other statute or legislative instrument, or a direction of the Ministerial Council on Energy;
- (f) to perform such activities as are necessary to prepare for a proposed conferral of functions or powers under articles 2(a) or 2(b); and
- (g) to do all other things as may be incidental or ancillary to the attainment of the objects in articles 2(a) to 2(f).

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## **3 Income and property of Company**

### **3.1 Application of income and property for objects only**

The profits (if any), other income and property of the Company, however derived, must be applied solely towards the promotion of the objects of the Company as set out in Part 2.

### **3.2 Not for profit - no dividend, bonus or profit paid to Members or officers**

No part of the profits, income or property of the Company may be paid or transferred to a Member or officer of the Company, either directly or indirectly by way of dividend, bonus or otherwise.

### **3.3 Payments by Company in good faith**

Article 3.2 does not prevent payment in good faith to an officer of the Company or a Member, or to a firm of which an officer of the Company or a Member is a partner:

- (a) of remuneration for services provided by that officer or Member to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of interest at a rate not exceeding the rate fixed for the purposes of this article by the Company in general meeting on money borrowed from an officer of the Company or a Member; or
- (d) of reasonable rent for premises let by an officer of the Company or a Member.

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## **4 Membership**

### **4.1 Becoming a Member**

Except for a person who was a Member at the Date of Adoption and is named in Schedule 1, a person may only become a Member under article 4.2 or 4.3.

### **4.2 Admission as an Industry Member**

The Directors may admit as an Industry Member any person who meets the Membership Eligibility Criteria for an Industry Member and agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.

### **4.3 Admission of a Government Member**

The Directors must admit as a Government Member a person who meets the Membership Eligibility Criteria for a Government Member and agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.

#### **4.4 Application for Membership**

A person may apply to become a Member by submitting to the Secretary a properly completed application in the form prescribed by the Directors.

#### **4.5 Effect of application**

By completing an application form, the person applying to become a Member agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.

#### **4.6 Decision**

The Directors must consider and resolve whether to accept or reject each application for Industry Membership and, within a reasonable time after making a decision, give the applicant a notice which states whether the application was successful or not.

#### **4.7 Admission to Membership**

Except for a person who was a Member at the Date of Adoption, a person is admitted as a Member when the person's application is accepted.

#### **4.8 Member to notify changes**

A Member must promptly notify the Company of any change in the details with respect to that Member which are recorded in the register of Members.

#### **4.9 Classes of Members**

The Members are divided into the following classes:

- (a) Government Members; and
- (b) Industry Members.

A Member may not be both a Government Member and an Industry Member.

#### **4.10 Ceasing to be a Member**

A person ceases to be a Member on:

- (a) resignation; or
- (b) the person ceasing to satisfy the Membership Eligibility Criteria; or
- (c) in the case of an Industry Member, expulsion under article 4.12; or
- (d) in the case of a natural person:
  - (i) death;
  - (ii) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or

- (iii) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
- (e) in the case of a body corporate:
  - (i) being dissolved or otherwise ceasing to exist;
  - (ii) having a liquidator or provisional liquidator appointed to it; or
  - (iii) being insolvent.

#### **4.11 Resignation**

A Member may by written notice to the Company resign from membership with immediate effect or with effect from a specified date occurring not more than 30 days after the service of the notice. A Member remains liable after resignation for all money due by the Member to the Company, in addition to any sum for which the Member is liable as a Member under article 15.1.

#### **4.12 Censuring, suspension or expulsion of Industry Members**

If any Industry Member:

- (a) wilfully refuses or neglects to comply with the provisions of this Constitution;
- (b) acts in a manner which in the opinion of the Directors is prejudicial to the interests of the Company; or
- (c) is suspended as a registered participant under the National Gas Law or National Electricity Law,

the Directors may by resolution censure, suspend or expel the Industry Member from the Company, provided that the following procedure is observed:

- (d) at least 10 Business Days before the Directors' meeting at which the resolution is proposed, the Industry Member must be given notice of the meeting setting out:
  - (i) what is alleged against the Member; and
  - (ii) the proposed resolution;
- (e) at the Directors' meeting, and before the passing of the resolution, the Industry Member must be given an opportunity of giving, orally or in writing, any explanation the Member thinks fit;
- (f) in the case of a resolution passed by the Directors for the Industry Member's expulsion under this article 4.12, the membership of the Industry Member automatically terminates, in which case the Industry Member ceases to be a Member.

A Member suspended under this article 4.12 shall cease to enjoy and may not exercise any rights it otherwise would have as a Member until such time as the suspension is lifted by resolution of the Directors. The Directors have no power to censure, suspend or expel a Government Member.

#### **4.13 Representative Members**

If a person is admitted as a Member as an agent of an unincorporated association or body, the name of the Member, the name of the unincorporated association or body and the fact that the Member is its agent must be entered in the register of Members. Subject to the Directors' right to decline to accept any person as a Member of the Industry Class, the unincorporated association or body may replace the Member who is its agent with another person by notice in writing to the Company signed by any officer of the association or body concerned and setting out the details of the new agent, without it being necessary for the outgoing Member to resign or the incoming Member to apply to become a Member.

#### **4.14 Limited liability**

A Member has no liability as a Member except as set out in this Part 4 and article 15.1.

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### **5 General meetings**

#### **5.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

#### **5.2 Convening a general meeting**

The Directors may convene and arrange to hold a general meeting of the Company when they think fit and must do so if required to do so under the Corporations Act.

#### **5.3 Members have power to convene general meeting**

If there are not sufficient Directors for a quorum, a Director or any two or more Members may convene a general meeting of the Company at the cost of the Company.

#### **5.4 Notice of general meeting**

Notice of a general meeting must be given in accordance with Part 13 and the Corporations Act and may be given as set out below.

If a Member nominates:

- (a) an electronic means by which the Member may be notified that notices of meeting are available; and
- (b) an electronic means the Member may use to access notices of meeting,

the Company may give the Member notice of the meeting by notifying the Member (using the notification means nominated by the Member):

- (c) that the notice of meeting is available; and
- (d) how the Member may use the electronic means nominated by the Member to access the notice of meeting.

A notice of meeting given to a Member by this electronic means is taken to be given on the day after the day on which the Member is notified that the notice of meeting is available.

## **5.5 Calculation of period of notice**

In computing the period of notice under article 5.4, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

## **5.6 Directors entitled to notice of general meeting**

A Director is entitled to receive notice of, attend and speak at, all general meetings of the Company and all separate meetings of any class of Members.

## **5.7 Cancellation or postponement of general meeting**

Where a general meeting (including an annual general meeting) is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This article 5.7 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members, or to a meeting convened by a court.

## **5.8 Notice of cancellation, postponement or change of place of general meeting**

Notice of cancellation or postponement or change of place of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company. The notice must be given at least two days before the date for which the meeting is convened and must specify the reason for the cancellation, postponement or change of place. A notice of a change of place of a general meeting must specify the different place for the holding of the meeting.

## **5.9 Contents of notice postponing general meeting**

A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting;
- (b) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting; and

- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

#### **5.10 Number of clear days for postponement of general meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

#### **5.11 Business at postponed general meeting**

The only business that may be transacted at a general meeting, the holding of which is postponed, is the business specified in the original notice convening the meeting.

#### **5.12 Non-receipt of notice**

The non-receipt of, or accidental omission to give, a notice of a general meeting or cancellation, postponement or change of place of a general meeting by, or to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed or changed place meeting or the cancellation or postponement of a meeting.

#### **5.13 Proxy, attorney or Representative at postponed general meeting**

Where by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

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## **6 Proceedings at general meetings**

### **6.1 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in this Part 6 means a person who is a Member, or:

- (a) a proxy;



- (b) an attorney; or
  - (c) a Representative
- of that Member.

## **6.2 Number for a quorum**

Quorum at a general meeting of the Company is such number of Members, present in person or by proxy, attorney or Representative, being no less than:

- (a) the number of Government Members equal to the total number of Government Members minus one; together with
- (b) the lowest number of Industry Members that together represents at least 10% of the total number of Industry Members.

## **6.3 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

## **6.4 If quorum not present**

If within 15 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

## **6.5 Adjourned meeting**

At a meeting adjourned under article 6.4(b), quorum is such number of Members, present in person or by proxy, attorney or Representative, being no less than:

- (a) the number of Government Members equal to the total number of Government Members minus one; together with
- (b) the lowest number of Industry Members that together represents at least 5% of the total number of Industry Members.

If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## **6.6 Appointment of chairman of general meeting**

The Chair is entitled to preside as chairman at a general meeting of the Company.

## **6.7 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) the Chair has not been appointed under Part 7; or
- (b) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) an Independent Director chosen by a majority of the Directors present;
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

## **6.8 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this article 6.8 is final.

## **6.9 Adjournment of general meeting**

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) subject to article 6.9(b), in exercising this discretion, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative;
- (b) prior to exercising this discretion in respect of any business, motion, question, resolution, debate or discussion concerning the position of the chairman of the general meeting, the chairman of the general meeting must obtain the approval of the Members present in person or by proxy, attorney or Representative; and
- (c) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

#### **6.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

#### **6.11 Number of votes exercisable in a general meeting**

At each general meeting of the Company, on a vote decided by a poll or show of hands,

- (a) each Government Member present in person or by proxy, attorney or Representative shall be entitled to cast the number of votes calculated according to the following formula:

$$\text{number of votes} = \frac{60}{G} \times 1,000, \text{ where}$$

$G$  = the total number of Government Members present in person or by proxy, attorney or Representative and entitled to vote at the meeting, and

- (b) each Industry Member present in person or by proxy, attorney or Representative shall be entitled to cast the number of votes calculated according to the following formula:

$$\text{number of votes} = \frac{40}{I} \times 1,000, \text{ where}$$

$I$  = the total number of Industry Members present in person or by proxy, attorney or Representative and entitled to vote at the meeting.

If the calculation under this article 6.11 results in a fraction, the number of votes will be rounded up or down to the nearest whole number.

## **6.12 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

## **6.13 Voting on show of hands**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman 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 book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

## **6.14 Demanding a poll**

At a general meeting of the Company, a poll may be demanded by:

- (a) at least five Members entitled to vote on the resolution; or
- (b) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chairman of the meeting.

## **6.15 Poll**

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman or on a question of adjournment it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

## **6.16 Objection to voting qualification**

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting or to vote on a poll:

- (a) may not be raised except at that meeting or adjourned meeting or when that poll is taken; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

#### **6.17 Chairman to determine voting dispute**

If there is a dispute as to the admission or rejection of a vote, the chairman of the general meeting must decide it and the chairman's decision made in good faith is final and conclusive.

#### **6.18 Circulating resolutions of Members**

Unless the Corporations Act requires otherwise, the Members may pass a resolution without a general meeting being held if all of the Members who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy. The resolution is taken to be passed, as if it had been passed unanimously at a duly convened general meeting, at the time the Secretary has evidence that the last Member has signed it.

#### **6.19 Right to appoint attorney**

A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.

To be effective, an instrument appointing an attorney under this article, together with any evidence of non-revocation the Directors require, must be received by the Company at least 48 hours before the meeting.

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## **7 Directors**

### **7.1 Number of Directors**

The number of Directors may not be less than five nor more than 10, including:

- (a) the Chair;
- (b) the Managing Director; and
- (c) at least three, but not more than six, Directors with Industry Experience.

A person may not simultaneously hold office as both the Chair and the Managing Director. The Directors in office at the time this Constitution takes effect continue in office notwithstanding this article 7.1 but subject to article 7.13 and the balance of this Constitution.

### **7.2 Independent Directors**

A majority of the Directors, including the Chair, must be Independent Directors. The Directors must regularly assess the independence of each Director in light of the interests disclosed by them. Each Independent

Director must provide the Directors with all relevant information for this purpose. The Directors must disclose to Members, in a timely fashion, any matter or circumstance which may affect a Director's status as an Independent Director.

### **7.3 Directors appointed by the Ministerial Council on Energy**

Directors, other than the Managing Director, will be appointed by a determination of the members of the Ministerial Council on Energy in accordance with the MCE Protocol and this Constitution. Subject to articles 7.4 and 7.4A, the process by which those appointments will be made is as follows:

- (a) the Board Selection Panel will prepare a report ("**Board Selection Panel Report**") specifying the candidates that the Board Selection Panel recommends for appointment as a Director, having regard to the matters contained in Schedule 2;
- (b) the Board Selection Panel Report will be presented to Members, and the submission to the Ministerial Council on Energy of the Board Selection Panel Report must be approved by a resolution of Members. If Members do not approve the submission of a Board Selection Panel Report to the Ministerial Council on Energy, the Board Selection Panel will revise and re-submit the Board Selection Panel Report to Members until such time as the submission of the Board Selection Panel Report to the Ministerial Council on Energy is approved by a resolution of Members; and
- (c) following approval by resolution of Members of the submission of a Board Selection Panel Report to the Ministerial Council on Energy, the Board Selection Panel will submit the Board Selection Panel Report to the Ministerial Council on Energy in accordance with the MCE Protocol. The Ministerial Council on Energy will then make a determination on the appointment of the Directors in accordance with the MCE Protocol.

### **7.4 Reappointment of Directors**

In this article 7.4, a reference to a Director does not include a reference to the Director for the time being in the position of Chair.

Directors may be reappointed in accordance with this article 7.4 as follows:

- (a) The Chair will review all Directors whose terms are due to expire and will identify and compile a list of all such Directors who are eligible and whom the Chair recommends to be re-appointed for a further term ("**Reappointment Directors**").
- (b) If the list compiled by the Chair does not include all Directors whose term is due to expire, the reappointment of any Director must be made in accordance with the process for the appointment of Directors in article 7.3.
- (c) If the list compiled by the Chair includes all Directors whose term is due to expire, and who are eligible for re-appointment, the Chair will

present the list of the Reappointment Directors to Members, seeking approval in the form of a resolution of Members for the list to be submitted to the Ministerial Council on Energy.

- (d) If Members approve the submission of the list to the Ministerial Council on Energy, the list will be submitted to the Ministerial Council on Energy in accordance with the MCE Protocol. The Ministerial Council on Energy will then make a determination on the reappointment of the Directors in accordance with the MCE Protocol.
- (e) If Members do not approve the submission of the list of the Reappointment Directors to the Ministerial Council on Energy, the reappointment of any Director must be made in accordance with the process for appointment of Directors in article 7.3.

#### **7.4A The Chair**

- (a) Subject to article 7.4A(b), where a vacancy in the office of the Chair has arisen or is expected to arise, the Ministerial Council on Energy in accordance with the MCE Protocol will nominate an Independent Director to be the Chair.
- (b) The Director who for the time being is in the position of Chair ("**the incumbent Chair**") may be reappointed as a Director in the position of Chair in accordance with this article 7.4A(b) as follows:
  - (i) If the incumbent Chair's term as a Director is due to expire and the incumbent Chair is eligible for reappointment as a Director, the incumbent Chair may provide the Directors with a statement that includes:
    - (A) a notice of intention to nominate for reappointment as a Director; and
    - (B) a rationale for reappointment as the Chair based on his or her past performance.
  - (ii) If the incumbent Chair provides a statement under article 7.4A(b)(i), the Directors will vote on whether to recommend to Members that the incumbent Chair be reappointed as a Director in the position of Chair.
  - (iii) If the Directors vote to recommend to Members that the incumbent Chair be reappointed as a Director in the position of Chair, then the incumbent Chair must present a nomination for reappointment to Members, seeking approval in the form of a resolution of Members, for the nomination to be submitted to the Ministerial Council on Energy. The nomination for reappointment will:
    - (A) relate only to the reappointment of the incumbent Chair and, for the purposes of the MCE Protocol and this Constitution, will be regarded as separate to the list prepared by the Chair under article 7.4(a);

- (B) describe the incumbent Chair as a Reappointment Director;
  - (C) describe the position to be filled as the position of Chair; and
  - (D) include a statement that the incumbent Chair has nominated himself or herself for reappointment based on the recommendation of Directors under article 7.4A(b)(ii).
- (iv) If the Directors vote, under article 7.4A(b)(ii), against recommending to Members that the incumbent Chair be reappointed as a Director in the position of Chair, then the incumbent Chair may be reappointed as a Director in accordance with the process for appointment of Directors in article 7.3.
  - (v) If Members approve the submission of the nomination for reappointment to the Ministerial Council on Energy, the nomination will be submitted to the Ministerial Council on Energy in accordance with the MCE Protocol. The Ministerial Council on Energy will then make a determination on the reappointment of the incumbent Chair as a Director in the position of Chair in accordance with the MCE Protocol.
  - (vi) If Members do not approve the submission of the nomination for reappointment to the Ministerial Council on Energy, then the incumbent Chair may be reappointed as a Director in accordance with the process for appointment of Directors in article 7.3.

## **7.5 Term of office**

A Director appointed under articles 7.3, 7.4 or 7.4A will hold office until the Annual General Meeting following the expiry of the term specified in the Ministerial Council on Energy's determination. The term specified by the Ministerial Council on Energy must not exceed:

- (a) for a Director other than the Chair, four years from the date of appointment under article 7.3 or 7.4; or
- (b) for a Director in the position of Chair, four years from the date of appointment to the position of Chair under article 7.3 or 7.4A.

Subject to article 7.5A, the office of a Director becomes vacant at the conclusion of the Annual General Meeting following the expiry of the relevant term specified for a person by the Ministerial Council on Energy at the time of their appointment.

## **7.5A Limits on re-appointment**

The Ministerial Council on Energy may reappoint a person as a Director under article 7.3, 7.4 or 7.4A for:



- (a) one further consecutive term; and
- (b) a second further consecutive term only if the Ministerial Council on Energy considers there are special circumstances to warrant that reappointment,

provided that:

- (c) each further term must not exceed four years;
- (d) a person must not be appointed as a Director in the position of Chair for more than two consecutive terms;
- (e) if the person was first appointed under article 7.7, then the person:
  - (i) may be reappointed for a second further consecutive term whether or not the Ministerial Council on Energy considers there are special circumstances to warrant that reappointment; and
  - (ii) may not hold office for consecutive terms totalling more than eight years; and
- (f) no person may hold office as a Director for consecutive terms totalling more than twelve years.

## **7.6 Maximum number of consecutive terms**

A person who has previously held office as a Director, other than the Managing Director, for three consecutive terms is not eligible for reappointment as a Director for further terms, except where that person has not held office as a Director within the immediately preceding three years.

## **7.7 Casual vacancy**

The Ministerial Council on Energy may, upon the recommendation of the Directors at any time, appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number, if any, determined in accordance with article 7.1.

A Director appointed under this article:

- (a) holds office for such term as is specified by the Ministerial Council on Energy, which must not exceed 12 months; but
- (b) is eligible for reappointment by the Ministerial Council on Energy under article 7.3, 7.4 or 7.4A.

Subject to article 7.5A, the office of a Director appointed under this article becomes vacant at the conclusion of the term specified by the Ministerial Council on Energy at the time of their appointment.

The process in article 7.3 does not apply to the appointment of Directors under this article 7.7. This article 7.7 does not apply to a Managing Director appointed by the Directors under article 8.10.

## **7.8 Remuneration of Directors**

The Directors, other than the Managing Director, will collectively be entitled to remuneration for their services as Directors equal to an annual amount not exceeding the Annual Directors Remuneration Pool. The part of the Annual Directors Remuneration Pool to which individual Directors are entitled will be determined by the Directors, having regard to any recommendation from the Remuneration Adviser.

## **7.9 Superannuation contributions**

If required by law, the Company may make contributions, from that part of the Annual Directors Remuneration Pool to which an individual Director is entitled under article 7.8, to a fund for the purpose of making provision for or obtaining superannuation benefits for that Director.

## **7.10 Reimbursement of expenses**

A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company. The Company will only be liable for such expenses to the extent they are consistent with any policy adopted by the Directors from time to time and substantiated to the satisfaction of the Secretary.

## **7.11 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor, unless being or becoming a Director would breach any law by reason of holding that office;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) if the other Directors determine that the Director's interest should not disqualify the Director from considering or voting on a matter, participate in, vote on and be counted in a quorum for any meeting,

resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and

- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this article is also a reference to each related body corporate of the Company.

#### **7.12 Vacation of office**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (b) resigns office by notice in writing to the Company;
- (c) is not present personally at three consecutive meetings of the Directors without leave of absence from the Directors; or
- (d) holds office by virtue of their appointment as Managing Director and ceases to be Managing Director.

#### **7.13 Transitional provision**

- (a) This article 7.13 applies notwithstanding any other provision of this Part 7.
- (b) A person holding office as a director of Australian Energy Market Operator (Transitional) Limited ACN 132 770 104 at the Date of Adoption shall be appointed as a Director of the Company ("**Initial Director**") from the later of:
  - (i) the time this Constitution takes effect;
  - (ii) the time the Company receives from that person a signed consent to act as a Director of the Company; and
  - (iii) 1 July 2009.
- (c) The chairperson of the directors of Australian Energy Market Operator (Transitional) Limited ACN 132 770 104 at the Date of Adoption shall be appointed as the initial Chair from such time as

they are appointed as a Director of the Company under article 7.13(b).

- (d) The Ministerial Council on Energy will determine the terms for which each of the Initial Directors will hold office as Director of the Company, provided that:
  - (i) one third of the number of Initial Directors (or the number closest to one third), including the Chair, shall hold office for a term of three years;
  - (ii) one third of the number of Initial Directors (or the number closest to one third) shall hold office for a term of two years; and
  - (iii) all other Initial Directors shall hold office for a term of one year.
- (e) Until such time as a resolution is passed in accordance with article 7.8, the Directors will, from the time of their appointment under article 7.13(b), be remunerated for their services as Directors to the same extent as they are or would have been entitled to be remunerated for their services as directors of Australian Energy Market Operator (Transitional) Limited ACN 132 770 104 had they continued to serve as directors of that company.

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## **8 Powers and duties of Directors**

### **8.1 Directors to manage Company**

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **8.2 Specific powers of Directors**

Without limiting the generality of article 8.1, the Directors may exercise all the powers of the Company to create by-laws, to borrow or raise money, to charge any property or business of the Company or give any other security for a debt, liability or obligation of the Company or of any other person.

### **8.3 Powers concerning the discharge of statutory functions**

Where the Company is required to satisfy any requirement or discharge any duty under the National Gas Law, National Electricity Law or any other law or legislative instrument, such requirements or duties are to be the responsibility of the Directors who are accordingly empowered (to the exclusion of the Company in general meeting) to do and to cause to be done everything necessary to cause those requirements or duties to be satisfied.

### **8.4 Activities requiring approval of Members**

Except where the transaction is required for the purposes of the objects of the Company described in articles 2(a), 2(b) or 2(f), or for any other thing as may

be incidental or ancillary to the attainment of the objects described in articles 2(a), 2(b) or 2(f), the Directors must not undertake any of the following transactions without prior approval in the form of a resolution of Members:

- (a) acquiring a business or making a material financial commitment towards starting a significant new business;
- (b) disposal of the Company or its business or any substantial part of the Company or its business; or
- (c) merger or amalgamation of the Company with any other company.

#### **8.5 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for the period and subject to the conditions they think fit.

#### **8.6 Provisions in power of attorney**

A power of attorney granted under article 8.5 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

#### **8.7 Signing of cheques**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

#### **8.8 Committees**

The Directors may delegate (and revoke the delegation of) any of their powers, other than powers required by law to be dealt with by the Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

#### **8.9 Powers delegated to Committees**

A Committee to which any powers have been delegated under article 8.8 must exercise those powers in accordance with any directions of the Directors.

#### **8.10 Appointment of Managing Director**

The Directors may appoint a person to the office of Managing Director for the period and on the terms they think fit.

### **8.11 Termination of appointment of Managing Director**

Whether or not the appointment of the Managing Director was expressed to be for a specified term, the appointment of the Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Directors remove the Managing Director from the office of Managing Director (which, subject to any contract between the Company and the Managing Director, the Directors have power to do).

### **8.12 Remuneration of Managing Director**

The remuneration of the Managing Director may be fixed by the other Directors.

### **8.13 Powers of Managing Director**

The Directors (other than the Managing Director) may:

- (a) confer on the Managing Director any of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on the Managing Director.

### **8.14 Powers of delegation**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

### **8.15 Managing Director transitional provision**

- (a) Subject to this Part 8, the person holding the office of Chief Executive Officer of Australian Energy Market Operator (Transitional) ACN 132 770 104 at the Date of Adoption shall be appointed as the Managing Director of the Company from the later of:
  - (i) the time this Constitution takes effect;
  - (ii) the time the Company receives from that person a signed consent to act as a Director of the Company; and
  - (iii) 1 July 2009.

- (b) Until such time as a resolution is passed in accordance with article 8.12, the Managing Director will, from the time of their appointment under article 8.15(a), be remunerated for their services as Managing Director to the same extent as they are or would have been entitled to be remunerated for their services as Chief Executive Officer of Australian Energy Market Operator (Transitional) ACN 132 770 104 had they continued to serve as Chief Executive Officer of that company.

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## **9 Proceedings of Directors**

### **9.1 Directors' meetings**

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

### **9.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

### **9.3 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

### **9.4 Chairman of Directors' meetings**

The Chair will act as chairman of the meetings of Directors.

### **9.5 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) the Chair has not been appointed under articles 7.3 or 7.4; or
- (b) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number who is an Independent Director to be a chairman of Directors' meetings until such time as a Chair is appointed under articles 7.3 or 7.4 or for such time as the Chair is absent or unable or unwilling to act.

### **9.6 Director attending and voting by proxy**

A Director ("**Appointing Director**") may participate in, and vote by, proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the Appointing Director.

The appointment may be general or for one or more particular meetings. A Director present as proxy for one or more Appointing Directors has:

- (c) one vote per Appointing Director for whom the Director is proxy and who would be entitled to vote if present at the meeting; and
- (d) one vote in his or her own capacity as a Director if entitled to vote at the meeting.

#### **9.7 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is as determined by the Directors and, unless so determined, is two.

#### **9.8 Continuing Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 7.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

#### **9.9 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Members involved may elect one of their number to be chairman of the meeting.

#### **9.10 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

#### **9.11 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

In the event of an equality of votes the chairman of the meeting has a casting vote, unless only two members of the Committee are present and entitled to vote at the meeting on the question.

#### **9.12 Circulating resolutions**

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing



by the Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

### **9.13 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

### **9.14 Meeting by use of technology**

A Director may not leave a meeting held with the use of technology by disconnecting the telephone or other communication device without the consent of the chairman of the meeting. A Director is deemed to be present and form part of the quorum throughout the meeting unless the Director obtains the consent of the chairman of the meeting to leave the meeting.

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## **10 Secretary**

### **10.1 Appointment of Secretary**

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

### **10.2 Suspension and removal of Secretary**

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

### **10.3 Powers, duties and authorities of Secretary**

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

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## **11 Seals**

### **11.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **11.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **12 Inspection of records**

### **12.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

### **12.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except:

- (a) minutes of general meetings of the Company; or
- (b) as provided by law or authorised by the Directors or by the Company in general meeting.

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## **13 Service of documents**

### **13.1 Document includes notice**

In this Part 13, a reference to a document includes a notice.

### **13.2 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by sending it to the Member by other electronic means nominated by the Member.

### **13.3 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and

- (b) if sent to an address outside Australia, must be sent by airmail, and in either case is taken to have been received on the day after the date of its posting.

### **13.4 Fax or electronic transmission**

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

### **13.5 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

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## **14 Indemnity and insurance**

### **14.1 Indemnity**

To the maximum extent permitted by law, the Company may indemnify any current or former Director or Secretary or officer or senior manager of the Company or a subsidiary of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

## **14.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or officer or senior manager of the Company or of a subsidiary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

## **14.3 Contract**

The Company may enter into an agreement with a person referred to in articles 14.1 and 14.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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# **15 Winding up**

## **15.1 Contributions on winding up**

Each Member undertakes to contribute to the Company's property if the Company is wound up during, or within one year after the cessation of, the Member's membership on account of:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
  - (b) the costs of winding up; and
  - (c) adjustment of the rights of the contributories among themselves,
- an amount not to exceed \$1.00.

## **15.2 Application of property on winding up**

If any property remains on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:

- (a) having objects and/or purposes similar to those of the Company; and
- (b) whose memorandum of association or constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution.

The institution is to be determined by the Members at or before the time of dissolution and in default by application to the Supreme Court of the Australian Capital Territory.

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## **16 Accounts and statements of corporate intent**

### **16.1 Accounts**

The Directors must cause the accounts of the Company to be maintained and audited in accordance with the requirements of the Corporations Act.

### **16.2 Statement of Corporate Intent and Annual Budget**

- (a) Not later than one month before the commencement of each Financial Year of the Company, the Directors must prepare and submit to Members:
  - (i) a draft Statement of Corporate Intent; and
  - (ii) a draft Annual Budget,relating to that Financial Year.
- (b) The Directors must consider any comments on the draft Statement of Corporate Intent and draft Annual Budget which are submitted by Members to the Secretary within one month of the commencement of the Company's financial year.
- (c) Following consideration of Member's comments under article 16.2(b) (which may be adopted or rejected by the Directors in their discretion), the Directors must issue a final Statement of Corporate Intent and a final Annual Budget to Members within three months of the commencement of the Company's Financial Year.
- (d) Neither the Statement of Corporate Intent nor the Annual Budget limits the powers or discretions of Directors. However, the Directors may have regard to the Statement of Corporate Intent and Annual Budget when exercising their powers and discharging their duties.

# Constitution

## Schedule 1 - Members of the Company at the Date of Adoption (article 4.1)

The Crown in Right of the Australian Capital Territory

The Crown in Right of the State of New South Wales

The Crown in Right of the State of Queensland

The Crown in Right of the State of South Australia

The Crown in Right of the State of Tasmania

The Crown in Right of the State of Victoria

# Schedule 2 - Directors' independence, skills and experience

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## 1 Independence

A Director is considered an Independent Director by the Company if the Director is a non-executive Director who is not a member of management and is free of any business or other relationship that could materially interfere with the exercise of their unfettered and independent judgment or could reasonably be perceived to do so.

A Director who:

- (a) is associated directly with a Member of the Company;
- (b) is employed, or has previously been employed in an executive capacity by the Company, or a Member and there has not been a period of at least six months between ceasing that employment and serving as a Director;
- (c) within the last six months, has been a principal of a material professional adviser or material consultant to the Company or a Member, or an employee materially associated with the service provided;
- (d) is a material supplier or customer of the Company or a Member, or an officer of or otherwise associated directly or indirectly with a material supplier or customer; or
- (e) has a material contractual relationship with the Company or a Member other than as a director of the Company,

will not be an Independent Director, unless the Board Selection Panel (or, when regularly assessing the independence of each Director under article 7.2, the Directors) are satisfied on reasonable grounds that the Director is independent despite the existence of one or more of these circumstances.

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## 2 Skills and experience

In assessing the suitability of prospective candidates for election as a non-executive Directors (“**Nominees**”), the Board Selection Panel must ensure that the Nominees recommended will enable the Ministerial Council on Energy to appoint a board of Directors that (as a whole) possesses the following core skills and experience:

- (a) strategic expertise – the ability to review the strategy through constructive questioning and suggestion;

- (b) accounting and finance – the ability to read and comprehend the company’s accounts, financial material presented to the Directors, financial reporting requirements and some understanding of corporate finance;
- (c) legal – the Directors’ responsibility involves overseeing compliance with numerous laws as well as understanding an individual director’s legal duties and responsibilities;
- (d) managing risk – experience in managing areas of major risk to the organisation;
- (e) managing people and achieving change;
- (f) experience with financial markets;
- (g) experience in similar organisations or industries;
- (h) information technology – the ability to govern significant investment in information technology to ensure appropriate capital and operational expenditures in line with the company’s objects; and
- (i) economics and public policy.

In addition, the Board Selection Panel must ensure that the Nominees recommended will enable the board of Directors (as a whole) to have significant experience (“**Industry Experience**”) in:

- (j) operation of the National Electricity Market;
- (k) operation of the various gas markets in Australia;
- (l) understanding of the planned reforms to the electricity and gas markets in Australia and the reform agenda of Council of Australian Governments and the Ministerial Council on Energy;
- (m) energy systems planning;
- (m1) professional power systems engineering or equivalent;
- (n) power and gas system security;
- (o) prudential management;
- (p) forecasting and reliability in relation to supply/demand;
- (q) application of the various regulatory regimes to the Company and the energy markets generally, including the National Electricity Law, the National Gas Law, the Rules and Procedures under those Laws and the procedures adopted by the market operators, and the context of the regulatory framework for the gas and electricity industries;
- (r) incident investigation;



- (s) experience in the operation of market administrators and operators in the electricity and gas industries, and the need to develop a “customer-focussed” organisation;
- (t) experience in and understanding of the usage and issues of the various classes of consumer of gas and electricity, including an ability to develop competing positions into a hierarchy of needs;
- (u) experience in the operation of regulated entities;
- (v) understanding of the government and political processes in the energy industry;
- (w) understanding of remote areas to ensure minor states and regional Australia are represented; and
- (x) understanding of the particular requirements for stakeholder engagement in an energy market operator, where stakeholders include governments through the Council of Australian Governments, the Ministerial Council on Energy and individual jurisdictions, market participants, energy users and regulators.