

# **CONSTITUTION**

**CONSUMER UTILITIES ADVOCACY CENTRE LIMITED**

**ACN 100 188 752**

**Amended 18 September 2014**

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**CONSTITUTION**  
**CONSUMER UTILITIES ADVOCACY CENTRE LIMITED**  
**ACN 100 188 752**

**1. PRELIMINARY**

**1.1 Name of the Company**

The name of the Company shall be ‘Consumer Utilities Advocacy Centre Limited’.

**1.2 Replaceable rules**

The provisions of the Act that apply to public companies as replaceable rules do not apply to the Company to the extent that those replaceable rules are inconsistent with the rules set out in this constitution.

**1.3 Definitions**

The following definitions apply in this constitution except where the context indicates otherwise:

“**Act**” means the *Corporations Act 2001*.

“**Board**” means the Directors acting collectively under this constitution.

“**Casual vacancy**” is a vacancy that occurs in the position of director or other office holder other than by way of the termination of that role through the expiry of the time the position was fixed for.

“**Chairman**” means a Director who is appointed chairman of the Company pursuant to rule 5.3(a)

“**Company**” means the company named above whatever its name may be from time to time.

“**Consolidated Fund**” has the meaning provided by section 5 of the *Constitution Act 1975*.

“**Deputy Chairman**” means a Director who is appointed Deputy Chairman pursuant to rule 5.3(b).

“**Director**” means a person who is, for the time being, a director of the Company.

“**dividend**” includes bonus.

**“Grant Application”** means a request for financial support to aid a person or group of persons to research and report on issues relevant to the Objects of the Company.

**“Member”** means the person whose name is entered in the Register as a Member of the Company.

**“Objects”** means the objects for which the Company is established as set out in rule 3.

**“ordinary resolution”** means a resolution of the Member other than a special resolution.

**“Reference Group”** means the Reference Group constituted by rule 8.

**“Register”** means the register of Members kept as required by the Act.

**“Remuneration”** in relation to a Director:

- (a) includes salary, bonuses, fringe benefits and superannuation contributions provided by the Company; and
- (b) excludes a payment as compensation for loss of office or in connection with retirement from office and an indemnity under rule 12.

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

**“special resolution”** has the meaning given by the Act.

**“Utility”** means a person or entity who is involved in the provision of infrastructure to the public or sections of the public, including persons or entities who supply, sell or distribute gas water or electricity and **“Utilities”** means the infrastructure provided. Provided that **“Utility”** and **“Utilities”** shall not include persons, entities and infrastructure outside the industries described as regulated industries declared by the Governor in Council for the purposes of the *Essential Services Commission Act 2001*.

#### **1.4 Rules for interpreting this constitution**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
  - (c) A word which suggests one gender includes the other gender.
  - (d) If a word is defined, another part of speech has a corresponding meaning.
  - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (f) The word “**agreement**” includes an undertaking or other binding arrangement or understanding, whether or not in writing.
  - (g) A reference to something being “**written**” or “**in writing**” includes that thing being represented or reproduced in any mode in a visible form.
  - (h) Words (other than those defined in rule 1.2) which are defined by the Act have the same meaning in this constitution.
  - (i) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

## **2. COMPANY LIMITED BY GUARANTEE**

### **2.1 Company limited by guarantee**

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

### **2.2 Member’s liability limited**

The liability of the Member is limited and the Member undertakes to contribute to the Company’s property if the Company is wound up while he or she is a Member or within one year after he or she ceases to be a Member, for payment of the Company’s debts and liabilities contracted before he or she ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the

contributories among themselves, such amount as may be required, not exceeding \$10.00.

### **2.3 Restriction on application of profits**

All profits (if any) and other income including funding and property of the Company must be applied in promoting the Objects and no part of them may be paid, directly or indirectly, by way of dividend, bonus or otherwise, to the Member.

### **2.4 Certain payments allowed**

Rule 2.3 does not prevent the payment in good faith of reasonable and proper Remuneration to any officers and employees of the Company or other person in return for any service actually rendered to the Company.

### **2.5 Surplus on winding up**

If the Company is wound up, any surplus must be paid into the Consolidated Fund.

## **3. OBJECTS AND POWERS**

### **3.1 Objects**

The objects of the Company are:

- (a) To facilitate and provide an independent, proactive and informed advocacy voice for Victorian Utility consumers to effectively represent their interest in regulatory processes, and in the consultation processes of other relevant Utility sector stakeholders.
- (b) To facilitate and undertake the preparation and dissemination of independent research on consumer related Utility issues to enable consumers to take full advantage of Utility markets .
- (c) To monitor grass roots consumer Utilities issues, with particular regard to low income, disadvantaged and rural consumers.
- (d) To undertake other activities which the Board considers are ancillary or incidental to the above objects.



### **3.2 Powers**

- (a) Subject to paragraph (b) of this Rule, in pursuit of its Objects the Company shall have all the legal capacity and powers of an individual and of a body corporate.
- (b) In pursuit of the object specified in Rule 3.1(a), the Company shall not have power to participate in or provide resources for litigation other than litigation brought against the company.

## **4. MEMBERSHIP**

### **4.1 Number of Members**

The Company shall have only one Member.

### **4.2 Identity of the Member**

The Member of the Company shall be the Minister of the Crown in right of the State of Victoria for the time being administering the *Fair Trading Act 1999* (Victoria).

## **5. DIRECTORS**

### **5.1 Number of Directors**

The number of Directors shall be 5 and not more than 5.

### **5.2 Appointment of Directors**

Subject to the maximum number of Directors for the time being fixed under rule 5.1 not being exceeded, the Company by ordinary resolution may appoint a person to be a Director to fill any vacancy.

### **5.3 Composition of the Board**

The Directors appointed pursuant to rule 5.2 must include:

- (a) a Director who is a person with a demonstrated understanding of regulated industries and consumer advocacy methodologies, which person shall be the Chairman of the Company;
- (b) two Directors appointed on the basis of their knowledge and expertise in areas related to the functions of the Company such as economics, regulatory affairs,

consumer affairs or communications, one of whom may be appointed by the Company as Deputy Chairman; and

- (c) two Directors representative of key consumer interests as determined by the Company.

#### **5.4 Qualification**

A Director need not be a Member of the Company.

#### **5.5 First Directors**

The initial Directors of the Company shall be the following persons:

Jennifer Lynn Dawson;  
Christopher James Field;  
Dimitry Anne Fifer;  
Edward William Russell; and  
Joan Bernadette Sturton-Gill.

#### **5.6 Cessation of Director's appointment**

The office of a Director automatically becomes vacant if the person who holds the office:

- (a) becomes an insolvent under administration;
- (b) is not permitted by the Act (or an order made under the Act) to be a director;
- (c) becomes subject to sections 206A, 206B, 206C, 206D, 206E, or 206F of the Act;
- (d) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (e) fails to attend Board meetings for a continuous period of six months without leave of absence from the Board;
- (f) resigns by notice in writing to the Company;
- (g) is removed from office under rule 5.7; or
- (h) if the person was appointed to the office for a specified period and that period expires.

## **5.7 Removal from office**

The Member may by ordinary resolution remove a Director from office.

## **5.8 Too few Directors**

If the number of Directors is reduced below the number required by rule 5.1:

- (a) The Member must endeavour to appoint one or more new Directors within 90 days in order that the number of directors be returned to the number required by 5.1; and
- (b) The continuing Directors may act as the Board in all matters subject to the quorum requirement in rule 13.5; and
- (c) Where no new directors have been appointed and 90 days has expired since the number of directors was reduced below the number required by rule 5.1, the continuing directors may act as the Board only:
  - (i) to exercise the responsibility of financial management; and
  - (ii) to seek a resolution from the Member.

## **5.9 Compulsory retirement**

At the annual general meeting of the Company in the year 2007 the two directors appointed prior to the 2006 annual general meeting, one appointed in accordance with clause 5.3(b) and one appointed in accordance with clause 5.3(c), or any person filling their position by way of casual vacancy, shall automatically retire and be eligible for reappointment. Those positions shall be filled by appointment by the Member.

At the next annual general meeting after the annual general meeting of 2007 the positions of the Chairperson appointed in accordance with clause 5.3(a) and the remaining directors, one appointed in accordance with clause 5.3(b) and one appointed in accordance with clause 5.3(c), or any other person filling their position by way of casual vacancy, shall automatically retire and be eligible for reappointment. Those positions shall be filled by appointment by the Member.

In ensuing years, at every annual general meeting of the company after the 2008 annual general meeting, until, but not including, the 2014 annual general meeting, the preceding pattern of rotation 2 and 3 shall be used to determine which Directors shall automatically retire and be eligible for reappointment. If not re-appointed or deemed re-appointed under rule 5.10, that retirement takes effect at the conclusion of that annual general meeting.

At the 2014 annual general meeting, the three positions that will be vacated through the automatic retirement of the Chairperson and two directors in accordance with the preceding pattern, shall be filled by appointment by the Member to hold office until

the 2017 annual general meeting (or, if not so appointed, by deemed re-appointment under rule 5.10). At the 2015 annual general meeting, the positions vacated by the two directors (or any person filling their position by way of casual vacancy) in accordance with the preceding pattern, shall be filled by appointment by the Member to hold office until the 2018 annual general meeting.

In ensuing years, at the end of the term of appointment for each cohort of Directors, the rotation for each cohort of Directors will occur at each third subsequent annual general meeting of the company. This pattern shall be used to determine which Directors shall automatically retire and be eligible for reappointment.

If not re-appointed or deemed reappointed under rule 5.10, retirement in accordance with this clause takes effect at the conclusion of the relevant annual general meeting.

### **5.10 Deemed re-appointment**

Where a Director retiring by reason of rule 5.9 is not re-appointed under rule 5.2 and is willing to continue to act as Director, that Director continues in office until automatic retirement in accordance with rule 5.9, unless the Member resolves otherwise.

## **6. POWERS AND RESPONSIBILITIES OF THE BOARD**

### **6.1 Powers generally**

Except as otherwise required by the Act, any other applicable law, or this constitution, the Board:

- (a) has power to manage the business of the Company and to carry into effect all or any of the Objects; and
- (b) may exercise every right, power or capacity of the Company.

### **6.2 Exercise of Powers**

A power of the Board can be exercised only:

- (a) by resolution passed, or treated by rule 13 as passed, at a meeting of the Board; or
- (b) in accordance with a delegation of the power under rule 9.

### **6.3 Responsibilities of the Board**

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

- (a) setting an annual work program for the Company;
- (b) developing guidelines regarding Grant Applications, a summary of which guidelines the Board shall publish;
- (c) representation by at least one Board member at Reference Group Forums;
- (d) developing policy positions consistent with its objectives and advocating these in discussions with the Essential Services Commission, other specialist regulators and industry stakeholders;
- (e) receiving funding applications and allocating available funds according to the guidelines developed under (b) above;
- (f) staff appointment and management; and
- (g) financial management.

#### **6.4 Voting and attendance restrictions on Directors**

Where a Director has a material personal interest in the outcome of a vote, the participation of that Director both in the vote and in the meeting at which the vote takes place shall be governed by the procedures set out in section 195 of the Act.

#### **6.5 Determination of Grant Applications**

The Board shall determine all Grant Applications in light of the Objects of the Company.

### **7. EXECUTING NEGOTIABLE INSTRUMENTS**

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner for the time being decided by the Board.

## **8. REFERENCE GROUP**

### **8.1 Establishment**

There shall be a Reference Group appointed by the Board, the function of which group will be to act as an advisory group to the Board on consumer Utility issues generally. Reference Group members shall not be appointed for any particular term but may be removed by the Board at any time.

## **8.2 Composition of the Reference Group**

The number of representatives on the Reference Group will be as determined by the Board but until otherwise determined shall be not less than 12 nor more than 20. The initial membership of the Reference Group shall be representatives of the organisations represented on the Customer Consultative Committee established by the Office of the Regulator-General plus up to 8 other consumer representatives appointed on the advice of the representatives appointed on the advice of those organisations' representatives.

## **8.3 Responsibilities of the Reference Group**

The responsibilities of the Reference Group include the provision of advice to the Board on emerging consumer issues and on the development of the Company's work program, and the sharing of grass roots consumer feedback and research.

## **8.4 Procedures of the Reference Group**

The Reference Group shall meet and otherwise carry out their functions in accordance with procedures determined by the Board, subject to the proviso that no more than six meetings are to be held in any calendar year.

## **8.5 Sitting Fees**

Reference Group members shall be entitled to sitting fees. These sitting fees shall be fixed by the Directors but shall not exceed such sum as may be determined by the Member.

## **9. DELEGATION OF BOARD POWERS**

### **9.1 Delegation to committee**

The Board may delegate any of its powers other than the power to determine Grant Applications to a committee consisting of at least one Director which may also include people who are not Directors, and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to section 126(1) of the Act.

### **9.2 Terms of delegation**

A delegation of powers under rule 9.1 may be made:

- (a) for a specified period or without specifying a period; and

(b) on the terms and subject to any restrictions the Board decides,

and power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

### **9.3 Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this constitution which regulate the meetings and proceedings of the Board.

## **10. DIRECTOR'S DUTIES AND INTERESTS**

### **10.1 Director not disqualified**

A Director is not disqualified by reason only of being a Director from holding any office or place of profit or employment other than that of the Company's auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the auditor.

### **10.2 Declaration of interests**

A Director who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest in accordance with s191 of the Act.

## **11. DIRECTORS' REMUNERATION**

### **11.1 Remuneration of Directors**

In consultation with the Member and subject to Part 2E.1 of the Act, the Board may fix the Remuneration of each Director and that Remuneration may consist of salary, bonuses or any other elements (excluding dividends). The overall level of Remuneration shall not exceed such sum as may be determined by the Member.

### **11.2 Expenses of Directors**

Subject to the overall level of reimbursement by the Company for expenses incurred by the Directors not exceeding such sum as may be determined by the Member the Company must pay a Director all reasonable out-of-pocket expenses ("**Expenses**") incurred by the Director in carrying out that Director's duties as a Director, but may not do so:

- (a) unless the Board has fixed the maximum aggregate amount payable to each Director in respect of Expenses (“**Expense Limit**”) and the period to which the Expense Limit relates (which it is authorised to fix from time to time, but may not fix retrospectively); and
- (b) in respect of all or any part of a Director’s Expenses which exceed the Expense Limit for the period to which they relate.

## **12. OFFICERS’ INDEMNITY AND INSURANCE**

### **12.1 Indemnity**

Subject to sections 199A and 199C of the Act, the Company must indemnify every officer and may indemnify its auditor (if any) against a liability:

- (a) incurred as officer or auditor to a person (other than the Company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith; and
- (b) for costs and expenses incurred in defending civil or criminal proceedings in which judgment is given in favour of that person in which that person is acquitted, or in connection with an application, in relation to those proceedings, in which the court grants relief to that person under the Act.

The Company will consider the merits of each application for indemnity by its auditor (if any) on a case by case basis.

### **12.2 Insurance**

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

### **12.3 Former officers**

The indemnity in favour of officers under rule 12.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company even though the person is not an officer at the time the claim is made.

## **13. BOARD MEETINGS**

### **13.1 Convening Board meetings**

The Chairman may at any time, and the Secretary must on request from the Chairman, convene a Board meeting.



### **13.2 Notice of Board meeting**

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

### **13.3 Use of technology**

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other manner permitted by the Act. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairman of the meeting is located.

### **13.4 Chairing Board meetings**

The Chairman shall chair Board meetings. If the Chairman is not present at the time for which a Board meeting is called or is unwilling to act and there is a Deputy Chairman who is present and is willing to act, the Deputy Chairman shall chair the meeting. In any other case, the Directors present must elect a Director present to chair the meeting.

### **13.5 Quorum**

- (a) The quorum for a Board meeting is three Directors, provided there are three Directors present for the whole meeting and:
  - (i) the Chairman is one of those present, or
  - (ii) there is a Deputy Chairman and the Deputy Chairman is one of those present.
- (b) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another manner permitted by the Act, the Board must resolve the basis on which Directors are treated as present.

### **13.6 Majority decisions**

- (a) A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (b) The Chairman of a meeting has a primary vote and in addition a second or casting vote in the event of a deadlock. If an equal number of votes be cast for and against a resolution the matter is decided in the negative.

### **13.7 Procedural rules**

The Board may adjourn and, subject to this constitution, otherwise regulate its meetings as it decides.

### **13.8 Written resolution**

If all the Directors entitled to receive notice of a Board meeting and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution in those terms is treated as having been passed at a Board meeting at the time when the last Director signs.

### **13.9 Additional provisions concerning written resolutions**

For the purpose of rule 13.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document;
- (d) a telex, telegram, fax or e-mail message containing the text of the document expressed to have been signed by a Director and sent to the Company is a document signed by that Director at the time of its receipt by the Company.

### **13.10 Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

## **14. MEETING OF THE BOARD WITH MEMBER**

### **14.1 Meeting with the Member**

The Board must hold a meeting with the Member or a representative nominated by the Member at least once in each calendar year and within 4 months after the end of its financial year.

### **14.2 Reports to be considered at the Meeting**

At each meeting, referred to in clause 14.1, the Board must present to the Member:

(a) the financial report; and

(b) the directors' report;

for the last financial year that ended before the meeting.

## **15. PROCEEDINGS AT MEETINGS OF MEMBERS**

### **15.1 Single Member Company**

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

## **16. SECRETARY**

### **16.1 Appointment**

The Board must appoint a person to the office of Secretary for a specific term or without specifying a term.

### **16.2 Terms and conditions of office**

The Secretary holds his office on the terms (including as to Remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of such terms of office.

### **16.3 Removal from office**

Subject to any contract between the Company and the Secretary, the Board may remove the Secretary from that office whether or not the appointment was expressed to be for a specified term.

## **16.4 Delegation**

The Board may:

- (a) confer on the Secretary any powers, discretions, and duties (including any powers, discretions and duties vested in or exercisable by the Board);
- (b) withdraw, suspend or vary any of the powers, discretions and duties conferred on the Secretary; and
- (c) authorise the Secretary to delegate all or any of the powers, discretions and duties conferred, respectively, on the Secretary.

## **18. COMPANY SEALS**

### **18.1 Common seal**

The Board:

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

### **18.2 Use of seals**

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

### **18.3 Fixing seals to documents**

The fixing of a Company seal to a document must be witnessed:

- (a) by two Directors or one Director and either one Secretary or another person authorised by the Board; or
- (b) in any other way (including the use of facsimile signatures) authorised by the Board.

## **19. ACCOUNTS AND AUDIT**

### **19.1 Company to keep accounts**

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

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited in accordance with the Act,

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

## **19.2 Financial reporting**

The Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to the Member no later than four months after the end of the reporting period or the deadline set by the Act (if earlier).

## **19.3 Audit**

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any) are as set out in the Act.

## **20. NOTICES**

### **20.1 Notices by Company**

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

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered personally;
  - (ii) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (iii) sent by fax to the fax number (if any) nominated by that person;
  - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

### **20.3 When notice is given**

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

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

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

#### **20.4 Business days**

For the purposes of rule 20.3, a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent is a business day.

#### **20.5 Counting days**

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