

ROADS.ACT.1993

**ORDER APPROVING A TOLLWAY OMBUDSMAN SCHEME UNDER SECTION 261A(1)
AND THE SCHEME'S MONETARY LIMIT UNDER SECTION 261A(3)(g)**

I, John Graham MLC, Minister for Transport:

1. pursuant to section 261A(1) of the Roads.Act.1993, on being satisfied that the scheme meets the objectives specified in section 261A(3) of the Roads.Act.1993, approve the corporation to be registered with the attached Constitution and Charter as the tollway ombudsman scheme; and
2. pursuant to section 261A(3)(g) of the Roads.Act.1993, approve \$5,000 (plus the amount of any tolls and charges the subject of a claim) as the amount of the monetary limit on claims covered by the scheme.

This order takes effect on 1 January 2026.



The Hon. John Graham MLC
Minister for Transport

Date: 19/12/25

OFFICIAL

Constitution of NSW Tollway Ombudsman Limited

ACN []

2025

CONTENTS

RULE	PAGE
1. PRELIMINARY	1
1.1 Company limited by guarantee	1
1.2 Objectives of the Company	1
1.3 Application of income and property	2
1.4 Certain payments allowed	2
1.5 Replaceable rules.....	2
1.6 Definitions	2
1.7 Interpretation of this document	4
2. MEMBERSHIP	4
2.1 Membership	4
2.2 Cessation of membership.....	5
2.3 Limited liability of Members.....	5
2.4 Obligations of Members	5
2.5 Member Contributions	6
3. DIRECTORS.....	6
3.1 Membership of the Board.....	6
3.2 Term of office.....	6
3.3 Chair.....	7
3.4 Non-operating Government Director.....	7
3.5 Industry Directors.....	7
3.6 Community Directors	8
3.7 Cessation of Director's appointment	8
3.8 Director remuneration	9
4. POWERS OF THE BOARD.....	9
4.1 Duties	9
4.2 Exercise of powers	10
4.3 Powers generally	10
5. OMBUDSMAN	10
5.1 Initial Period	10
5.2 Term	10
5.3 Conflict.....	10
5.4 Removal	11
5.5 Responsibilities.....	11
5.6 Board meetings	12
6. CONSULTATIVE COUNCIL MEETINGS.....	12
7. DELEGATION OF BOARD POWERS.....	12
7.1 Power to delegate	12
7.2 Power to revoke delegation	12
7.3 Terms of delegation	13
7.4 Proceedings of committees	13
8. DIRECTORS' DUTIES AND INTERESTS	13
8.1 Compliance with duties under the Corporations Act and the general law	13
8.2 Director can hold other offices	13
8.3 Conflicts	13
8.4 Agreements with third parties	14
9. OFFICERS' INDEMNITY AND INSURANCE	14

9.1	Indemnity	14
9.2	Insurance	14
9.3	Former officers	14
9.4	Deeds	15
10.	BOARD MEETINGS	15
10.1	Frequency of meetings	15
10.2	Convening Board meetings	15
10.3	Notice of Board meeting	15
10.4	Use of technology	15
10.5	Quorum	15
10.6	Majority decisions	16
10.7	Special Board decisions	16
10.8	Written resolution of Directors	16
10.9	Valid proceedings	17
11.	MEETINGS OF MEMBERS	17
11.1	Annual general meeting	17
11.2	Calling meetings of Members	17
11.3	Majority decisions	17
11.4	Notice of meeting	18
11.5	Short notice	18
11.6	Postponement or cancellation	18
11.7	Fresh notice	18
11.8	How meetings of Members may be held	18
11.9	Accidental omission	19
12.	PROCEEDINGS AT MEETINGS OF MEMBERS	19
12.1	Member present at meeting	19
12.2	Quorum	19
12.3	Quorum not present	19
12.4	Chairing meetings of Members	19
12.5	Attendance at general meetings	19
12.6	Adjournment	20
12.7	Business at adjourned meetings	20
13.	DISPUTE RESOLUTION	20
13.1	Dispute resolution	20
14.	PROXIES, ATTORNEYS AND REPRESENTATIVES	21
14.1	Appointment of proxies	21
14.2	Member's attorney	21
14.3	Deposit of proxy appointment forms, powers of attorney and proxy appointment authorities	21
14.4	Corporate representatives	22
14.5	Appointment for particular meeting, standing appointment and revocation	22
14.6	Position of proxy or attorney if Member present	22
14.7	Priority of conflicting appointments of attorney or representative	22
14.8	Continuing authority	22
15.	ENTITLEMENT TO VOTE	23
15.1	Number of votes	23
15.2	Casting vote of chair	23
15.3	Voting restrictions	23
15.4	Decision on right to vote	23
16.	HOW VOTING IS CARRIED OUT	23
16.1	Method of voting	23

16.2	Demand for a poll	23
16.3	When and how polls must be taken	24
16.4	Written resolutions.....	24
17.	SECRETARY.....	24
17.1	Appointment of Secretary	24
17.2	Terms and conditions of office	25
17.3	Cessation of Secretary's appointment.....	25
17.4	Removal from office	25
18.	MINUTES	25
18.1	Minutes must be kept.....	25
18.2	Minutes as evidence	25
18.3	Inspection of minute books	26
19.	COMMON SEAL	26
20.	FINANCIAL REPORTS AND AUDIT	26
20.1	Company must keep financial records	26
20.2	Financial reporting	26
20.3	Audit or review	26
20.4	Inspection of financial records and books.....	27
20.5	Reporting obligations to the Minister	27
21.	CONFLICTS	27
22.	CHANGES TO THE CHARTER AND THE CONSTITUTION	27
23.	REGISTER OF MEMBERS	28
24.	REVIEW OF SCHEME	28
25.	WINDING UP	28
26.	NOTICES	29
26.1	How to give a notice	29
26.2	When a notice is given	29
26.3	Business days	30
26.4	Counting days	30
26.5	Notices to "lost" Members.....	30

CONSTITUTION OF NSW TOLLWAY OMBUDSMAN LIMITED

1. Preliminary

1.1 Company limited by guarantee

The Company is a not-for-profit public entity and is registered as a company limited by guarantee under the Corporations Act and the liability of Members is limited as provided in rule 2.3.

1.2 Objectives of the Company

- (a) The Company is formed for purposes of operating the Scheme in accordance with the Charter and section 261A of the Roads Act.
- (b) The objectives of the Company are to:
 - (i) provide a scheme that has satisfactory arrangements in place to deal with disputes and complaints between Members and Customers;
 - (ii) ensure that the Ombudsman will be able to operate independently of Members in exercising functions under the Scheme;
 - (iii) ensure that the Scheme will be accessible to Customers;
 - (iv) ensure the Scheme will operate expeditiously and without cost to Customers and other persons prescribed by the regulations;
 - (v) allow Customers to choose whether or not they wish to be bound by determinations under the Scheme;
 - (vi) ensure the Scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its Constitution and procedure and in terms of its day-to-day operations;
 - (vii) provide for a monetary limit on claims covered by the Scheme of an amount or amounts approved by the Minister;
 - (viii) ensure that the Scheme will maintain the capacity of the Ombudsman, where appropriate, to refer disputes or complaints to other forums;
 - (ix) ensure that the Scheme will require the Ombudsman to inform the Minister of substantial breaches of the Act or another Act or law covered by the Scheme; and
 - (x) other objectives prescribed by the regulations.
- (c) In promoting the Objectives of the Company, the Company has the power to do all things reasonably incidental or conducive to the attainment of its Objectives.
- (d) Each Member must exercise and must ensure any Director appointed by it from time-to-time exercises, their voting rights, and other powers (as far as they can by exercising those rights and powers) to give full effect to this document (including the Objectives).

1.3 **Application of income and property**

Subject to rule 1.4:

- (a) the Company must apply its income and assets solely towards promoting the Objectives of the Company; and
- (b) no part of the Company's income or assets may be paid, distributed or transferred directly or indirectly by way of dividend, bonus or otherwise to Members or any other third parties.

1.4 **Certain payments allowed**

Rule 1.3 does not prevent the payment of reasonable remuneration to any officer or employee of the Company or to any Member of the Company or other person in return for goods supplied or services rendered to the Company in the ordinary course of business, subject to rule 3.8.

1.5 **Replaceable rules**

The replaceable rules referred to in section 141 of the Corporations Act do not apply to the Company and are replaced by the rules set out in this document.

1.6 **Definitions**

The following definitions apply in this document.

Applicant has the meaning given in the Charter.

Binding Determination has the meaning given in the Charter.

Board means the Directors acting collectively under this document.

Chair means the chair of the Board.

Charter means the Company charter being a component of the Scheme approved by Ministerial Order as amended from time to time in accordance with this Constitution.

Community Director means a Director appointed to the Board as a community director.

Company means the company named at the beginning of this document whatever its name is for the time being.

Complaint has the meaning given in the Charter.

Consultative Council Meetings means a meeting of stakeholders held in accordance with rule 6.

Contribution means the fees payable by each Member pursuant to rule 2.5.

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

Customer has the meaning given in the Charter.

Director means a person who is, for the time being, a director of the Company, which includes the Chair, a Non-Operating Government Director, an Industry Director and a Community Director.

Draft Determination has the meaning given in the Charter.

Government Industry Director means a Director appointed to the Board by the Government Industry Members.

Government Industry Member means each Government entity that is a Member.

Industry Director means a Government Industry Director or a Private Industry Director.

Industry Member means each Private Industry Member and Government Industry Member.

Initial Period means the 6 month period commencing on adoption of this document, as may be extended by the Members in writing for a further 6 month period.

Member means a Toll Operator, an entity that is otherwise a member pursuant to section 261A of the Roads Act, or any other entity, including a Toll Service Provider, that has signed or acceded to a Membership Agreement.

Membership Agreement means the membership agreement entered into between the Company and a Member which specifies the terms of membership in the Company.

Minister means the Minister administering Part 15A of the Roads Act.

Monetary Limit has the meaning given in the Charter and is the amount or amounts approved from time to time by the Minister under section 261A(3)(g) of the Roads Act.

Non-operating Government Director means a Director appointed to the Board by the government.

Objectives means the objectives of the Company, as set out in rule 1.2(a).

Ombudsman means the NSW Tollway Ombudsman appointed in accordance with this Constitution in satisfaction of section 261A(2) of the Roads Act, as set out in rule 5.

Private Industry Director means a Director appointed to the Board by the Private Industry Members.

Private Industry Member means each non-Government entity that is a Member.

Register means the register of Members kept as required by sections 168 and 169 of the Corporations Act.

Roads Act means the *Roads Act 1993* (NSW).

Scheme means the NSW Tollway Ombudsman Scheme approved by the Minister under section 261A of the Roads Act by order published in the Government Gazette, as amended from time to time. The Scheme includes this Constitution and the Charter.

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

Special Board Resolution has the meaning given in rule 10.7.

Special Resolution means a special resolution of Members under the Corporations Act to be passed in accordance with rule 11.3(c).

Toll Operator means a “toll operator” as defined from time to time in the Dictionary to the Roads Act.

Toll Service Provider means a "toll service provider" as defined from time to time in section 3 of the *Transport Administration Act 1988* (NSW).

1.7 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, 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, modified in relation to the Company, 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 genders.
- (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 power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.

2. Membership

2.1 Membership

- (a) All Toll Operators and other entities who are Members will be Members of the Company and will participate in the Scheme.
- (b) The initial Members are those members named in the application for the Company's registration.

- (c) Subject to rule 2.1(a), each new Toll Operator and Toll Service Provider must apply to the Company to become a Member by completing an application for membership in the form prescribed by the Board, including signing or acceding to a Membership Agreement, and submitting to the Secretary.
- (d) If a Member becomes a member of the Company as a result of it executing a Membership Agreement and, at a later date, that Member is required to be a member of the Scheme as a result of legislative change to the Roads Act, then that Member's membership will continue unaffected.
- (e) The application for membership must be accepted by the Company if the application is in the form prescribed by the Board.

2.2 Cessation of membership

- (a) A Member immediately stops being a Member if they cease to be a Toll Operator or a Toll Service Provider.
- (b) Cessation of membership:
 - (i) does not entitle the Member to repayment of the whole or any part of any Contribution previously paid by the Member;
 - (ii) is without prejudice to the Member's liability to pay any Contribution which has become due and payable before such cessation of membership; and
 - (iii) is without prejudice to the Member's rights and obligations in respect of any Complaint made or referred to the Ombudsman before the cessation of membership.

2.3 Limited liability of Members

If the Company is wound up, each Member undertakes to contribute to the assets of the Company up to an amount not exceeding \$100 (one hundred dollars) for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for one year after a person ceases to be a Member.

2.4 Obligations of Members

Each Member:

- (a) must at all times comply with this document, the Charter and the Membership Agreement;
- (b) must provide a bona fide internal complaints handling service for the benefit of Customers and must publicise the availability of that service to Customers;
- (c) must inform Customers that the Company is available to provide them with a free Complaints resolution service;
- (d) must appoint a contact person who is adequately resourced to respond within the time periods prescribed under the Charter, and provide the Company with the name and contact details of that person and any replacement contact person appointed from time to time;
- (e) must comply with any Binding Determination. Failure to comply with any such Binding Determination is an offence under section 261A(6) of the Roads Act;

- (f) consents to the Company making public any failure by the Member to comply in whole or in part with a Binding Determination; and
- (g) consents to the provision by the Company to the Ombudsman and the Minister of any information concerning the Member.

2.5 **Member Contributions**

- (a) All Members agree to pay a Contribution towards:
 - (i) the costs of managing and administering the Scheme;
 - (ii) the costs of ensuring compliance with the Scheme; and
 - (iii) other costs relating to the Scheme,in accordance with the Scheme and the Membership Agreement.
- (b) A Member agrees to pay any Contributions levied by the Company on the Member. The Company will calculate these in accordance with the fee structure set by the Board and revised from time to time in accordance with rule 10.7(b).

3. **Directors**

3.1 **Membership of the Board**

- (a) During the Initial Period, the Board will comprise:
 - (i) an independent Chair;
 - (ii) one Government Industry Director; and
 - (iii) one Private Industry Director.
- (b) Subject to rule 3.1(a), the Board will comprise:
 - (i) an independent Chair;
 - (ii) one Non-operating Government Director;
 - (iii) one Government Industry Director;
 - (iv) two Private Industry Directors; and
 - (v) two Community Directors.

3.2 **Term of office**

Other than with respect to the Initial Period, each Non-operating Government Director, Industry Director and Community Director will hold office for a maximum term of three years but, subject to rule 3.5(e), may be re-appointed for a further three year term. No Director may serve more than two consecutive terms (excluding the Initial Period). Such Directors will be appointed by the Members who they represent in accordance with rule 3.5 or 3.6 or, in the case of the Non-operating Government Director, in accordance with rule 3.4.

3.3 Chair

- (a) The Board (including the retiring Chair) must appoint a person to be a Director and the independent Chair.
- (b) The Chair must not have a material interest or an existing association or relationship that conflicts with his or her duties as Chair.
- (c) In appointing the Chair, the Board must consider past associations or relationships and satisfy itself that they do not present any significant conflict to the role of Chair.
- (d) The Chair must be appointed for a specified term not exceeding three years and is eligible for re-appointment by the Board for further term of up to three years but must not serve more than two consecutive terms.
- (e) If the Chair is unavailable, the Board may appoint a Director to be the acting Chair for all or part of the time the Chair is unavailable.
- (f) Other than during the Initial Period, the Board can appoint up to two deputy Chairs from amongst its members, of which one deputy Chair must be a Community Director and, if there are to be two deputy Chairs, the other must be an Industry Director. The role of deputy Chair is to assist the Chair upon request in the conduct of his or her responsibilities.

3.4 Non-operating Government Director

Subject to rule 3.1(a), the Secretary of the Department of Transport has the right to appoint, remove and replace one Director to the Board, who is not appointed to represent, and is not an officer or employee of, a Government Industry Member, to represent the interests of the government (**Non-operating Government Director**). The Non-operating Government Director must be appointed from the Department of Customer Service or must have expertise in consumer affairs.

3.5 Industry Directors

- (a) During the Initial Period, the Industry Directors will be appointed to the Board as follows:
 - (i) the Private Industry Members have the right to appoint, remove and replace one Private Industry Director; and
 - (ii) the Government Industry Members have the right to appoint, remove and replace one Government Industry Director.
- (b) Subject to rule 3.5(a), the Industry Directors will be appointed to the Board as follows:
 - (i) the Private Industry Members have the right to appoint, remove and replace two Private Industry Directors; and
 - (ii) the Government Industry Members have the right to appoint, remove and replace one Government Industry Director,and such appointed Directors will comprise the Industry Directors.
- (c) A person is only eligible to be appointed as an Industry Director if they have experience in and knowledge of the tollway industry (whether private or public).

- (d) The appointment of an Industry Director will take effect when a written notice of appointment is received from the relevant Industry Members and the written consent to act as a director is received from the nominated individual.
- (e) If additional Industry Directors are required to be appointed in order to maintain the composition of the Board, then the relevant Industry Members will appoint such Industry Directors to fill the vacancy.

3.6 **Community Directors**

- (a) The Community Directors will be appointed by the Board as follows:
 - (i) one Community Director to be appointed from the Australian Consumers' Association (ACN 000 281 925) or another organisation of equivalent standing, purpose and independence from the Board; and
 - (ii) one Community Director to be appointed from the Australian Automobile Association (ACN 008 526 369) or another organisation of equivalent standing, purpose and independence from the Board.
- (b) A person is only eligible to be appointed to the Board to act as a Community Director under rule 3.6(a) if they are appropriately qualified and:
 - (i) are independent of the tolling industry (including any Toll Operator or Toll Service Provider);
 - (ii) are considered to be of good character; and
 - (iii) have expertise in corporate governance.
- (c) In assessing the qualifications of candidates for the appointment of a Community Director, the Board must have regard to each candidate's:
 - (i) ability to uphold the independence of the Ombudsman;
 - (ii) expertise in consumer affairs;
 - (iii) links to relevant community and consumer groups;
 - (iv) capacity and willingness to consult with relevant community and consumer groups; and
 - (v) knowledge of, or the ability to acquire knowledge of, tolling issues.

3.7 **Cessation of Director's appointment**

A person automatically ceases to be a Director if that person:

- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (b) becomes prohibited from holding the office of director of a company under the Corporations Act;
- (c) becomes of unsound mind or mentally incapable of performing the functions of that office;

- (d) has been absent for three consecutive meetings without permission of the Chair (or in the case of the Chair, the majority of the other Directors) from the meetings of the Board held during that period;
- (e) is convicted of an indictable offence or of an offence that, if committed in New South Wales, would be an indictable offence;
- (f) commits any act of dishonesty whether relating to the Company or otherwise or is guilty of serious misconduct or any conduct tending to bring the company or himself or herself into serious disrepute;
- (g) if the person resigns from office by notice in writing to the Company; or
- (h) is removed or replaced by their appointors.

3.8 Director remuneration

- (a) Subject to clause 3.8(b), the Company remunerates the Chair in an amount to be determined by the Board and on terms decided upon by the Industry Directors and the Non-operating Government Director. All Directors are entitled to be reimbursed reasonable travelling, accommodation and other expenses reasonably and properly incurred by them in connection with the business of the Board. The Industry Directors, the Non-operating Government Director and the Community Directors do not receive remuneration, unless any Industry Director, the Non-operating Government Director, or Community Director performs a service which in the reasonable opinion of the Board is outside the scope of the ordinary duties of a Director.
- (b) No Director other than the independent Chair will be remunerated by the Company during the Initial Period.

4. Powers of the Board

4.1 Duties

In addition to carrying out their specific responsibilities under the Corporations Act and this Constitution, the Board is responsible for:

- (a) approving the Company's corporate plan;
- (b) appointing, suspending or removing the Ombudsman in accordance with rules 4.3 and 5.4;
- (c) overseeing the performance of the Ombudsman's duties;
- (d) overseeing the financial management of the Company, including establishing financial delegations, approving the Company's annual budget and overseeing the Company's financial reporting;
- (e) reviewing and amending the fee structure from time to time in accordance with rule 10.7(b);
- (f) reviewing and making recommendations to the Minister with respect to the Monetary Limit;
- (g) approving any loan facility entered into by the Company;
- (h) overseeing the Company's risk management arrangements;

- (i) overseeing the stakeholder liaison plan;
- (j) monitoring the effectiveness of the Charter and this Constitution; and
- (k) amending or replacing the Charter or Constitution in accordance with rule 22.

4.2 **Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 10; or
- (b) in accordance with a delegation of the power under rule 6.

4.3 **Powers generally**

The Board has the power:

- (a) to suspend or to remove the Ombudsman at any time in its absolute discretion;
- (b) if the Ombudsman is unable to carry out his or her duties, to appoint a deputy or substitute for the Ombudsman for the period and on the terms the Board thinks fit; and
- (c) to prescribe regulations, rules and procedures in relation to the conduct of the Community Directors' appointment.

5. **Ombudsman**

5.1 **Initial Period**

- (a) During the Initial Period, the Ombudsman will be appointed by the Board established pursuant to rule 3.5(a) from candidates nominated in accordance with rule 5.1(b).
- (b) The Government Industry Members and the Private Industry Members will each nominate two suitably qualified candidates to be considered for appointment as the Ombudsman for the Initial Period by the Board in accordance with the recruitment process prescribed by the Board.

5.2 **Term**

Subject to rule 5.1, the Ombudsman is appointed by the Board to hold office for a period of three years at the remuneration, and on the other terms and conditions of engagement, determined by the Board and subject to this Constitution. The Ombudsman may not be reappointed at the expiry of any period of office, except for the Initial Period. The Ombudsman is bound by the Charter and this Constitution.

5.3 **Conflict**

- (a) The Ombudsman must not have a material interest or an existing association or relationship that conflicts with his or her duties as the Ombudsman.
- (b) In appointing the Ombudsman, the Board must consider past associations or relationships and satisfy itself that they do not present any significant conflict to the role of the Ombudsman.

- (c) The Ombudsman must be able to operate independently of Members in exercising its functions under the Scheme, in accordance with section 261A3(b) of the Roads Act.

5.4 **Removal**

Without limiting rule 4.3, the Board will remove the Ombudsman from office if the Ombudsman:

- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
- (b) becomes prohibited from holding the office of director of a company under the Corporations Act;
- (c) becomes of unsound mind or mentally incapable of performing the functions of that office;
- (d) is convicted of an indictable offence or of an offence that, if committed in New South Wales, would be an indictable offence;
- (e) commits any act of dishonesty whether relating to the Company or otherwise or is guilty of serious misconduct or conduct tending to bring the Company or himself or herself into serious disrepute; or
- (f) is unable to operate independently of Members in exercising his or her functions under the Scheme, as per section 261A(3)(b) of the Roads Act.

5.5 **Responsibilities**

The Ombudsman is appointed by the Board to assist in the administration of the Scheme and to be responsible for managing the day-to-day operations of the Company including:

- (a) ensuring compliance with the Scheme's Objectives;
- (b) preparing a corporate plan for the Board's consideration;
- (c) promoting the Company and its Complaints handling service;
- (d) considering Complaints and making Draft Determinations and Binding Determinations;
- (e) providing advice to Members on the development and maintenance of good Complaint handling practices;
- (f) developing for the Board's approval a comprehensive stakeholder liaison plan and implementing that plan (including by the convening of Consultative Council Meetings);
- (g) making recommendations to the Board as to the amendments that should be made to the Charter and this document;
- (h) financial management and reporting, including ensuring that proper financial records are kept, Company liabilities are met when due, an annual budget is prepared for the Board's approval and annual audited financial statements are prepared for the Board's approval;
- (i) staff and resources management, including the delegation of rights, powers and obligations to Company staff permitted under the Charter;

- (j) the discretion to report to Members on matters covered by the Scheme that may impact Members as a whole;
- (k) reporting to the Minister on any substantial breaches of the Roads Act or another act or law covered by the Scheme, in accordance with section 261A(3)(i) of the Roads Act; and
- (l) providing a report to the Minister in accordance with section 261A(11) of the Roads Act, detailing how the objectives of the Scheme are being met, if requested by the Minister.

5.6 Board meetings

The Ombudsman must receive notice of, and is entitled to attend and participate in (but not to vote at), every meeting of the Board, except where otherwise decided by the Board.

6. Consultative Council Meetings

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

7. Delegation of Board Powers

7.1 Power to delegate

The Board may delegate any of its powers to:

- (a) a Director;
- (b) a committee (which need not include a Director);
- (c) any other person or persons, including the Ombudsman; or
- (d) an attorney.

7.2 Power to revoke delegation

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

7.3 **Terms of delegation**

A delegation of powers under rule 7.1 may be made:

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

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

7.4 **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 document which regulate the meetings and proceedings of the Board.

8. Directors' Duties and Interests

8.1 **Compliance with duties under the Corporations Act and the general law**

Each Director must comply with their duties under the Corporations Act, and any other applicable law or regulation and under the general law.

8.2 **Director can hold other offices**

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the Company's auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor;
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

8.3 **Conflicts**

- (a) The Board must ensure that processes are in place to deal with conflicts of interests and material personal interests of Directors which must:
 - (i) apply to both financial and non-financial interests;
 - (ii) require full disclosure of interests at meetings of the Board and the recording of the disclosure in the minutes of the meeting;
 - (iii) require the Board to determine whether a conflict of interests in a matter is material; and
 - (iv) enable the Board to:
 - (A) require the absence from a meeting of a Director who has a material conflict of interest in a matter while the Board is considering the matter;

- (B) prohibit such a Director from taking part in any decision of the Board in relation to the matter; and
- (C) require the Board to notify in writing the Minister as soon as practicable after becoming aware of any breach of the conflict of interest management processes.

8.4 **Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of a conflict of interest or duty; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

9. **Officers' Indemnity and Insurance**

9.1 **Indemnity**

Subject to and so far as permitted by the Corporations Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law or regulation:

- (a) the Company must indemnify every officer and employee of the Company to the extent permitted by law against any Liability incurred as such an officer or employee to a person (other than the Company or a related body corporate) including a Liability incurred by an officer or employee as a result of appointment or nomination by the Company as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith or misconduct by the officer or employee or conduct that is outside the employee's course of employment; and
- (b) the Company must make a payment (whether by way of advance or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule:

- (a) **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator; and
- (b) **officer** includes any Director, Secretary or the Ombudsman.

9.2 **Insurance**

Subject to the Corporations Act and any other applicable law or regulation, the Company must enter into, and pay premiums on, a contract of insurance in respect of any officer (as that term is defined in clause 9.1).

9.3 **Former officers**

The indemnity in favour of officers under rule 9.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

9.4 **Deeds**

Subject to the Corporations Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law or regulation, the Company may, without limiting a person's rights under this rule 9, enter into an agreement with or execute a deed in favour of a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 9 on any terms and conditions that the Board thinks fit.

10. **Board Meetings**

10.1 **Frequency of meetings**

The Board must meet as necessary to perform the Board's functions but at least quarterly.

10.2 **Convening Board meetings**

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

10.3 **Notice of Board meeting**

- (a) The convenor of each Board meeting:
 - (i) must give at least 14 days' prior notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director (unless the Director who receives less than 14 days' prior notice consents to waive the notice); and
 - (ii) may give that notice orally (including by telephone) or in writing,

but accidental failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.
- (b) The notice must provide reasonable details of the time, date, place of, and the matters to be considered at the meeting, and the business to be put to the vote of the Directors.

10.4 **Use of technology**

- (a) A Board meeting may be called or held using any technology.
- (b) Without limiting rule 10.4(a), a Board meeting may be held:
 - (i) at one or more physical venues;
 - (ii) at one or more physical venues and using virtual meeting technology; or
 - (iii) using virtual meeting technology only.
- (c) Despite rules 10.4(a) and 10.4(b), if technology is used to call a Board meeting, or to hold a Board meeting (whether or not the meeting is held at one or more physical venues), the technology must be reasonable.

10.5 **Quorum**

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is three Directors in office and, at a minimum, must include at least either of the Government Industry Director or the Non-operating Government Director, one Community Director

and one Private Industry Director, and a quorum must be present for the whole meeting.

- (b) A Director is taken to be present at a Board meeting if the Director is present at a physical venue or able to communicate with each other Director that is present using the relevant virtual meeting technology.
- (c) If a quorum is not present within 15 minutes from the scheduled start of a Board meeting:
 - (i) the meeting is adjourned to the day that is three business days after the day appointed for the original meeting or such other date that is agreed between the Directors;
 - (ii) each Director must be notified of the adjourned meeting; and
 - (iii) the time and place of the adjourned meeting is otherwise the same as for the original meeting.
- (d) If a quorum is not present within 15 minutes from the scheduled start of the adjourned meeting, then the meeting is dissolved.
- (e) A quorum does not lapse if a Director is prohibited by law, this document, or any other document to which a party is bound, from being present at all or part of a Board meeting.

10.6 **Majority decisions**

- (a) Each Director has one vote and, in the event of a tie, the Chair has a casting vote in addition to any votes the Chair has as a Director.
- (b) Subject to rule 10.7 in relation to Special Board Resolutions, a resolution of the Board is passed if a majority of the votes cast by Directors entitled to vote on the resolution are in favour of it. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

10.7 **Special Board decisions**

A decision by the Board:

- (a) to appoint, remove or suspend the Ombudsman;
- (b) to revise the fee structure as set out in the Membership Agreement;
- (c) to approve the annual budget;
- (d) to borrow funds;
- (e) to prescribe any procedure in relation to the conduct of Community Directors' appointments pursuant to rule 4.3(c); or
- (f) as described in rule 22(b),

requires the support of 75% of Directors present and voting (**Special Board Resolution**).

10.8 **Written resolution of Directors**

- (a) The Directors may pass a resolution in writing without a meeting of the Board if:

- (i) a copy of the proposed written resolution is provided to each Director; and
 - (ii) the written resolution is signed by all Directors entitled to vote in respect of the subject matter of the resolution.
- (b) Subject to compliance with rule 10.8(a), a written resolution of Directors is effective when signed by the final Director entitled to vote in respect of the subject matter of the resolution.
- (c) A written resolution of Directors may consist of several documents or counterparts in the same form each signed by one or more of the Directors and a Director is taken to sign a document if the Director:
- (i) signs a physical copy of the document by hand or an electronic form of the document using electronic means and the method of signing the document is permitted under the Act or approved by the Board; or
 - (ii) notifies the other Directors (or, if the Company has a Secretary, the Secretary) that the Director approves the resolutions set out in the document; and
 - (iii) an electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

10.9 **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.

11. **Meetings of Members**

11.1 **Annual general meeting**

The Company must hold an annual general meeting as required by the Corporations Act.

11.2 **Calling meetings of Members**

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by the Corporations Act.

11.3 **Majority decisions**

- (a) Each Member is entitled to one vote at a Members' meeting.
- (b) Unless the subject of a resolution requires a Special Resolution, a resolution of Members is passed by a majority of votes of Members present and entitled to vote on the resolution.

- (c) A Special Resolution may only be passed by at least 75% of the votes cast by Members present and entitled to vote on a resolution.
- (d) A Member may have regard to, and represent, the interests of the Member and may act on the wishes of the Member in exercising any power to vote in relation to the Company.
- (e) The chair of the Members' meeting, in the event of a tie, has a casting vote in addition to any votes they may be entitled to as a Member.

11.4 **Notice of meeting**

Subject to rule 11.5, at least 21 days' written notice of a meeting of Members must be given individually to:

- (a) each Member (whether or not the Member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor (if any).

11.5 **Short notice**

Subject to the Corporations Act, if the Company has elected to convene a meeting of Members as the annual general meeting, if all the Members entitled to attend and vote agree, a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

11.6 **Postponement or cancellation**

Subject to the Corporations Act, the Board may:

- (a) postpone a meeting of Members;
- (b) cancel a meeting of Members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

11.7 **Fresh notice**

If a meeting of Members is postponed or adjourned for one month or more, the Company must give a new notice of the resumed meeting.

11.8 **How meetings of Members may be held**

- (a) The Company may hold a meeting of its Members:
 - (i) at one or more physical venues;
 - (ii) at one or more physical venues and using virtual meeting technology; or
 - (iii) using virtual meeting technology only,as determined by the convenor of the meeting.

- (b) The Company must give the Members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting in accordance with the requirements of the Corporations Act.

11.9 **Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

12. **Proceedings at Meetings of Members**

12.1 **Member present at meeting**

- (a) A Member who attends the meeting (whether at a physical venue or by using virtual meeting technology) is taken for all purposes to be present in person at the meeting while so attending.
- (b) If a proxy, attorney or representative of a Member attends a meeting of Members (whether at a physical venue or by using virtual meeting technology), subject to this rule 12, the Member is taken to be present in person at the meeting while their proxy, attorney or representative so attends.

12.2 **Quorum**

- (a) The quorum for a meeting of Members is 3 Members, provided that a Government Industry Member and a Private Industry Member are present.
- (b) A person who is attending the meeting in more than one capacity (for example, as a Member and as a proxy, attorney or representative of another Member, or as a proxy, attorney or representative of more than one Member) may only be counted once toward the quorum.
- (c) If a Member has appointed more than one proxy or representative, only one of them may be counted towards a quorum.

12.3 **Quorum not present**

- (a) If a quorum is not present within 30 minutes after the time for which a meeting of Members is called the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place.
- (b) If a quorum is not present within 30 minutes from the scheduled start of the adjourned meeting, the meeting is dissolved.

12.4 **Chairing meetings of Members**

The Chair will chair the meeting of Members. If the Chair is not present at the time for which a meeting of Members is called or is not willing to chair the meeting, the Members present must elect a Director or a representative of a Member present to chair the meeting.

12.5 **Attendance at general meetings**

- (a) Every Member has the right to attend all meetings of Members.
- (b) Every Director has the right to attend and speak at all meetings of Members.

- (c) The auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

12.6 **Adjournment**

Subject to rule 12.7, the chair of a meeting of Members at which a quorum is present:

- (a) may; and
- (b) must, if directed by resolution of the majority of Members of the meeting, adjourn it to another time and place.

12.7 **Business at adjourned meetings**

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

13. **Dispute Resolution**

13.1 **Dispute resolution**

- (a) The dispute resolution procedure in this rule 13.1 applies to disputes (disagreements) under this Constitution between a Member or Director and:
 - (i) one or more Members;
 - (ii) one or more Directors; or
 - (iii) the Company.
- (b) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it, or within a timeframe agreed by those involved.
- (c) If those involved in the dispute do not resolve it under rule 13.1(b), they must within 10 days (or within a timeframe agreed by those involved):
 - (i) tell the Directors about the dispute in writing;
 - (ii) agree or request that a mediator be appointed; and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (d) The mediator must:
 - (i) be chosen by agreement of those involved, or
 - (ii) where those involved do not agree, be chosen by the Chair.
- (e) A mediator chosen under rule 13.1(d)(i):
 - (i) may be an officer or employee of a Member or former Member of the Company;
 - (ii) must not have a personal interest in the dispute; and
 - (iii) must not be biased towards or against anyone involved in the dispute.

- (f) When conducting the mediation, the mediator must:
 - (i) allow those involved a reasonable chance to be heard;
 - (ii) allow those involved a reasonable chance to review any written statements;
 - (iii) ensure that the mediation is conducted in a manner free from bias; and
 - (iv) not make a decision on the dispute.

14. Proxies, Attorneys and Representatives

14.1 Appointment of proxies

- (a) Each Member may appoint a proxy to attend and act for the Member at a meeting of Members.
- (b) If the Member is entitled to cast two or more votes at the meeting, the Member may appoint two proxies to attend and act for the Member at a meeting of Members. If a Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of those votes.
- (c) An appointment of proxy must be made by written notice to the Company that:
 - (i) complies with section 250A(1) of the Corporations Act; or
 - (ii) is in a form and mode, and is signed or otherwise authenticated by the Member in a manner, satisfactory to the Board.
- (d) A later appointment of a proxy revokes an earlier one if both appointments could not be validly exercised at the meeting.

14.2 Member's attorney

A Member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of Members. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

14.3 Deposit of proxy appointment forms, powers of attorney and proxy appointment authorities

An appointment of a proxy or an attorney is not effective for a particular meeting of Members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company:

- (c) at its registered office or electronic address or another place specified for the purpose in the notice of meeting; or

- (d) if the notice of meeting specifies other electronic means by which a Member may give the document, when the document given by those means is received by the Company,

at least 24 hours (or, if a reduced period is specified in the notice of meeting, the reduced period) before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

14.4 **Corporate representatives**

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

14.5 **Appointment for particular meeting, standing appointment and revocation**

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

14.6 **Position of proxy or attorney if Member present**

The appointment of a proxy or attorney is not revoked by the Member attending and taking part in the general meeting, but if the Member votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the Member's proxy or attorney on the resolution.

14.7 **Priority of conflicting appointments of attorney or representative**

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

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 14.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

14.8 **Continuing authority**

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

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

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

15. Entitlement to Vote

15.1 Number of votes

Subject to sections 250BB(1) and 250BC of the Corporations Act:

- (a) each Member has one vote on a show of hands or a poll; and
- (b) a Member who is present and entitled to vote and is also a proxy, attorney or representative of another Member has one vote on a show of hands.

15.2 Casting vote of chair

In the event of a tie, the chair of a meeting of Members has a casting vote.

15.3 Voting restrictions

If:

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

those Members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those Members. If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1) of the Corporations Act, on a show of hands the vote is invalid and the Company must not count it and on a poll rule 16.3(c) applies.

15.4 Decision on right to vote

A Member or Director may challenge a person's right to vote at a meeting of Members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chair, whose decision is final.

16. How Voting is Carried Out

16.1 Method of voting

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under rule 16.2 either:
 - (i) before the vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) Unless a poll is demanded, the chair's declaration of a decision on a show of hands is final.

16.2 Demand for a poll

A poll may be demanded on any resolution (except a resolution concerning the election of the chair of a meeting) by:

- (a) a Member entitled to vote on the resolution; or
- (b) the chair of the meeting.

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

16.3 **When and how polls must be taken**

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 16.3(c), in the manner that the chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 16.3(c), in the manner that the chair of the meeting directs;
- (c) votes which sections 250BB(1) or 250BC of the Corporations Act require to be cast in a given way must be treated as cast in that way;
- (d) subject to rule 16.3(c), a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

16.4 **Written resolutions**

- (a) The Company may pass a resolution (other than a resolution under the Corporations Act to remove an auditor) without a general meeting being held if all the Members 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. Each Member of a joint membership must sign. 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 passed when the last Member signs.
- (b) If the Company has only one Member, that Member may pass a resolution by the Member recording it and signing the record.
- (c) The Company may treat a document on which an electronic signature appears or which is otherwise acknowledged by a Member in a manner satisfactory to the Board as being signed by that Member.

17. **Secretary**

17.1 **Appointment of Secretary**

The Board:

- (a) must appoint at least one individual; and
- (b) may appoint more than one individual,

to be a Secretary either for a specified term or without specifying a term.

17.2 **Terms and conditions of office**

- (a) A Secretary holds office on the terms (including as to remuneration) that the Board decides, including those functions set out in rule 17.2(b).
- (b) The role of the Secretary includes:
 - (i) maintaining the Register; and
 - (ii) maintaining the minutes and other records of Board meetings (including notices of meeting), committee meetings and other resolutions.
- (c) The Board may vary any decision previously made by it in respect of a Secretary.

17.3 **Cessation of Secretary's appointment**

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Corporations Act to be a secretary of a company;
- (b) becomes disqualified from managing corporations under the Corporations Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 17.4.

17.4 **Removal from office**

The Board may remove a Secretary from that office at any time whether or not the appointment was expressed to be for a specified term.

18. **Minutes**

18.1 **Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 6);
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,

to be kept and signed by the Chair or the chair of the meeting (as the case may be) within a week of the meeting.

18.2 **Minutes as evidence**

A minute recorded and signed is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

18.3 **Inspection of minute books**

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members.

19. **Common seal**

- (a) The Board:
 - (i) may decide whether or not the Company has a common seal; and
 - (ii) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) of the Corporations Act.
- (b) 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 section 123 of the Corporations Act.
- (c) The fixing of the common seal, or any duplicate seal, to a document must be witnessed:
 - (i) by two Directors;
 - (ii) by one Director and one Secretary; or
 - (iii) by any other signatories or in any other way authorised by the Board.

20. **Financial reports and audit**

20.1 **Company must keep financial records**

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, if required by the Corporations Act or Part 2M.3 of the Corporations Act, reviewed or audited,

and must allow a Director and, where the financial statements are required by the Corporations Act or Part 2M.3 of the Corporations Act to be audited or reviewed, the auditor to inspect those records at all reasonable times.

20.2 **Financial reporting**

If required by Part 2M.3 of the Corporations Act, the Board must cause the Company to prepare a financial report and a directors' report that comply with that Part and must report to Members in accordance with section 316A of the Corporations Act.

20.3 **Audit or review**

If required by Part 2M.3 of the Corporations Act, the Board must cause the Company's financial report for each financial year to be audited or reviewed and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C of the Corporations Act.

20.4 **Inspection of financial records and books**

Subject to the Corporations Act, the Board will determine the times and places at which, and the conditions and regulations upon which, the financial and other records of the Company will be open for inspection by Members.

20.5 **Reporting obligations to the Minister**

- (a) The Company must report to the Minister as follows:
- (i) provide the annual budget to the Minister under which the Contributions have been and will be set by the Board, which annual budget will seek to permit the Company to operate in an efficient and cost effective manner and will include the employee and resource requirements of the Company, the expected budget (including expected spend on technology), and any applications from new Members,;
 - (ii) with respect to the borrowing of funds;
 - (iii) on Special Board Resolutions passed in accordance with rule 10.7;
 - (iv) provide copies of the reports delivered to the Board in accordance with rule 24(b);
 - (v) provide annual reports with respect to Complaints handling in accordance with the Charter;
 - (vi) any changes to the Constitution or the Charter proposed to be made in accordance with rule 22;
 - (vii) report in writing on the Scheme as prescribed by the regulations;
 - (viii) attend two formal briefings per year (at 6 month intervals) with the Minister on the Scheme or as otherwise demanded or waived by the Minister.
- (b) The Ombudsman must report directly to the Minister as follows:
- (i) as required under rules 5.5(j) or 5.5(k);
 - (ii) report in writing on the Scheme as prescribed by the regulations; and
 - (iii) attend two formal briefings per year (at 6 month intervals) with the Minister on the Scheme or as otherwise demanded or waived by the Minister,
- and provide a copy of the report to the Board.

21. **Conflicts**

The Company must have a conflict-of-interest policy or charter in place relating to conflicts between the Company and its Members.

22. **Changes to the Charter and the Constitution**

- (a) If the Board wishes to amend or replace the Constitution or the Charter, any changes to or replacement of the Constitution or the Charter must comply with the Roads Act and regulations and the Corporations Act and must be approved by the Minister.

- (b) If the Board wishes to:
 - (i) recommend to the Minister a change to the definition of Monetary Limit in the Charter;
 - (ii) recommend to the Minister a change to the quantum of the Monetary Limit in the Charter; or
 - (iii) change paragraph 9 of the Charter,

the Board must first take reasonable steps to consult with the Ombudsman and the Members and may only make such a recommendation or change if passed as a Special Board Resolution.

23. Register of members

The Company must set up and maintain a register of members. The Register must contain the information required in accordance with section 169 of the Corporations Act.

24. Review of Scheme

- (a) The Company must commission independent reviews of:

- (i) the Scheme; and
- (ii) the effective governance of the Company,
at the cost of the Government Industry Members:
- (iii) bi-annually until 2028; and
- (iv) thereafter every five years,

or when the Board otherwise considers it necessary or desirable, in accordance with the Benchmarks for Industry Based Customer Dispute Resolution.

- (b) The reviewers appointed under rule 24(a), must prepare and present to the Board and the Minister (via the Ombudsman) a written report of findings and recommendations, including suggested improvements to any aspect of the Scheme or the Company's operations or governance.

25. Winding Up

- (a) The Company must seek approval from the Minister before taking steps to dissolve or wind up the Company, including:
 - (i) taking any steps to convene a general meeting to pass a Special Resolution that the Company be wound up, other than on the basis of insolvency;
 - (ii) without limiting the above, appointing, or taking steps to appoint or to procure or facilitate the appointment (by any person) of a liquidator or a provisional liquidator to the Company, unless the appointment of a liquidator or provisional liquidator is sought on the basis that the Company is insolvent; or
 - (iii) seeking that the Company be voluntarily deregistered or otherwise dissolved, or taking any steps to enable or facilitate the deregistration or dissolution of the Company taking any steps to procure or facilitate the appointment (by any

person) of a receiver or other controller (as that term is defined in the Corporations Act) to the Company.

- (b) If the approval of the Minister for the Scheme is revoked at any time, the Company must take steps to dissolve or wind up the Company as set out in rule 25(a).
- (c) In the event of the winding up of the Company, any surplus property remaining after satisfaction of all the Company's debts and liabilities must not be paid to, or distributed amongst, the Members, but must be paid or transferred to a corporation or institution in Australia, the constituent documents of which:
 - (i) require the corporation or institution to pursue objects including objects similar to those of the Company and to apply its income solely towards promoting its objects; and
 - (ii) prohibit the corporation or institution from making distributions to its members and paying fees to its directors to at least the same extent as the Company,to be determined by the Members, or failing determination, by the liquidator of the Company.

26. Notices

26.1 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

- (b) in writing and in English;
- (c) signed by the party making the communication or on its behalf by the solicitor for, or any attorney, director, secretary or authorised agent or representative of that party;
- (d) addressed to the person to whom it is to be given; and
- (e) either:
 - (i) sent by pre-paid mail (by airmail, if the addressee is overseas); or
 - (ii) delivered; or
 - (iii) sent by email,

to the address of the addressee notified by that party to each other party from time to time.

26.2 When a notice is given

A notice, consent or other communication that complies with this rule is regarded as given and received:

- (a) if it is delivered or sent:
 - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5.00 pm (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;
- (b) if it is sent by mail:

- (i) within Australia – three business days after posting; or
 - (ii) to or from a place outside Australia - seven business days after posting.
- (c) if it is sent by email:
- (i) if it is transmitted by 5.00 pm (Sydney time) on a business day – on that business day; or
 - (ii) if it is transmitted after 5.00 pm (Sydney time) on a business day, or on a day that is not a business day – on the next business day,

provided that the sender does not receive an automated message that the email has not been delivered or that the recipient is not reviewing emails at that time.

26.3 **Business days**

For the purposes of rule 26, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

26.4 **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.

26.5 **Notices to "lost" Members**

If:

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

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

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