

DRAFT

**CONSTITUTION OF UTILITIES COMPLAINTS SERVICES  
LIMITED**

COMPANY NUMBER [NUMBER]

## TABLE OF CONTENTS

<b>1</b>	<b>DEFINITIONS AND INTERPRETATION .....</b>	<b>1</b>
	Definitions.....	1
	Interpretation.....	2
	Conflict between the Act and this Constitution .....	3
<b>2</b>	<b>PURPOSE AND OBJECTIVES OF THE COMPANY .....</b>	<b>3</b>
	Purpose.....	3
	Objectives.....	3
	Operating principles.....	4
<b>3</b>	<b>SHARES.....</b>	<b>4</b>
	Rights and powers attaching to shares .....	4
<b>4</b>	<b>OTHER MATTERS RELATING TO SHARES.....</b>	<b>4</b>
	Board may not issue further Shares.....	4
	Transfer of Shares .....	4
<b>5</b>	<b>DISTRIBUTIONS.....</b>	<b>5</b>
	Distributions.....	5
<b>6</b>	<b>STAKEHOLDER MEETINGS .....</b>	<b>5</b>
<b>7</b>	<b>APPOINTMENT AND REMOVAL OF BOARD .....</b>	<b>5</b>
	Initial Board .....	5
	Transitional Board.....	5
	Board.....	6
	Vacation of office.....	7
<b>8</b>	<b>BOARD MEETINGS.....</b>	<b>7</b>
	Third Schedule to the Act not to apply .....	7
	Notice of meeting.....	7
	Methods of holding meetings.....	8
	Quorum .....	9
	Chair of Board meetings .....	9
	Voting.....	9
	Conduct of meetings .....	9
	Minutes.....	9
	Written resolution .....	9
	Committees .....	10
	Validity of actions.....	10
	Other proceedings .....	10
<b>9</b>	<b>POWERS OF BOARD MEMBERS.....</b>	<b>10</b>
	Management of Company .....	10
	Exercise of powers by Board .....	10
	Delegation of powers .....	11
	Appointment of attorney .....	11
	Ratification by Shareholder.....	11
<b>10</b>	<b>AMENDMENTS TO THE CONSTITUTION .....</b>	<b>11</b>

<b>11</b>	<b>BOARD MEMBERS' REMUNERATION AND OTHER BENEFITS</b> .....	<b>11</b>
	Authorisation of payment or other benefit .....	11
	Expenses.....	12
<b>12</b>	<b>INDEMNITY AND INSURANCE</b> .....	<b>12</b>
	Indemnity for Board members .....	12
	Indemnities and insurance.....	12
	Definitions.....	12
<b>13</b>	<b>METHOD OF CONTRACTING</b> .....	<b>12</b>
	Deeds.....	12
	Written contracts .....	13
	Other contracts .....	13
<b>14</b>	<b>NOTICES</b> .....	<b>13</b>
	Method of service.....	13

DRAFT

## 1 DEFINITIONS AND INTERPRETATION

### Definitions

1.1 In this Constitution the following definitions apply:

**Act** means the Companies Act 1993.

**Advisory Committee** means any committee formed by the Board under clause 8.18.

**Approved Scheme** means a Scheme approved by a Minister as a dispute resolution scheme for the purposes of legislation that applies to participation in the Utilities Sector.

**Board** means those Board members whose number is not less than the required quorum acting together as a board of directors and includes the Initial Board and the Transitional Board

**Board chair** means the person appointed as such under clauses 7.13 and 7.15 and includes the Initial Board chair.

**Board member** includes the Board chair and the Directors.

**Commissioner or Chief Executive Officer** means the person appointed as Commissioner or Chief Executive Officer of the Company in accordance with this Constitution.

**Company** means Utilities Complaints Services Limited.

**Consumer Director** means a Director who:

- (a) is appointed in accordance with clauses 7.4 to 7.11, and
- (b) must have experience in and be knowledgeable about consumers' interests in the relevant Scheme.

**Director** means a person appointed as a director of the Company in accordance with this Constitution and includes an Initial Director and a Transitional Director.

**Energy Complaints Scheme** means the rules that apply to the independent external dispute resolution services for gas and electricity sector Providers operated by the Company.

**Independent** in relation to those persons required to be independent under this Constitution, means that the person:

- (a) has not been an employee of, nor has held any office or position with, a Provider or consumer organisation in the 12 months prior to assuming any employment, office or position with the Company,
- (b) has not personally acted in a professional capacity, or been employed by a firm who has acted in a professional capacity, for a Provider or consumer organisation

in the 12 months prior to assuming any employment, office, or position with the Company, and

- (c) is free from any other interest that would give rise to an actual or perceived conflict of interest.

**Industry Director** means a Director appointed in accordance with clauses 7.4 to 7.11.

**Initial Board** means the first Board of the Company appointed as set out in clauses 7.1 to 7.3.

**Initial Board chair** means the first chairperson of the Board appointed as set out in clauses 7.1 to 7.3.

**Initial Director** means the first Directors of the Company appointed as set out in clauses 7.1 to 7.3. **Minor Amendment** means an amendment which does not substantively vary the meaning of the Constitution. For example, an amendment to correct a drafting issue or error.

**Provider** means a business or undertaking that provides goods or services in the Utilities Sector and that has entered into an agreement with the Board to use the Company's services.

**Scheme** means the terms on which an individual or group of Providers has agreed to use the Company's services.

**Share** means a share issued by the Company.

**Shareholder** means the person who holds the Company's share in accordance with clause 3.1.

**Special Resolution** means:

- (a) where there are five Board members, a resolution of the Board passed by at least four out of five Board members, or
- (b) where there is a vacancy in Board membership, a unanimous resolution of the Board.

**Transitional Board** means transitional Board of the Company appointed as set out in clauses 7.4 to 7.11.

**Transitional Director** means the transitional Directors of the Company appointed as set out in clauses 7.4 to 7.11.

**Utilities Sector** means businesses or undertakings that provide necessary goods or services to the public including (without limitation) electricity, gas, water, and telecommunications and related goods and services.

### **Interpretation**

1.2 In this Constitution, unless the context otherwise requires:

- 1.2.1 Except as specified in clause 1.1, words or expressions used in this Constitution that are defined in the Act have the meaning given by the Act.
- 1.2.2 A reference to writing includes facsimile and electronic communications resulting in visible reproduction.
- 1.2.3 An expression referring to a natural person includes a company, trust, partnership, association, body corporate or public authority.
- 1.2.4 A reference to any legislation or to any provision of any legislation includes:
- (a) That legislation or provision as from time to time amended, re-enacted or substituted.
  - (b) Any statutory instruments, regulations, rules and orders issued under that legislation or provision from time to time.
- 1.2.5 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Constitution.
- 1.2.6 A reference to the word 'include' or 'including' is to be construed without limitation.

### **Conflict between the Act and this Constitution**

- 1.3 The provision, word or expression in this Constitution prevails if there is any conflict between:
- 1.3.1 A provision in this Constitution and a provision in the Act that is expressly permitted to be altered by the Constitution.
- 1.3.2 A word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution.

## **2 PURPOSE AND OBJECTIVES OF THE COMPANY**

### **Purpose**

- 2.1 The purpose of the Company is to establish, maintain and promote dispute resolution schemes for the Utilities Sector.

### **Objectives**

- 2.2 The objectives of the Company are to:
- 2.2.1 provide complainants with access to a dispute resolution scheme for resolving their complaint,
  - 2.2.2 be an Approved Scheme for businesses or undertakings operating in the Utilities Sector, and

2.2.3 actively help resolve complaints.

### **Operating principles**

- 2.3 The Company's Chief Executive Officer will act as the Commissioner to deal with complaints in accordance with rules adopted by the Board. The Chief Executive Officer (Commissioner) must be Independent.
- 2.4 The Commissioner will deal with all complaints and will not be subject to the direction or control of any other person. The Board will be responsible for the operation of the Schemes. It does not have power or authority to deal with complaints.
- 2.5 The Company and the Board have full powers, rights and privileges (to the maximum extent permitted by law) to carry on or undertake any business or activity, or do any act, or enter into any transaction, to further the objectives set out in clause 2.2, including without limitation the right to charge, levy, collect and receive fees, subscriptions, levies and other payments from Providers and expend the same in furthering all or any of the objectives or providing for the expenses of the Company.
- 2.6 The Board must ensure the Company operates on a not for profit basis and applies all the income and property of the Company towards the promotion of the purpose and objectives of the Company set out at clauses 2.1 and 2.2.
- 2.7 When setting fees, subscriptions, levies and other payments payable by Providers, the Company must ensure that each Provider pays a fair, reasonable and proportionate share of the direct cost of the Scheme(s) to which the Provider belongs and of the Company's overall costs.

## **3 SHARES**

### **Rights and powers attaching to shares**

- 3.1 The capital of the Company consists of 1 ordinary paid Share which is to be held by the person who for the time being occupies the position of Board chair.
- 3.2 The Board chair holds the Share on trust for the purposes and objectives of the Company.

## **4 OTHER MATTERS RELATING TO SHARES**

### **Board may not issue further Shares**

- 4.1 The Board does not have the power to issue further Shares.

### **Transfer of Shares**

- 4.2 Subject to the terms of this Constitution:
- 4.2.1 The Share is transferable only to the person who for the time being occupies the position of Board chair; and

- 4.2.2 When the person holding the office of Board chair changes, the Share must be transferred from the existing Board chair to the new Board chair. The Company may act as agent of the Shareholder for the purpose of signing the necessary share transfer form, and doing all things or signing all other documents necessary or expedient, to give effect to this clause 4.2.2.

## **5 DISTRIBUTIONS**

### **Distributions**

- 5.1 The Board will not authorise any distribution or dividend except on winding up or liquidation of the Company.
- 5.2 If on the winding up of the Company and after satisfaction of all its debts and liabilities there remains any property whatsoever, that property will be distributed to other organisation(s) within New Zealand whose purposes are consistent with those of the Company, or are charitable, as the Board decides.

## **6 STAKEHOLDER MEETINGS**

- 6.1 The Board will hold an annual meeting of Providers and relevant stakeholders, giving not less than 10 working days' notice of the time and place. The Board chair will chair the meeting and will decide the procedure to follow.

## **7 APPOINTMENT AND REMOVAL OF BOARD**

### **Initial Board**

- 7.1 The Initial Board will consist of the Initial Board chair and the Initial Directors being the people who, at the time of registration of the Company, were the board chair and the board members respectively of the Electricity and Gas Complaints Commissioner Scheme.
- 7.2 The Initial Board will hold office from the date of registration of the Company until the earlier of the date:
- 7.2.1 that is two months after the date of registration of the Company, or
- 7.2.2 the Initial Board appoints the Transitional Directors under clause 7.4.
- 7.3 If a member of the Initial Board ceases to hold office in accordance with the Act or this Constitution before the date in clause 7.2, the Initial Board will appoint another person to be a member of the Initial Board in his or her place.

### **Transitional Board**

- 7.4 The Initial Board must appoint the Transitional Directors within two months following the date of registration of the Company.



7.5 The Transitional Board will consist of the Initial Board chair and the Transitional Directors.

7.6 The Transitional Directors are:

7.6.1 two Independent Directors,

7.6.2 one Industry Director, and

7.6.3 one Consumer Director.

7.7 The Transitional Board holds office from the date the Initial Board appoints the Transitional Directors under clause 7.4 until the earlier of the date:

7.7.1 that is two years after the date of registration of the Company, or

7.7.2 the Board appoints the Independent Directors under clause 7.13.

7.8 If there is more than one Scheme while the Transitional Board holds office, the Transitional Board must appoint one additional Industry Director and one additional Consumer Director.

7.9 In appointing the Industry Directors and the Consumer Directors, the Initial Board must:

7.9.1 appoint the Industry Directors from among three candidates nominated by the Providers in the relevant Scheme.

7.9.2 advise the relevant Minister or Ministers of the appointment of Consumer Directors.

7.10 The Initial Board may take such advice or counsel as it considers appropriate when appointing an Industry Director or a Consumer Director.

7.11 If a member of the Transitional Board ceases to hold office in accordance with the Act or this Constitution before the date in clause 7.7 the Board will appoint another person to be a member of the Transitional Board in his or her place.

### **Board**

7.12 Subject to clauses 7.1 to 7.11, the Board will consist of four Independent Directors and an Independent Board chair.

7.13 The Transitional Board must appoint the Independent Directors and the Independent Board chair within two years following the date of registration of the Company. Before appointing the Board chair, the Transitional Board must consult with, and have regard to the views of, the relevant Minister or Ministers.

7.14 The Board chair so appointed, and subsequent Board chairs, may hold office for a term of up to four years and may be reappointed for a further term or terms of office up to a maximum of eight consecutive years.

7.15 Subsequent Board chairs are appointed by the Board. Before appointing a Board chair, the Board must consult with, and have regard to the views of, the relevant Minister or Ministers.

7.16 Subsequent Directors:

7.16.1 are appointed by the Board; and

7.16.2 may hold office for a term of up to three years and may be reappointed for a further term or terms of office up to a maximum of six consecutive years.

#### **Vacation of office**

7.17 A Board member vacates office if any of the following occurs:

7.17.1 The Board member resigns by notice in writing to the Company. The notice is to be effective when it is received by the Company or at a later time specified in the notice.

7.17.2 The Board member is removed in accordance with section 156 of the Act.

7.17.3 The Board member becomes disqualified from being a director pursuant to section 151 of the Act.

7.17.4 The Board member ceases to be Independent.

7.17.5 The Board member dies.

7.17.6 The Board member has served his or her maximum term of office under clauses 7.2, 7.7, 7.14 or 7.16.

7.18 The Board may delay a Board member's vacation of office pursuant to sub-clause 7.17.6 by such period as it (acting reasonably) considers reasonable to provide continuity and a staggered rotation of Board members.

## **8 BOARD MEETINGS**

### **Third Schedule to the Act not to apply**

8.1 The Third Schedule to the Act relating to the proceedings of a board does not apply to the Company except to the extent included in this Constitution.

### **Notice of meeting**

8.2 A Board member or, if requested by a Board member to do so, the person appointed by the Board to act as Board secretary, may convene a meeting of the Board by giving notice in accordance with clause 8.3.

8.3 The following provisions apply in relation to meetings of the Board:

- 8.3.1 Not less than two working days' notice of a meeting of the Board is to be sent to each Board member, unless the Board Member waives that right.
- 8.3.2 Notice to a Board member of a meeting of the Board may be:
- (a) Delivered to the Board member.
  - (b) Posted to the address given by the Board member to the Company for that purpose.
  - (c) Sent by facsimile transmission to the facsimile number given by the Board member to the Company for that purpose.
  - (d) Sent by electronic means in accordance with any request made by the Board member from time to time for that purpose.
- 8.3.3 A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual communication, the manner in which each Board member may participate in the proceedings of the meeting.
- 8.3.4 A notice given to a Board member pursuant to this clause 8.3 is deemed to be given:
- (a) In the case of delivery, by handing the notice to the Board member or by delivery of the notice to the address of the Board member.
  - (b) In the case of posting, three days after it is posted.
  - (c) In the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Board member.
  - (d) In the case of electronic means, at the time of transmission.
- 8.4 An irregularity in the notice of a meeting or a failure to give notice is waived if all Board members entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all Board members agree to the waiver.

#### **Methods of holding meetings**

- 8.5 A meeting of the Board may be held by any of the following means:
- 8.5.1 By a number of the Board members who constitute a quorum, being assembled together at the place, date and time appointed for the meeting.
- 8.5.2 By means of audio, or audio and visual, communications by which all Board member participating and constituting a quorum can simultaneously hear each other during the meeting.

### **Quorum**

- 8.6 A quorum for a meeting of the Board, other than an adjourned meeting, is a majority of the Board.
- 8.7 No business may be transacted at a meeting of the Board if a quorum is not present.

### **Chair of Board meetings**

- 8.8 The Board chair will chair meetings of the Board.
- 8.9 If at a meeting of the Board the Board chair is not present within 10 minutes after the time appointed for the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

### **Voting**

- 8.10 Every Board member has one vote.
- 8.11 Subject to the provisions of this Constitution, a resolution of the Board is passed if a majority of the votes of Board members present and voting are in favour of it. In the event of an equality of votes, the Board chair has a casting vote, in addition to his or her deliberative vote.
- 8.12 A Board member present at a meeting of the Board will be presumed to have voted in favour of a resolution of the Board unless he or she:
- 8.12.1 Expressly abstains from voting.
  - 8.12.2 Dissents from or votes against the resolution.

### **Conduct of meetings**

- 8.13 Subject to the provisions of this Constitution, the Board may regulate their meetings as they think fit.

### **Minutes**

- 8.14 The Board must ensure that minutes are kept of all proceedings at meetings of the Board and may appoint a Board minutes secretary to attend Board meetings for this purpose.

### **Written resolution**

- 8.15 A resolution in writing, signed or assented to in written form by a majority of Board members, is as valid as if it had been passed at a meeting of the Board duly convened and held.
- 8.16 A resolution pursuant to clause 8.15 may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Board members.

- 8.17 A copy of any such resolution must be entered in the minute book of Board proceedings. The Company must, within five working days after any resolution is passed in accordance with clause 8.15, send a copy of the resolution to each Board member who has not signed or consented to the resolution, but failure to do so does not invalidate the resolution.

### **Committees**

- 8.18 The Board may form one or more Advisory Committees consisting of people who are not Board members. An Advisory Committee:
- 8.18.1 will provide the Board with advice or recommendations, and a forum for consultation, on matters relating to the Board's operation of the Schemes,
  - 8.18.2 will include industry and consumer representatives,
  - 8.18.3 has no delegated authority, and
  - 8.18.4 will comply with any procedural or other requirements imposed on it by the Board, but otherwise may regulate their meetings as they may decide.
- 8.19 The Board must form at least one Advisory Committee for each Scheme unless otherwise provided in the rules governing the relevant Scheme.
- 8.20 A committee of Board members must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Board members apply, with appropriate modification, to meetings of a committee of Board members.

### **Validity of actions**

- 8.21 The acts of the Board are valid despite any vacancy in their number and the acts of a person as a Board member are valid even though the person's appointment was defective or the person is not qualified for appointment.

### **Other proceedings**

- 8.22 Except as provided in this Constitution, the Board may regulate its own procedure.

## **9 POWERS OF BOARD MEMBERS**

### **Management of Company**

- 9.1 The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.

### **Exercise of powers by Board**

- 9.2 The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholder.

### **Delegation of powers**

- 9.3 Subject to clause 9.4, the Board may delegate to a committee of Board members, a Board member, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.
- 9.4 The Board must not delegate the following powers:
- 9.4.1 The power to establish an Advisory Committee.
- 9.4.2 The power under clause 10.1 to amend this Constitution.

### **Appointment of attorney**

- 9.5 The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. A power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### **Ratification by Shareholder**

- 9.6 Subject to section 177 of the Act (relating to ratification of certain actions of directors), the Shareholder, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Board member or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

## **10 AMENDMENTS TO THE CONSTITUTION**

- 10.1 Subject to clause 10.2, the Board may amend this Constitution by Special Resolution. Before voting on any such Special Resolution, unless the amendment is a Minor Amendment, the Board must consult with relevant stakeholders including Providers and the relevant Minister.
- 10.2 No addition to or alteration of the non profit aims, personal benefit clause or the winding up clause shall be made which affect the tax exempt status. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

## **11 BOARD MEMBERS' REMUNERATION AND OTHER BENEFITS**

### **Authorisation of payment or other benefit**

- 11.1 The Board may only exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section.

### **Expenses**

- 11.2 Each Board Member is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Board member in connection with the Board member's attendance at meetings or otherwise in connection with the Company's business.

## **12 INDEMNITY AND INSURANCE**

### **Indemnity for Board members**

- 12.1 Every Board member will be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

### **Indemnities and insurance**

- 12.2 In addition to the indemnity set out in clause 12.1, the Company may with the prior written approval of the Board do any of the following:
- 12.2.1 Indemnify a Board member or employee of the Company for any costs referred to in section 162(3) of the Act.
  - 12.2.2 Indemnify a Board member or employee of the Company in respect of any liability or costs referred to in section 162(4) of the Act.
  - 12.2.3 Effect insurance for a Board member or employee of the Company in respect of any liability or costs referred to in section 162(5) of the Act.

### **Definitions**

- 12.3 Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 12.

## **13 METHOD OF CONTRACTING**

### **Deeds**

- 13.1 A deed to be entered into by the Company may be signed on behalf of the Company by any of the following:
- 13.1.1 By two or more Board members.
  - 13.1.2 If there is only one Board member, by that Board member whose signature must be witnessed.
  - 13.1.3 A Board member, or other person or persons authorised to do so by the Board, whose signature or signatures must be witnessed.
  - 13.1.4 One or more attorneys appointed by the Company in accordance with section 181 of the Act.

**Written contracts**

- 13.2 An obligation or contract, which is required by law to be in writing and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the Company's express or implied authority.

**Other contracts**

- 13.3 An obligation or contract may be entered into on behalf of the Company orally by a person acting under the Company's express or implied authority.

**14 NOTICES**

**Method of service**

- 14.1 Any notices, reports, accounts or documents required to be sent to a Shareholder must be sent in the manner set out in section 391 of the Act. Notices to any other person must be sent in the same manner as if that person was a Shareholder.

DRAFT