
Tasmanian Water and Sewerage Corporation Pty Ltd

Constitution

Tasmanian Water and Sewerage Corporation
Pty Ltd ACN 162 220 653
A proprietary company limited by shares

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Table of Contents

1	Principal Objectives	1
2	Defined terms and interpretation	1
2.1	Definitions in the Dictionary	1
2.2	Interpretation	1
2.3	Act to prevail	1
3	Share capital	1
3.1	Shares	1
3.2	Certificates.....	1
3.3	Share class structure.....	1
3.4	Equitable interests in shares.....	2
4	Indemnities and surrender.....	3
4.1	Indemnity for payments by the Corporation.....	3
4.2	Surrender of shares	3
4.3	General provisions applicable to a disposal of shares under this constitution	4
4.4	Interest payable by member	4
5	Transfer and transmission of shares	4
5.1	Transfer of shares	4
5.2	Power to decline registration of transfers.....	5
5.3	Power to suspend registration of transfers.....	5
5.4	Transmission of shares	5
5.5	Members to act in good faith on the occurrence of a Transmission Event.....	5
6	General meetings.....	6
6.1	Convening general meetings	6
6.2	General meetings	6
6.3	Notice of general meetings	6
6.4	Quorum at general meetings.....	7
6.5	Chair of general meetings.....	7
6.6	Conduct of general meetings.....	7
6.7	Decisions at general meetings	8
6.8	Voting at general meetings.....	8
6.9	Representation at general meetings	9
6.10	Resolutions without meetings	10
6.11	Electronic technology to conduct meetings	11
7	Constitution.....	11
7.1	Process for adopting, modifying and repealing.....	11

7.2	Constitution is a public document.....	11
7.3	Entrenchment of constitution	11
7.4	Subsidiary constitutions	12
8	Shareholders' Letter of Expectations	12
8.1	Process for adopting, modifying and repealing.....	12
8.2	Matters to be included in Shareholders' Letter of Expectations.....	12
8.3	Publication of Shareholders' Letter of Expectations	13
8.4	Crown's role in adopting or amending the Corporate Plan.....	13
9	Owners' Representatives	13
9.1	Appointment of Owners' Representatives	13
9.2	Chief Representatives.....	14
9.3	Appointment of Acting Owners' Representatives.....	14
9.4	Functions of Owners' Representatives.....	14
9.5	Proceedings of Owners' Representatives.....	15
10	Selection Committee	15
10.1	Establishment of Selection Committee	15
10.2	Term	16
10.3	Function of Selection Committee	16
10.4	Proceedings of Selection Committee	17
10.5	Remuneration of Selection Committee	17
10.6	Removal of Selection Committee member	17
11	Directors	17
11.1	Board	17
11.2	Director Independence.....	17
11.3	Appointment, reappointment and removal of directors.....	18
11.4	Vacation of office.....	18
11.5	Remuneration of directors	18
11.6	Director need not be a member	19
11.7	Interested directors	19
11.8	Powers and duties of directors.....	20
11.9	Proceedings of directors.....	21
11.10	Convening meetings of directors.....	21
11.11	Notice of meetings of directors	21
11.12	Quorum at meetings of directors	22
11.13	Chair of directors	22
11.14	Decisions of directors	22

11.15	Resolutions without meetings	22
11.16	Committees of directors	23
11.17	Delegation to individual directors	23
11.18	Validity of acts	23
11.19	Limitation on sale or disposal of main undertaking	23
12	Board Reporting and Communication	23
12.1	Annual report	23
12.2	Other information	24
12.3	Commercial in confidence dispute resolution	24
13	Executive officers	25
13.1	Chief Executive Officer	25
13.2	Secretaries	25
13.3	Provisions applicable to all executive officers	25
14	Seals	26
14.1	Adoption of common seal	26
14.2	Safe custody of Seal	26
14.3	Use of Seal	26
14.4	Duplicate seal	26
14.5	Share seal or certificate seal	26
14.6	Sealing and signing of certificates	26
15	Distribution of profits	26
15.1	Dividends	26
15.2	Capitalisation of profits	27
15.3	Ancillary powers	27
15.4	Reserves	28
15.5	Carry forward of profits	28
16	Winding up	28
16.1	Distribution of surplus	28
16.2	Division of property	29
17	Minutes and records	29
17.1	Minutes	29
17.2	Signing of minutes	29
17.3	Minutes as evidence	29
17.4	Inspection of records	29
18	Indemnity and insurance	30
18.1	Persons to whom rules 18.2 and 18.4 apply	30

18.2	Indemnity.....	30
18.3	Extent of Indemnity.....	30
18.4	Insurance.....	30
18.5	Agreement and Access to Corporation Books.....	30
18.6	Savings.....	30
19	Notices.....	31
19.1	Notices by the Corporation to members.....	31
19.2	Notices by the Corporation to directors.....	31
19.3	Notices by members or directors to the Corporation.....	31
19.4	Notices to members outside Australia.....	32
19.5	Time of service.....	32
19.6	Other communications and documents.....	32
19.7	Notices in writing.....	32
20	General.....	32
20.1	Currency.....	32
20.2	Submission to jurisdiction.....	32
20.3	Subsidiaries.....	32
20.4	Limit on borrowings.....	33
20.5	Prohibition and enforceability.....	33
	SCHEDULE 1 - DICTIONARY.....	34
1	Dictionary.....	34
2	Interpretation.....	35
2.1	General.....	35
2.2	Application of the Corporations Act.....	35
2.3	Exercise of powers.....	36
2.4	Replaceable rules not to apply.....	37
2.5	Best Efforts.....	37
	SCHEDULE 2 – SHARE CAPITAL STRUCTURE.....	38
	SCHEDULE 3 – EQUITY PROPORTIONS PER MEMBER FOR DISTRIBUTION PURPOSES.....	40
	SCHEDULE 4 – SPECIAL MAJORITY MEMBERS RESOLUTION.....	41
	SCHEDULE 5 - 75% BY MEMBER, 75% BY EQUITY RESOLUTION.....	42
	SCHEDULE 6 – GOVERNMENT MEMBER RESOLUTIONS.....	43

1 Principal Objectives

The principal objectives of the Corporation are as follows:

- (a) to efficiently provide water and sewerage functions in Tasmania;
- (b) to encourage water conservation, the demand management of water and the re- use of water on an economic and commercial basis;
- (c) to be a successful business and, to this end:
 - (i) to operate its activities in accordance with good commercial practice;
 - (ii) to deliver sustainable returns to its members; and
 - (iii) to deliver water and sewerage services to customers in the most cost- efficient manner.

Each of the principal objectives of the Corporation is of equal importance.

2 Defined terms and interpretation

2.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (Dictionary), has the meaning given to it in the Dictionary;
- (b) which is used in the *Water and Sewerage Corporation Act 2012* (Tas) has the meaning given to it in the *Water and Sewerage Corporation Act 2012* (Tas); and
- (c) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

2.2 Interpretation

The interpretation clause in Schedule 1 (Dictionary) sets out rules of interpretation for this constitution.

2.3 Act to prevail

- (a) The provisions of the *Water and Sewerage Corporation Act 2012* (Tas) prevail over any inconsistent provisions of this constitution.
- (b) The Corporation, its directors and members are expressly prohibited from exercising any of their powers in contravention of or in a manner inconsistent with any requirement of the *Water and Sewerage Corporation Act 2012* (Tas).

3 Share capital

3.1 Shares

The directors have the right to issue shares in accordance with, or to ensure compliance with, the *Water and Sewerage Corporation Act 2012* (Tas).

3.2 Certificates

Each member is entitled without payment to receive a certificate for shares issued as required under the Corporations Act.

3.3 Share class structure

Without prejudice to any special rights conferred on the holders of any shares or class of shares, the

directors may, subject to the terms of the *Water and Sewerage Corporation Act 2012* (Tas), issue or allot or otherwise dispose of, shares in the Corporation including:

- (a) "A" ordinary shares;
- (b) "B" ordinary shares;
- (c) "C" ordinary shares;
- (d) "D" ordinary shares;
- (e) "E" ordinary shares;
- (f) "F" ordinary shares;
- (g) "G" ordinary shares;
- (h) "H" ordinary shares;
- (i) "I" ordinary shares;
- (j) "J" ordinary shares;
- (k) "K" ordinary shares;
- (l) "L" ordinary shares;
- (m) "M" ordinary shares;
- (n) "N" ordinary shares;
- (o) "O" ordinary shares;
- (p) "P" ordinary shares;
- (q) "Q" ordinary shares;
- (r) "R" ordinary shares;
- (s) "S" ordinary shares;
- (t) "T" ordinary shares;
- (u) "U" ordinary shares;
- (v) "V" ordinary shares;
- (w) "W" ordinary shares;
- (x) "X" ordinary shares;
- (y) "Y" ordinary shares;
- (z) "Z" ordinary shares;
- (aa) "AA" ordinary shares;
- (bb) "BB" ordinary shares;
- (cc) "CC" ordinary shares;
and
- (dd) "DD" ordinary shares,

which shall rank *pari passu* in all respects, except for:

- (i) voting rights attaching to the shares are set out in rule 6.8; and
- (ii) dividend rights attaching to the shares are set out in rule 15.

3.4 Equitable interests in shares

- (a) The Corporation may treat the registered holder of a share as the absolute owner of that share.

- (b) The Corporation is not bound by or compelled in any way to recognise an equitable, contingent, future, partial or other right or interest in a share or unit of a share, even if the Corporation has notice of that right or interest.
- (c) With the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.
- (d) Nothing in rule 3.4(c) limits rule 3.4(a).

4 Indemnities and surrender

4.1 Indemnity for payments by the Corporation

- (a) A member or, if the member no longer exists, the member's legal personal representative, must indemnify the Corporation against any liability which the Corporation has under any law to make a payment for or on account of that member including in respect of:
 - (i) shares held by that member;
 - (ii) a transfer or transmission of shares by a member; or
 - (iii) dividends, bonuses or other money owed to the member.
- (b) Rule 4.1(a) includes, without limitation, a payment arising from:
 - (i) the winding up of that member;
 - (ii) the non-payment of any income tax, income tax equivalents, capital gains tax, wealth tax or other tax by that member or the legal personal representative of that member; or
 - (iii) the non-payment of any duty by that member or the legal personal representative of that member.
- (c) The member or, if the member no longer exists, the member's legal personal representative, must pay to the Corporation immediately on demand:
 - (i) the amount required to reimburse the Corporation for a payment described in rule 4.1(a); and
 - (ii) interest on any part of that amount which is unpaid from the date the Corporation makes the payment until the date the Corporation is reimbursed in full for that payment, at a rate determined under rule 4.4.
- (d) This rule is in addition to any right or remedy the Corporation may have under the law which requires it to make the payment.
- (e) The directors may:
 - (i) exempt a share from all or any part of this rule 4.1; and
 - (ii) waive or compromise all or any part of any payment due to the Corporation under this rule 4.1.

4.2 Surrender of shares

- (a) Subject to any applicable requirements of the *Water and Sewerage Corporation Act 2012* (Tas), the directors may accept a surrender of a share:
 - (i) by way of compromise of any claim as to whether or not that share has been validly issued;
 - (ii) where it is within the power of the Corporation to require a surrender; or
 - (iii) where accepting a surrender is necessary to ensure compliance with the *Water and Sewerage Corporation Act 2012* (Tas).
- (b) Any share surrendered under rule 4.2(a) may be reissued or otherwise disposed of in the

same manner as set out in rule 4.3.

4.3 General provisions applicable to a disposal of shares under this constitution

- (a) A reference in this rule 4.3 to a disposal of shares under this constitution is a reference to cancellation of a share surrendered under rule 4.2.
- (b) Where any share is surrendered under rule 4.2(a), the Corporation may convene a general meeting of members to vote on a resolution to cancel that share under the Corporations Act (if required) and the member must take all action required to give effect to that cancellation except to the extent that doing so may cause non-compliance with the applicable requirements of the *Water and Sewerage Corporation Act 2012* (Tas).
- (c) The remedy of any person aggrieved by a disposal of shares under this constitution is limited to damages only and is against the Corporation exclusively.
- (d) A statement in writing signed by a director or secretary of the Corporation to the effect that a share in the Corporation has been surrendered under rule 4.2(a) on a date stated in the statement is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

4.4 Interest payable by member

- (a) For the purposes of rule 4.1(c)(ii), the rate of interest payable to the Corporation is:
 - (i) if the directors have fixed a rate, that rate; or
 - (ii) in any other case, 10% per annum.
- (b) Interest payable under rule 4.1(c)(ii) accrues daily and may be capitalised monthly or at other intervals the directors think fit.

5 Transfer and transmission of shares

5.1 Transfer of shares

- (a) Subject to this constitution, the rights or restrictions attached to any shares or class of shares and to any applicable requirements of the *Water and Sewerage Corporation Act 2012* (Tas), a member may transfer all or any of the member's shares by an instrument in writing in any usual form or in any other form that the directors approve where the shares are:
 - (i) surrendered under rule 4.2(a); or
 - (ii) the subject of a Transmission Event under rule 5.4.
- (b) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.
- (c) The Corporation must not charge a fee for the registration of a transfer of shares.
- (d) An instrument of transfer referred to in rule 5.1(a) must be signed by or on behalf of both the transferor and the transferee unless the transfer:
 - (i) relates only to fully paid shares and signature by the transferee has been dispensed with by the directors; or
 - (ii) is a sufficient transfer of marketable securities for the purposes of the Corporations Act.
- (e) An instrument of transfer referred to in rule 5.1(a) must be duly stamped if required by law to be stamped.
- (f) An instrument of transfer referred to in rule 5.1(a) must be lodged for registration at the registered office of the Corporation, or at such other place as the directors determine, accompanied by any evidence which the directors require to prove the title of the transferor or the transferor's right to the shares including the share certificate, if any, and to prove the right of the transferee to be registered as the owner of the shares.

- (g) Subject to the powers vested in the directors under rules 5.2 and 5.3, where the Corporation receives an instrument of transfer complying with rules 5.1(d), 5.1(e) and 5.1(f), the Corporation must register the transferee named in the instrument as the holder of the shares to which it relates.
- (h) The Corporation may retain any registered instrument of transfer received by the Corporation under rule 5.1(f) for any period as the directors think fit.
- (i) Except in the case of fraud, the Corporation must return any instrument of transfer received under rule 5.1(f) which the directors decline to register to the person who deposited it with the Corporation.
- (j) The directors may, to the extent permitted by law and subject to the *Water and Sewerage Corporation Act 2012*, waive all or any of the requirements of this rule 5.1.

5.2 Power to decline registration of transfers

Subject to any special rights conferred on the holders of any shares or class of shares, the directors may, in their absolute discretion, decline to register any transfer of shares provided that they may not do so in the case of a transfer of shares effected under the enforcement of any security interest created over the relevant shares.

5.3 Power to suspend registration of transfers

The directors may suspend the registration of transfers at the times and for the period the directors think fit, but the period of suspension must not exceed a total of 30 days in any year provided that they may not do so in the case of a transfer of shares effected under the enforcement of any security interest created over the relevant shares.

5.4 Transmission of shares

- (a) This rule 5.4 is subject to all applicable provisions of the *Water and Sewerage Corporation Act 2012* (Tas).
- (b) In the case of a Transmission Event, the only person or entity that the Corporation may recognise as having any title to a member's shares or any benefits accruing in respect of those shares are:
 - (i) the legal personal representative of that member where the member no longer exists and was a sole holder; and
 - (ii) another Council.
- (c) Nothing in rule 5.4(b) releases the entity that has assumed the responsibilities of a member which no longer exists from any liability in respect of a share.
- (d) Only a person who becomes entitled to a share as a result of a Transmission Event may elect to be registered as the holder of the share and must do so by signing and serving on the Corporation a notice in writing stating that election after producing any evidence the directors require to prove that person's entitlement to the share, including the certificate for the share.
- (e) The provisions of this constitution relating to the right to transfer, and the registration of transfers of, shares apply, so far as they can and with the changes as are necessary, to any transfer under rule 5.4(b)(ii) as if the relevant Transmission Event had not occurred and the transfer were executed or effected by the registered holder of the share.
- (f) Despite rule 5.4(b), the directors may register a transfer of shares signed by a member before a Transmission Event even though the Corporation has notice of the Transmission Event.

5.5 Members to act in good faith on the occurrence of a Transmission Event

If a Transmission Event occurs, the members must act in good faith and use their best efforts to ensure that the equity percentages for distributions set out in Schedule 3 are amended, if necessary, to reflect the Transmission Event.

6 General meetings

6.1 Convening general meetings

- (a) A general meeting may be convened by:
 - (i) the directors by resolution of the board; or
 - (ii) in accordance with sections 249E, 249F and 249G of the Corporations Act.
- (b) A general meeting must be convened by the directors in accordance with section 249D of the Corporations Act.
- (c) Subject to rule 6.1(e), the directors may postpone, cancel or change the venue for a general meeting by giving notice not later than five business days before the time at which the general meeting was to be held to each person who is at the date of the notice:
 - (i) a member;
 - (ii) a director; or
 - (iii) an auditor of the Corporation.
- (d) A notice postponing or changing the venue for a general meeting must specify the date, time and place of the general meeting.
- (e) A general meeting convened under section 249D of the Corporations Act may not be:
 - (i) postponed beyond the date by which that section requires it to be held; or
 - (ii) cancelled without the consent of the member or members who requested it.

6.2 General meetings

- (a) The Corporation must hold a general meeting:
 - (i) at least twice in each calendar year; and
 - (ii) subject to rule 6.2(b), the second general meeting for the calendar year must be held within 5 months after the end of the Corporation's financial year.
- (b) The members may extend the time referred to in rule 6.2(a)(ii).
- (c) The directors may attend a general meeting.
- (d) In addition to the notice of meeting, at least 21 days before the second general meeting for each calendar year, the Corporation must give the members a copy of the Corporation's annual report.

6.3 Notice of general meetings

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given within the time limits prescribed by the Corporations Act and in the manner authorised by rule 19.1 to each person who is at the date of the notice:
 - (i) a member;
 - (ii) a director; or
 - (iii) an auditor of the Corporation.
- (b) A notice of a general meeting must specify the date, time and place of the meeting and state the general nature of the business to be transacted at the meeting and any other matters required under the Corporations Act.
- (c) A person may waive notice of any general meeting by notice in writing to the Corporation.
- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting

under this rule 6.3 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:

- (i) the non-receipt or failure occurred by accident or error; or
- (ii) before or after the meeting, the person:
 - (A) has waived or waives notice of that meeting under rule 6.3(c); or
 - (B) has notified or notifies the Corporation of the person's agreement to that act, matter, thing or resolution by notice in writing to the Corporation.
- (e) A person's attendance at a general meeting:
 - (i) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (ii) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

6.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) A quorum consists of:
 - (i) if the number of members entitled to vote is two or more - more than 50% of the total number of members entitled to vote (irrespective of the number of shares held by each member); or
 - (ii) if only one member is entitled to vote - that member.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) where the meeting was convened by, or at the request of, a member or members, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to the day, and at the time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.5 Chair of general meetings

- (a) The Chief Representative, or if the Chief Representative is not present, the Deputy Chief Representative, must preside as chair at each general meeting if present at the time appointed for the meeting.
- (b) If neither the Chief Representative or the Deputy Chief Representative is present at the time appointed for the meeting, the members present must elect as chair of the meeting another person who is present and willing to act.

6.6 Conduct of general meetings

- (a) Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.
- (b) The chair of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at

any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (c) It is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

6.7 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a Special Majority Members Resolution and as otherwise provided for in this Constitution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and that decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution:
 - (i) the chair of the meeting does not have a second or casting vote; and
 - (ii) the proposed resolution is taken as having been lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before a vote by show of hands is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
 - (i) the chair of the meeting; or
 - (ii) at least 5 members present and entitled to vote on the relevant resolution; or
 - (iii) members with at least 5% of the votes that may be cast on the resolution on a poll.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Corporation, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it will be taken when and in the manner the chair of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (g) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (h) The demand for a poll may be withdrawn.

6.8 Voting at general meetings

- (a) Subject to this constitution (including rule 6.7(f)) and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
 - (i) on a show of hands, every member present has one vote irrespective of the number of fully paid shares held by the member in respect of which they are entitled to vote; and
 - (ii) on a poll, each member present has one vote for each fully paid share (of any class) held by a member and each person present as proxy, attorney or Representative of a member has one vote for each fully paid share held by the member that that person represents.
- (b) Each of the matters listed in Schedule 4 requires a Special Majority Members Resolution;
- (c) Each of the matters listed in Schedule 5 requires a resolution of the members passed by:
 - (i) at least 75% by number of the members of the Corporation entitled to vote; and
 - (ii) any combination of members that hold at least 75% of the votes cast by members of the Corporation entitled to vote on the resolution;

- (d) Each of the matters listed in Schedule 6 requires a Government Member Resolution;
- (e) Where a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member the following rules apply to a vote taken on a show of hands:
 - (i) the person is entitled to one vote only despite the number of members the person represents; and
 - (ii) the person's vote will be taken as having been cast for all the members the person represents.
- (f) A person entitled to a share as a result of a Transmission Event may vote at a general meeting in respect of that share in the same manner as if that person were the registered holder of the share if, before the meeting, the directors have:
 - (i) admitted that person's right to vote at that meeting in respect of the share; or
 - (ii) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under rule 5.4(d),
 and any vote tendered by that person must be accepted to the exclusion of the vote of the registered holder of the share.
- (g) Where a member holds any share on which any call due and payable to the Corporation has not been duly paid that member is only entitled to be present at a general meeting but not vote.
- (h) An objection to the qualification of a person to vote at a general meeting:
 - (i) must be raised before or immediately after the result of the motion on which the vote objected to is given or tendered; and
 - (ii) must be referred to the chair of the meeting, whose decision is final.
- (i) A vote not disallowed by the chair of a meeting under rule 6.8(g) is valid for all purposes.

6.9 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person or, where a member is a body corporate, by its Representative;
 - (ii) by proxy; or
 - (iii) by attorney.
- (b) A proxy, attorney or Representative may be a member of the Corporation but does not have to be a member.
- (c) A proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the Corporations Act or in the appointment, an appointment of a proxy, attorney or Representative is taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this constitution;
 - (ii) to speak to any proposed resolution on which the proxy, attorney or Representative may vote;
 - (iii) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;
 - (iv) even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on

any motion that the proposed resolutions not be put or any similar motion;

- (B) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
- (C) to act generally at the meeting; and
- (v) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) The chair of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (f) Where a member appoints two proxies or attorneys to vote at the same general meeting and the authority of one is not conditional on the other failing to attend or vote, the following rules apply:
 - (i) where the appointment does not specify the proportion or number of the member's votes each proxy or attorney may exercise, each proxy or attorney may exercise half of the member's votes;
 - (ii) on a show of hands, neither proxy or attorney may vote; and
 - (iii) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents.
- (g) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (h) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received:
 - (i) at the registered office of the Corporation, at the fax number at its registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting; and
 - (ii) by the time specified in the notice of meeting.
- (i) Unless the Corporation has received written notice of the matter by the time and at the place or in the manner set out in rules 6.9(h)(i) and (h)(ii), a vote cast by a proxy or attorney is valid even if, before the proxy or attorney votes:
 - (i) a Transmission Event occurs in relation to the appointer; or
 - (ii) the member revokes the proxy's or attorney's appointment; or
 - (iii) the member revokes the authority under which a third party appointed the proxy or attorney; or
 - (iv) the member transfers the share in respect of which the proxy or attorney was appointed.
- (j) The authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while the member is present at the meeting.

6.10 Resolutions without meetings

- (a) Subject to rule 6.10(c), the Corporation may pass a resolution without a general meeting being

held, if all of 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.

- (b) For the purposes of rule 6.10(a):
 - (i) the document may be sent to members in any manner described in rule 19;
 - (ii) the resolution is passed when the last member signs;
 - (iii) 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; and
 - (iv) a signature of a member transmitted to the Corporation by facsimile is sufficient evidence of signature.
- (c) Rule 6.10(a) does not apply to a resolution to remove an auditor.
- (d) Where a document is signed in accordance with rule 6.10(a) the document is to be taken as a minute of the passing of the resolution.

6.11 Electronic technology to conduct meetings

Any meeting of the Corporation may be conducted by telephone, video conference or any other means of communication that gives the members a reasonable opportunity to participate and a member who participates in a meeting as permitted under this rule is taken to be present at the meeting.

7 Constitution

7.1 Process for adopting, modifying and repealing

- (a) Subject to the requirements of the *Water and Sewerage Corporation Act 2012* (Tas), the constitution of the Corporation is adopted on registration if each person specified in the application for the company's registration as a person who consents to become a member agrees in writing to the terms of the constitution before the application is lodged.
- (b) In accordance with the *Water and Sewerage Corporation Act 2012* (Tas), as soon as practicable after incorporation of the Corporation, the members must approve the constitution by resolution passed by at least 75% of the members of the Corporation entitled to vote.
- (c) Subject to rule 7.1(d) and rule 6.8(d), the Corporation may modify or repeal the constitution or a provision of the constitution by a resolution passed by at least 75% of the members of the Corporation entitled to vote.
- (d) Despite anything else in this constitution, this rule 7.1(d) and Schedule 3 can only be modified by a resolution passed by:
 - (i) at least 75% by number of the members of the Corporation entitled to vote; and
 - (ii) at least 75% of the votes cast by members of the Corporation entitled to vote on the resolution.

7.2 Constitution is a public document

The Corporation is to make available to the public the constitution of the Corporation following its adoption or modification as soon as practicable following its adoption or modification.

7.3 Entrenchment of constitution

- (a) Any special or other resolution of the Corporation that purports to modify or repeal the constitution or a provision of the constitution in breach of clause 7.3(b) does not have any effect.
- (b) The constitution or a provision of the constitution may not be modified or repealed:
 - (i) in a way that would result in the constitution being inconsistent with the provisions of

the *Water and Sewerage Corporation Act 2012* (Tas) or any regulations made under it;
or

- (ii) unless the provisions of section 11 of the *Water and Sewerage Corporation Act 2012* have been complied with.

7.4 Subsidiary constitutions

Each of the provisions that are to be included in the Corporation's constitution in accordance with *Water and Sewerage Corporation Act 2012* (Tas) must also be included in the constitution of any subsidiary of the Corporation.

8 Shareholders' Letter of Expectations

8.1 Process for adopting, modifying and repealing

- (a) The members must prepare and approve by Ordinary Majority, a Shareholders' Letter of Expectations in accordance with this constitution and the *Water and Sewerage Corporation Act 2012* (Tas).
- (b) As soon as practicable after incorporation of the Corporation, the members must provide the Shareholders' Letter of Expectations to the board.
- (c) The Shareholders' Letter of Expectations must not be inconsistent with the *Water and Sewerage Corporation Act 2012* (Tas), the regulations or this constitution.
- (d) Subject to rule 8.1(f), the members may decide by Ordinary Majority, at any time, or on application of the board to:
 - (i) amend the Shareholders' Letter of Expectations; or
 - (ii) revoke the Shareholders' Letter of Expectations and substitute another Shareholders' Letter of Expectations.
- (e) Before or while preparing a Shareholders' Letter of Expectations or an amendment to a Shareholders' Letter of Expectations, the members of the Corporation are to consult with the board.
- (f) Where any amendment or revocation and substitution of the Shareholders' Letter of Expectations involves a change to:
 - (i) the process for adoption and amendment of the Corporation's corporate plan (including any mechanism for resolving any dispute regarding the adoption of amendments to the corporate plan); or
 - (ii) any expectation that the Corporation will commit to a price freeze or a cap on annual price increases for regulated services for water and sewerage customers; or
 - (iii) any expectation that the Corporation will, on a best endeavours basis, commit to deliver an accelerated capital investment program such that it achieves a target of \$1.8 billion in total infrastructure investment over the remainder of its current 10 year investment program (ie until 30 June 2026), subject to the Corporation, Owner Councils and the Crown jointly securing an additional \$100 million funding from the Federal Government or other sources),

the amendment or revocation and substitution of the Shareholders' Letter of Expectations will require the support of:

- (iv) an Ordinary Majority of Owners' Representatives (excluding the Crown's Owner's Representative); and
- (v) the Crown's Owner's Representative.

8.2 Matters to be included in Shareholders' Letter of Expectations

- (a) The Shareholders' Letter of Expectations must specify, without limitation:

- (i) the strategic priorities of the Corporation;
- (ii) the high-level expectations of members for the performance of the business of the Corporation and any subsidiary of the Corporation;
- (iii) the process for adoption and amendment of the Corporation's corporate plan;
- (iv) the required content and form for, and time period to be covered by, the corporate plan; and
- (v) that the chair of directors and Chief Executive Officer must provide briefings to members as provided in the Shareholders' Letter of Expectations.

8.3 Publication of Shareholders' Letter of Expectations

The Corporation must publish the Shareholders' Letter of Expectations on the Corporation's website as soon as practicable after adoption.

8.4 Crown's role in adopting or amending the Corporate Plan

- (a) Subject to rule 8.4(c) and rule 8.4(d), the process for adopting or amending the corporate plan is set out in part 8.4 of the Shareholder's Letter of Expectations.
- (b) Subject to rule 8.4(c), any changes relating to:
 - (i) the role of the Crown's Owner's Representative in the process to approve, or request amendments to, the corporate plan; or
 - (ii) the Crown's Owner's Representative's role in the mechanism to avoid deadlock in the event that there is any dispute over adopting any amendments to the corporate plan, together "(the **Corporate Plan Rights**)", or to this rule 8.4(b), requires a Government Member Resolution in accordance with Schedule 6.
- (c) If the Crown does not meet its share subscription obligations in accordance with clause 2.2 of the Share Subscription and Implementation Agreement, then, for so long as the Crown fails to meet those obligations, the Corporate Plan Rights and rule 8.4(b) shall not apply.
- (d) Where the circumstances in rule 8.4(c) apply:
 - (i) there shall be no obligation for the Crown's Owner's Representative to approve the corporate plan, and an Ordinary Majority of the Owners' Representatives may accept or request amendments to the corporate plan; and
 - (ii) there shall be no right for the Owner's Representative for the Crown to take part in the mechanism for resolving any disputes in relation to the adoption of any amendments to the corporate plan. For the avoidance of doubt, in these circumstances the chair and the Chief Owner's Representative shall determine a solution.

9 Owners' Representatives

9.1 Appointment of Owners' Representatives

- (a) Each member of the Corporation must as soon as practicable, after incorporation of the Corporation and at any time there is a vacancy in the position of Owners' Representative for a member, appoint a person as an Owners' Representative for that member for a specified term not exceeding 3 years.
- (b) A person appointed by a Council as its Owners' Representative under rule 9.1(a), must be an elected member of Council for that member or the General Manager of Council for that Council.
- (c) A person appointed by the Crown as its Owner's Representative under rule 9.1(a), must be the Secretary of Treasury of the Department of Treasury and Finance in Tasmania for the Crown or a delegate of the Secretary.
- (d) Each member must notify the Corporation of the name of the Owner's Representative and if

there is a new appointment of a person as an Owner's Representative.

- (e) The number of times a person may be appointed to the role of Owners' Representative is not limited.

9.2 Chief Representatives

- (a) The Owners' Representatives may elect by Ordinary Majority one of the Owners' Representatives as the Chief Owners' Representative.
- (b) The Owners' Representatives may elect by Ordinary Majority one of the Owners' Representatives as the Deputy Chief Representative.
- (c) The Chief Owners' Representative and Deputy Chief Representative are to carry out the duties prescribed in the charter of the Owners' Representatives established under this constitution.
- (d) The Owners' Representatives may remove a Chief Owners' Representative or Deputy Chief Representative by Special Majority.
- (e) The Chief Owners' Representative is to be paid such fees and allowances by the Corporation, as determined from time to time by the members on the recommendation of the Selection Committee, by an Ordinary Majority.
- (f) ¹A person may not serve as a Chief Owners' Representative or Deputy Chief Representative for a period exceeding 3 years unless re-elected by an Ordinary Majority of the Owners' Representatives.
- (g) ²The number of times a person may be appointed as Chief Owners' Representative or Deputy Chief Representative is not limited.

9.3 Appointment of Acting Owners' Representatives

- (a) A member of the Corporation may appoint a person to act as the Owner's Representative for that member:
 - (i) during a vacancy in the position of Owner's Representative for that member, whether or not an appointment has previously been made to the position; or
 - (ii) during any period, or during all periods, when that member's Owner's Representative is absent from duty or is, for any reason, unable to perform all or part of the duties of the position.
- (b) An appointment of an Acting Owner's Representative under rule 9.3(a) may be limited by the member making the appointment to specified rights and obligations for which that appointment is valid.
- (c) Each member must notify the Corporation of the name of the Acting Owner's Representative and if there is a new appointment of a person as an Acting Owner's Representative.

9.4 Function of Owners' Representatives

- (a) The Owners' Representatives are to:
 - (i) consult with other Owners' Representatives and undertake such other functions imposed on Owners' Representatives under this constitution;
 - (ii) agree and present to members and the board a charter of operations and procedures to govern the Owners' Representatives' objects and functions;
 - (iii) make and implement decisions on behalf of members in accordance with the *Water and Sewerage Corporation Act 2012 (Tas)*, this constitution and the charter agreed under rule 9.4(a)(ii);

¹ Clause 9.2(f) amendment adopted 28 July 2015

² Clause 9.2(g) amendment adopted 28 July 2015

- (iv) act as the official liaison between the board and the members of the Corporation;
- (v) monitor the performance of the board against the Shareholders' Letter of Expectations and the Corporation's most recent corporate plan;
- (vi) through the Selection Committee and where appropriate the chair of directors, monitor:
 - (A) the appointment of directors including board renewal and continuity;
 - (B) board performance; and
 - (C) board remuneration;
- (vii) approve the charter of operations and procedures developed by the Selection Committee to govern the Selection Committee's objects and functions; and
- (viii) subject to any law or lawful order to the contrary, elect by Ordinary Majority at least one of the Owners' Representatives to attend any committee of the Parliament or state government as required.

9.5 Proceedings of Owners' Representatives

The Owners' Representatives may engage secretariat and executive support to assist it in performing its functions as required by this constitution.

10 Selection Committee

10.1 Establishment of Selection Committee

- (a) Subject to rule 10.1(h) and 10.1(i), the Owners' Representatives must as soon as practicable establish a Selection Committee composed of:
 - (i) 1 person selected by Ordinary Majority by the Owners' Representatives of the members of the North-western Region;
 - (ii) 1 persons selected by Ordinary Majority by the Owners' Representatives of the members of the Northern Region;
 - (iii) 2 persons selected by Ordinary Majority by the Owners' Representatives of the members of the Southern Region;
 - (iv) the chair of directors;
 - (v) the Crown's Owner's Representative; and
 - (vi) the Chief Owners' Representative, if that person is not one of the persons referred to in rule 10.1(a)(i), rule 10.1(a)(ii) or rule 10.1(a)(iii).
- (b) Only a person who is an Owners' Representative is eligible for appointment to the Selection Committee under rule 10.1(a).
- (c) The current chair of directors must not be present at or take part in any consultations, discussion or decision by the Selection Committee in relation to the appointment of any person to the role of chair of directors, unless the chair of directors is not seeking re-appointment and the other members of the Selection Committee all agree that the chair of directors may be present and take part.
- (d) ³A Selection Committee member may not appoint an acting or alternate member and may not give a proxy to another member of the Selection Committee.
- (e) ⁴The Selection Committee members may elect by Ordinary Majority one of the Selection Committee members to act as the Chair of the Selection Committee.

³ Clause 10.1(d) amendment adopted 13 May 2014

⁴ Clause 10.1 (e) amendment adopted 28 July 2015

- (f) ⁵If the Chair of the Selection Committee is absent from a meeting, the Selection Committee members present may elect another Selection Committee member who is present and willing to act to chair the meeting.
- (g) Subject to rule 10.1(h), any change or amendment to rule 10.1(a)(v) or to this rule 10.1(a)(g) requires a Government Member Resolution in accordance with Schedule 6.
- (h) If the Crown does not meet its share subscription obligations in accordance with clause 2.2 of the Share Subscription and Implementation Agreement then, for so long as the Crown fails to meet those obligations, the Crown's Owner's Representative will cease to be a member of the Selection Committee and rule 10.1(a)(v) will cease to apply.

10.2 Term

- (a) Members of the Selection Committee must not be appointed for a term exceeding 3 years.
- (b) The number of times a person may be appointed to the Selection Committee is not limited.
- (c) ⁶A person may not serve as the chair of the Selection Committee for a period exceeding 3 years unless re-elected by an Ordinary Majority of the Selection Committee members.
- (d) ⁷The numbers of times a person can be appointed as chair of the Selection Committee is not limited.

10.3 Function of Selection Committee

- (a) The Selection Committee must agree and present to the Owners' Representatives a charter of operations and procedures to govern the Selection Committee's objects and functions.
- (b) If there is a vacancy or expected vacancy in the position of chair of directors or other director, the Selection Committee is to cause an appropriate recruitment process to be undertaken to fill that vacancy, including if necessary and without limitation, by the use of a professional recruitment consultant to source candidates.
- (c) Any person, including directors of the Corporation, may nominate for consideration by the Selection Committee any one or more persons as candidates for appointment as chair of directors or other director of the Corporation.
- (d) The Selection Committee, after making due enquiry, is by Ordinary Majority to appoint a person who, in the opinion of the Selection Committee, has the experience and skills necessary to assist the Corporation to achieve its principal objectives, to the vacant position of chair of directors or other director of the Corporation.
- (e) The Selection Committee must consult with the Owners' Representatives on:
 - (i) a framework for the remuneration of directors, which must be approved by the Owners' Representatives by Ordinary Majority; and
 - (ii) apply the framework for remuneration to determine the remuneration of each director in accordance with rule 11.5.
- (f) When making appointments to the board, the Selection Committee must consider the need for both renewal and continuity of the members of the board as a whole.
- (g) The board must conduct an annual performance review of the board and provide a report to the Selection Committee.
- (h) The Selection Committee must report to the Owners' Representatives in accordance with its charter when requested with regard to board performance, board appointments and composition required to ensure an appropriate balance of board continuity and renewal.

⁵ Clause 10.1(f) amendment adopted 28 July 2015

⁶ Clause 10.2(c) amendment adopted 28 July 2015

⁷ Clause 10.2(d) amendment adopted 28 July 2015

10.4 Proceedings of Selection Committee

- (a) The Selection Committee must regulate its proceedings, including the calling of, and the conduct of business at its meetings, in accordance with its charter, this constitution and otherwise as it considers appropriate.
- (b) The Selection Committee may permit its members to participate in a particular meeting or all meetings by telephone, video conference or any other means of communication that gives members a reasonable opportunity to participate and a member who participates in a meeting as permitted under this rule is taken to be present at the meeting.
- (c) If the number of members of the Selection Committee that constitutes an Ordinary Majority signs a document containing a statement that they are in favour of a resolution or proposal set out in the document, a resolution or proposal in those terms is taken to have been passed or agreed to at a meeting of the Selection Committee on the day on which the document is signed or, if the members of the Selection Committee do not sign it on the same day, on the day on which the last of the members of the Selection Committee signs the document.
- (d) For the purposes of rule 10.4(c), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members of the Selection Committee, is taken to constitute 1 document.

10.5 Remuneration of Selection Committee

The members of the Selection Committee (other than the chair of directors) are to be paid such fees and allowances as the Owners' Representatives collectively determine from time to time, which will be payable by the Corporation.

10.6 Removal of Selection Committee member

The Owners' Representatives for a Region may, by Special Majority, remove any person (other than the chair of directors) from their position on the Selection Committee for that Region.

11 Directors

11.1 Board

- (a) The business of the Corporation is to be managed by the directors, who may exercise all such powers of the Corporation as are not, by the Corporations Act, the *Water and Sewerage Corporation Act 2012* (Tas) or by this Constitution, required to be exercised by the Corporation in general meeting.
- (b) The number of directors is to be not more than 7 directors, comprising:
 - (i) the chair of directors; and
 - (ii) a maximum of 6 other directors,appointed in accordance with the *Water and Sewerage Corporation Act 2012* (Tas), the Corporations Act and this constitution.
- (c) If at any time a vacancy occurs on the board, the Selection Committee must, as soon as practicable, do all things necessary to appoint a person to fill that vacancy in accordance with the procedures in this constitution.

11.2 Director Independence

- (a) None of the following persons may be appointed a director of the Corporation or any subsidiary of the Corporation:
 - (i) any person who has served as an elected government official at any time within the 3 years preceding the intended date of appointment; or
 - (ii) any person who currently holds office as an elected government official or who is currently an employee of any Council or the Crown.

- (b) Rule 11.2(a)(ii) shall not operate to exclude any person who:
 - (i) holds a position as a director of a State-Owned Business or
 - (ii) is engaged as an independent contractor to provide services to a board of directors of a State-Owned Business or to a Councilfrom being eligible to be appointed a director of the Corporation, or from continuing to act as a director of the Corporation.

11.3 Appointment, reappointment and removal of directors

- (a) The directors of the Corporation must be appointed and removed in accordance with the applicable requirements of the *Water and Sewerage Corporation Act 2012* (Tas), if any, and this constitution.
- (b) Each term of an appointment of a director must not exceed three years.
- (c) A person's appointment to the role of director must be reviewed by the Selection Committee in accordance with rule 10.3 of this constitution prior to the expiration of the term of his or her appointment. That person may be re-appointed as a director for further terms not exceeding three years each.
- (d) A director can be appointed by consecutive terms for a maximum period of 10 continuous years from the date of first appointment. The 10 year period may only be extended by a Special Majority of the Selection Committee. This rule 11.3(d) does not prevent the appointment of a director who has previously served for a period up to 10 continuous years, if that person has not been a director for a period of at least 3 years.
- (e) The Owners' Representatives may by Special Majority remove a person from the role of chair of directors or any other director of the Corporation.

11.4 Vacation of office

In addition to the circumstances in which the office of a director becomes vacant by virtue of the law, the office of a director becomes vacant:

- (a) in the circumstances prescribed by the *Water and Sewerage Corporation Act 2012* (Tas);
- (b) if the director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
- (c) if the director resigns by notice in writing to the Corporation;
- (d) if the director is absent, without the consent of the other directors, from meetings of the directors held during a period of three (3) months; or
- (e) if the director is directly or indirectly interested in any contract or proposed contract with the Corporation (other than in his or her capacity as a director or employee of the Corporation) and fails to declare the nature of that interest as required by the Corporations Act.

11.5 Remuneration of directors

- (a) Each director is entitled to the remuneration out of the funds of the Corporation as advised by the Selection Committee in accordance with this rule 11.5.
- (b) The Corporation must request that the Selection Committee:
 - (i) determines the amount of remuneration of each director in accordance with the framework for remuneration approved by the Owners' Representatives under this constitution, in terms of:
 - (A) a stated fee; or
 - (B) a fixed sum for attendance at each meeting of directors or a combination of both;
 - (ii) reviews the amount of remuneration of each director annually; and

- (iii) gives the directors and the Owners' Representatives written notice of the amount it determines in accordance with this constitution for each director on an annual basis.
- (c) In addition to remuneration under rule 11.5(a), the directors are entitled to be paid all travelling and other expenses properly incurred by them when engaged on the business of the Corporation, including in attending and returning from:
 - (i) general meetings of the Corporation;
 - (ii) meetings of the directors; or
 - (iii) meetings of committees of the directors.
- (d) If a director renders or is called on to perform extra services or to make any special exertions in connection with the affairs of the Corporation, the Selection Committee may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under rule 11.5(a).
- (e) Nothing in this rule 11.5 restricts the remuneration to which a director may be entitled as an officer of the Corporation or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under this rule 11.5.

11.6 Director need not be a member

- (a) A director is not required to hold any shares in the Corporation to qualify for appointment.
- (b) A director is entitled to attend and speak at a general meeting even if he or she is not a member of the Corporation.

11.7 Interested directors

- (a) A director may:
 - (i) hold any other office or place of profit, other than auditor, in the Corporation or a related body corporate in conjunction with his or her directorship; and
 - (ii) be appointed to that office or place of profit on the terms as to remuneration, tenure of office and otherwise as the directors think fit.
- (b) A director of the Corporation may be a director or other officer of:
 - (i) a related body corporate;
 - (ii) a body corporate promoted by the Corporation;
 - (iii) a body corporate in which the Corporation is interested, as shareholder or otherwise; or
 - (iv) a body corporate as required by law because of that director's position as a director of the Corporation,

or be otherwise interested in any of those bodies corporate. A director is not accountable to the Corporation for any remuneration or other benefits received by the director as a director or officer of that body corporate or from having an interest in that body corporate.
- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the Corporation as the directors think fit. This includes voting in favour of any resolution appointing an officer of that body corporate (excluding a director or a chairperson), or voting for the payment of remuneration to the directors or other officers of that body corporate. A director may, if permitted by law, vote in favour of the exercise of those voting rights even if he or she is, or may be about to be appointed, a director or other officer of that other body corporate.
- (d) A director is not disqualified merely because of being a director from contracting with the Corporation in any respect including, without limitation:

- (i) selling any property to, or purchasing any property from, the Corporation; or
 - (ii) being employed by the Corporation or acting in any professional capacity, other than auditor, on behalf of the Corporation.
- (e) No contract made by a director with the Corporation and no contract or arrangement entered into by or on behalf of the Corporation in which any director may be in any way interested is avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (f) No director contracting with the Corporation or being interested in any arrangement involving the Corporation is liable to account to the Corporation for any profit realised by or under a contract or arrangement of that kind merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (g) Subject to rule 11.7(h), a director who has a material personal interest in a contract or arrangement or proposed contract or arrangement, or other matter being considered at a directors meeting cannot:
- (i) be present while the matter is being considered at the meeting; or
 - (ii) vote on the matter.
- (h) Rule 11.7(g) does not apply if the director is permitted to be present or vote on a matter under the Corporations Act, in which case that director can:
- (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
 - (ii) vote in respect of the contract or arrangement or proposed contract or arrangement or any matter arising out of those things; and
 - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement.
- (i) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the Corporation or a related body corporate. Any regulations made under this rule bind all directors and apply in addition to any obligations imposed on the directors by the Corporations Act to disclose interests to the Corporation.
- (j) If the Corporation is a wholly-owned subsidiary of a body corporate, a director may act in the best interests of the holding Corporation.

11.8 Powers and duties of directors

- (a) Subject to the provisions of the *Water and Sewerage Corporation Act 2012* (Tas) and this constitution, the directors:
- (i) are responsible for managing the business of the Corporation having regard to the Shareholders' Letter of Expectations; and
 - (ii) may exercise to the exclusion of the Corporation in general meeting all the powers of the Corporation which are not required, by the Corporations Act or this constitution, to be exercised by the Corporation in general meeting.
- (b) Subject to rule 20.4 and without limiting rule 11.8(a), the directors may exercise all the powers of the Corporation to borrow or otherwise raise money, to charge any property or business of the Corporation or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Corporation or of any other person.
- (c) The directors may determine how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments or other documents must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the

Corporation.

- (d) The directors may:
 - (i) appoint or employ any person to be an officer, agent or attorney of the Corporation for the purposes, for the period and on the conditions as they think fit;
 - (ii) resolve to delegate any of their powers to an officer, agent or attorney and the officer, agent or attorney must exercise the powers delegated in accordance with any directions of the directors;
 - (iii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (iv) subject to any contract between the Corporation and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the Corporation at any time, with or without cause.
- (e) A power of attorney may contain provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

11.9 Proceedings of directors

- (a) The directors may hold meetings for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) Subject to the Corporations Act, the contemporaneous linking together by a form of technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors held using a form of technology.

11.10 Convening meetings of directors

- (a) Any three directors may, whenever they think fit, request the chair of directors to convene a meeting of the directors.
- (b) A secretary must, on the requisition of any three directors, convene a meeting of the directors.
- (c) The chair of directors may, whenever he or she thinks fit, convene a meeting of the directors.

11.11 Notice of meetings of directors

- (a) Subject to this constitution, reasonable notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, other than a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (i) must specify the time and place of, or form of technology for, the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting; and
 - (iii) may be given in person or by post, or, subject to the Corporations Act, by a form of technology.
- (c) A director may waive notice of a meeting of directors by notifying the Corporation to that effect in person or by post, or by a form of technology.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the director:

- (A) waives notice of that meeting under rule 11.11(c); or
 - (B) notifies the Corporation of his or her agreement to that act, matter, thing or resolution personally or by post, or by a form of technology; or
- (iii) the director attended the meeting.
- (e) Attendance by a person at a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

11.12 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of 4 directors, one of whom must be the chair of directors or if the chair of directors is unavailable the deputy chair.

11.13 Chair of directors

- (a) The chair of directors is appointed for a term not exceeding 3 years.
- (b) The chair of directors may be reappointed in accordance with this constitution on expiry of his or her term of office.
- (c) The chair of directors may only be removed in accordance with the Corporations Act and this constitution.
- (d) The directors may appoint one of the directors as a deputy chair of directors.
- (e) The office of chair of directors will not be treated as an extra service or special exertion performed by the director holding that office.
- (f) The chair of directors must preside as chair at each meeting of directors, if present at the time appointed for the holding of the meeting.
- (g) The directors present at a meeting of directors may elect a person present to chair the meeting if:
 - (i) there is a vacancy in the role of chair of directors; or
 - (ii) the chair of directors is not present within 30 minutes of the time appointed for the meeting.

11.14 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution and in accordance with the *Water and Sewerage Corporation Act 2012* (Tas).
- (b) Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) In the case of an equality of votes on a proposed resolution:
 - (i) the chair of the meeting does not have a second or casting vote; and
 - (ii) the proposed resolution is to be taken as having been lost.

11.15 Resolutions without meetings

- (a) The directors may pass a resolution without a directors' meeting being held if all the directors, other than a director on a leave of absence approved by the other directors, entitled to vote on the resolution assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used if the wording of the resolution and statement is identical in each copy.

- (c) The resolution is passed when the last director assents.
- (d) A director may signify assent to a document by signing the document or by notifying the Corporation of the director's assent in person or by post, fax, electronic, telephone or other method of written, audio or audio visual communication.
- (e) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (f) Where a document is assented to in accordance with this rule 11.15, the document is to be taken as a minute of the passing of the resolution.

11.16 Committees of directors

- (a) The directors may resolve to delegate any of their powers to a committee or committees consisting of such number of directors as they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with the changes as are necessary, to meetings and resolutions of a committee of directors.

11.17 Delegation to individual directors

- (a) The directors may resolve to delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

11.18 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

11.19 Limitation on sale or disposal of main undertaking

- (a) The directors must ensure that the Corporation does not dispose of the main undertakings of the Corporation, or permit the disposal of the main undertakings of any of the Corporation's subsidiaries.
- (b) The main undertakings of the Corporation are as specified in the most recent corporate plan of the Corporation.

12 Board Reporting and Communication

12.1 Annual report

- (a) The directors must in each calendar year and no later than 3 months after the end of the financial year to which the annual report relates, provide the members:
 - (i) with an annual report for the Corporation and each of its subsidiaries; and
 - (ii) any other information requested in writing by the members.
- (b) Subject to the *Water and Sewerage Corporation Act 2012* (Tas), on the written request of a

member, the Corporation must include in the financial statements any financial information that the members consider appropriate, unless that information is not accurate, or commercial in confidence.

- (c) The Corporation must publish the annual report on the Corporation's website no later than 5 months after the end of the financial year to which the annual report relates, or as soon as possible after the Annual General Meeting at which the report is adopted, whichever occurs first.

12.2 Other information

- (a) Subject to the *Water and Sewerage Corporation Act 2012* (Tas), on the written request of a member, the Corporation must provide to the members:
 - (i) the business and strategic plans of the Corporation and any subsidiary, as specified in the request;
 - (ii) the financial information specified in the request;
 - (iii) a report on the matters specified in the request; and
 - (iv) any other information relevant to any such plan, financial information or report;

unless the information is commercial in confidence.

- (b) If the directors form the opinion that a matter has arisen that may:
 - (i) prevent, or significantly affect, achievement of the objectives of the Corporation or any of its subsidiaries; or
 - (ii) significantly affect the strategies and policies that the Corporation or its subsidiaries are following to achieve those objectives; or
 - (iii) prevent, or significantly affect, achievement of a financial target,

the directors will promptly notify the members of their opinion and the reasons for the opinion.

12.3 Commercial in confidence dispute resolution

- (a) If the directors determine certain information requested by a member to be commercial in confidence in accordance with rule 12.1(b) or rule 12.2(a), the Corporation must give the member that made the request notice of that determination.
- (b) Within 7 days of the giving of notice under rule 12.3(a), the member may notify the Corporation that it disputes the determination and provide details specifying the nature of the dispute.
- (c) Within 14 days of the delivery of a dispute notice under rule 12.3(b), the Corporation and the member must meet and use their best endeavours to resolve the dispute to the mutual satisfaction of both parties as soon as possible.
- (d) If the Corporation and the member are not able to reach a resolution of the dispute within a reasonable period of time (in any event being no more than 14 days after the date of receipt of the notice of the dispute under rule 12.3(b)), then the dispute must be submitted for arbitration to an independent arbiter appointed by the President of the Law Society of Tasmania.
- (e) This rule 12.3 does not apply, or ceases to apply, if compliance with it would be likely to cause the Corporation to breach a law or any other requirement with respect to the Corporation's financial statements or any other information subject to the dispute.

13 Executive officers

13.1 Chief Executive Officer

- (a) The Chief Executive Officer of the Corporation is to be appointed by the directors and may be removed by the directors.
- (b) Subject to rule 13.1(d) and 13.1(e), in exercising their functions under rule 13.1(a), the directors shall consult with the Chief Owners' Representative and the Crown's Owner's Representative.
- (c) Subject to rule 13.1(d), any change or amendment to this rule 13.1(b) or this rule 13.1(c) requires a Government Member Resolution in accordance with Schedule 6.
- (d) If the Crown does not meet its share subscription obligations in accordance with clause 2.2 of the Share Subscription and Implementation Agreement then, for so long as the Crown fails to meet those obligations, the rights contained in rule 13.1(b) and rule 13.1(c) shall not apply.
- (e) Where the rights set out in rule 13.1(b) and 13.1(c) do not apply, the directors shall consult with the with the Chief Owner's Representative only in exercising their functions under rule 13.1(a).

13.2 Secretaries

- (a) The directors may appoint a secretary or more than one secretary.
- (b) The directors may appoint one or more assistant secretaries.
- (c) Any director may also be the secretary or a secretary of the Corporation.

13.3 Provisions applicable to all executive officers

- (a) A reference in this rule 13.3 to an executive officer is a reference to a Chief Executive Officer, secretary or assistant secretary appointed under this rule 13.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the directors think fit.
- (c) Subject to any contract between the Corporation and the relevant executive officer, an executive officer of the Corporation may be removed or dismissed by the directors at any time, with or without cause. Such removal or dismissal does not remove that person from office as a director.
- (d) The directors may:
 - (i) confer on an executive officer the powers, discretions and duties as they think fit, and may resolve to delegate any powers, discretions and duties vested in or exercisable by the directors;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (iii) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer is not required to hold any shares to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated by reason only of:
 - (i) a defect in the person's appointment as an executive officer; or
 - (ii) the person being disqualified to be an executive officer,if that circumstance was not known by the person when the act was done.

14 Seals

14.1 Adoption of common seal

- (a) The directors may determine that the Corporation has a common seal or that the Corporation no longer has a common seal, and may revoke a determination made under this rule 14.1(a).
- (b) Rules 14.2, 14.3, 14.4, 14.5 and 14.6 only apply if the Corporation has a common seal.

14.2 Safe custody of Seal

The directors must provide for the safe custody of the Seal.

14.3 Use of Seal

- (a) The Seal must be used only by the authority of the directors or a committee of the directors authorised by the directors to authorise the use of the Seal.
- (b) The authority to use the Seal may be given before or after the Seal is used.
- (c) Subject to rule 14.6, until the directors otherwise determine, the fixing of the Seal to a document must be witnessed by a director and by another director, a secretary or another person appointed by the directors to witness that document or a class of documents in which that document is included.

14.4 Duplicate seal

- (a) The Corporation may have for use in place of its common seal outside the state or territory where its common seal is kept one or more duplicate seals, each of which must be a facsimile of the common seal of the Corporation with the addition on its face of the words "duplicate seal" and the name of the place where it is to be used.
- (b) A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the Corporation.

14.5 Share seal or certificate seal

- (a) The Corporation may have for use on certificates for securities of the Corporation in place of its common seal one or more duplicate seals, each of which must be a facsimile of the common seal of the Corporation with the addition on its face of the words "share seal" or "certificate seal".
- (b) A certificate for securities of the Corporation sealed with a share seal or certificate seal is to be taken as having been sealed with the common seal of the Corporation.

14.6 Sealing and signing of certificates

The directors may determine either generally or in a particular case that the seal and the signature of any director, secretary or other person is to be printed on or fixed to any certificates for securities in the Corporation by some mechanical or other means.

15 Distribution of profits

15.1 Dividends

- (a) The directors must determine a dividend policy in conjunction with the Owners' Representatives and in accordance with the *Water and Sewerage Corporation Act 2012* (Tas).
- (b) The dividend policy must, subject to complying with that Act and the law generally, allow for payment of quarterly interim dividends during the financial year in which the profits are made.
- (c) The directors may, from time to time and in a manner consistent with the dividend policy, determine the aggregate amount of dividends to be distributed to members in accordance with the equity proportions for each member set out in Schedule 3 of this constitution.

- (d) Interest is not payable by the Corporation in respect of any dividend.
- (e) A dividend in respect of a share must be paid to the person who is registered as the holder of the share:
 - (i) where the directors have fixed a record date in respect of the dividend, on that date; or
 - (ii) where the directors have not fixed a record date in respect of that dividend, on the date the dividend is paid.
- (f) The directors may deduct from any dividend payable to a member all sums of money presently payable by the member to the Corporation and apply the amount deducted in or towards satisfaction of the money owing.
- (g) Where a person is entitled to a share as a result of a Transmission Event, the directors may, but are not obliged to, retain any dividends payable on that share until that person becomes registered as the holder of the share or transfers it.
- (h) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque and sent by post:
 - (i) to the address of the holder as shown in the register of members; or
 - (ii) to such other address as the holder in writing directs.

This rule 15.1(h) does not limit the method of payment the directors may adopt.
- (i) A cheque sent under rule 15.1(h) may be made payable to bearer or to the order of the member to whom it is sent or any other person the member directs and is sent at the member's risk.

15.2 Capitalisation of profits

- (a) Subject to any rights or restrictions attached to any shares or class of shares, the directors may capitalise and distribute among such of the members as would be entitled to receive dividends and in the same proportions, as each member would be entitled to receive a dividend, any amount:
 - (i) forming part of the undivided profits of the Corporation;
 - (ii) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the Corporation;
 - (iii) arising from the realisation of any assets of the Corporation; or
 - (iv) otherwise available for distribution as a dividend (having provided for expected future capital requirements and operational expenditure).
- (b) The directors may resolve that all or any part of the capitalised amount is to be applied:
 - (i) in paying up in full any unissued shares in the Corporation;
 - (ii) in paying up any amounts unpaid on shares held by the members;
 - (iii) partly as specified in rule 15.2(b)(i) and partly as specified in rule 15.2(b)(ii); or
 - (iv) in any other way permitted by the Corporations Act,

and that application must be accepted by the members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.
- (c) Rules 15.1(e) and 15.1(g) apply, so far as they can and with any necessary changes, to a capitalisation of an amount under rule 15.2 as if references in those rules to a dividend and to the date a dividend is paid were references to a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this rule 15.2 respectively.

15.3 Ancillary powers

- (a) Subject to any applicable requirements of the *Water and Sewerage Corporation Act 2012*

(Tas), the directors may do any of the following things to give effect to a resolution for the satisfaction of a dividend in the manner set out in rule 15.1 or by the capitalisation of an amount under rule 15.2:

- (i) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation and, in particular, where shares in the Corporation are or would otherwise be issuable in fractions:
 - (A) determine that fractions are to be disregarded or are to be rounded down to the nearest whole number; or
 - (B) determine that fractions are to be rounded up to the nearest whole number;
- (ii) fix the value for distribution of any specific assets;
- (iii) pay cash to any member or issue shares to any member in order to adjust the rights of all parties;
- (iv) vest any specific assets, cash or shares in a trustee on such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the directors; and
- (v) authorise any person to make, on behalf of all the members entitled to any further shares as a result of the distribution or capitalisation, an agreement with the Corporation or another body corporate providing, as appropriate:
 - (A) for the issue to them of further shares as fully paid; or
 - (B) for the payment by the Corporation on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,and any agreement made under an authority referred to in this rule (v) is effective and binding on all members concerned.
- (b) If the Corporation distributes to a member shares in the Corporation or another body corporate or a trust, the member appoints the Corporation as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate.

15.4 Reserves

- (a) Subject to this constitution, the directors may set aside out of the profits of the Corporation reserves or provisions for any purpose as they think fit, including for future capital requirements or operational expenditure of the Corporation.
- (b) The directors may appropriate to the profits of the Corporation an amount previously set aside as a reserve or provision.
- (c) The setting aside of an amount as a reserve or provision does not require the directors to keep the amount separate from other assets of the Corporation or prevent the amount being used in the business of the Corporation or being invested as the directors think fit.

15.5 Carry forward of profits

Subject to this constitution, the directors may carry forward as much of the profits remaining as they consider ought not to be distributed as dividends or capitalised without transferring those profits to a reserve or provision.

16 Winding up

16.1 Distribution of surplus

Subject to this constitution and to the rights or restrictions attached to any shares or class of shares:

- (a) if the Corporation is wound up and the property of the Corporation is more than sufficient:

- (i) to pay all of the debts and liabilities of the Corporation; and
- (ii) the costs, charges and expenses of the winding up,

the excess must be divided among the members in accordance with the proportion of shares held by each member at the relevant time irrespective of the amounts paid or credited as paid on the shares; and

- (b) for the purpose of calculating the excess referred to in rule 16.1(a), any amount unpaid on a share is to be treated as property of the Corporation.

16.2 Division of property

- (a) If the Corporation is wound up, the liquidator may divide among the members the whole or any part of the property of the Corporation in accordance with the proportion of shares held by each member at the relevant time. Nothing in this rule 16.2 adversely affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (b) Rule 15.3 applies, so far as it can and with necessary changes, to a division by a liquidator under rule 16.2(a) as if references in rule 15.3 to the directors and to a distribution or capitalisation were references to the liquidator and to the division under rule 16.2(a) respectively.

17 Minutes and records

17.1 Minutes

The directors must cause minutes of:

- (a) all proceedings and resolutions of general meetings;
- (b) proceedings and resolutions of meetings of the directors and of committees of the directors;
- (c) resolutions passed by members without a meeting;
- (d) resolutions passed by a director or directors without a meeting; and
- (e) declarations made by a director of a single director Corporation,

to be recorded and entered in books kept for that purpose, within one month after the meeting is held, the resolution is passed or the declaration is made.

17.2 Signing of minutes

- (a) Minutes of a meeting must be signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.
- (b) Minutes of the passing of a resolution without a meeting or the making of a declaration must be signed by a director within a reasonable time after the resolution is passed.

17.3 Minutes as evidence

A minute that is recorded and signed in accordance with rules 17.1 and 17.2 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

17.4 Inspection of records

- (a) Subject to the Corporations Act, the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Corporation or any of them will be open to the inspection of members other than directors.
- (b) A member other than a director does not have the right to inspect any books, records or documents of the Corporation except as provided by law or authorised by the directors.

18 Indemnity and insurance

18.1 Persons to whom rules 18.2 and 18.4 apply

Rules 18.2 and 18.4 apply:

- (a) to each person who is or has been a director or executive officer (within the meaning of rule 13.3(a)) of the Corporation;
- (b) to such other officers or former officers of the Corporation or of its related bodies corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the Corporation or of its related bodies corporate.

18.2 Indemnity

The Corporation must indemnify to the extent permitted by law, each person to whom this rule 18.2 applies for all losses or liabilities incurred by the person as an officer or, if the directors so determine, an auditor of the Corporation or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

18.3 Extent of Indemnity

The indemnity in rule 18.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 18.2 applies even though that person may have ceased to be an officer or auditor of the Corporation or of a related body corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- (c) operates only to the extent that the loss or liability is not covered by insurance.

18.4 Insurance

The Corporation may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 18.4 applies against any liability incurred by the person as an officer or auditor of the Corporation or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

18.5 Agreement and Access to Corporation Books

The Corporation may enter into an agreement with a person referred to in rule 18.1 (Persons to whom rules 18.2 and 18.4 apply) with respect to the matters covered by this rule 18. An agreement entered into pursuant to this rule may include provisions relating to rights of access to books of the Corporation conferred by the Corporations Act or otherwise by law.

18.6 Savings

Nothing in rule 18.2 or 18.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the Corporation to indemnify or provide insurance for any person to whom those rules do not apply.

19 Notices

19.1 Notices by the Corporation to members

- (a) A notice may be given by the Corporation to a member:
 - (i) by serving it personally at, or by sending it by post in a prepaid envelope to, the member's address as shown in the register of members or such other address, or by fax or electronic mail to such fax number or electronic address, as the member has supplied to the Corporation for the giving of notices; or
 - (ii) if the member does not have a registered address and has not supplied another address to the Corporation for the giving of notices, by exhibiting it at the registered office of the Corporation.
- (b) A notice may be given by the Corporation to a person entitled to a share as a result of a Transmission Event by serving it or sending it in the manner authorised by rule 19.1(a)(i) addressed to the name or title of the person, at or to the address, fax number or electronic address supplied to the Corporation for the giving of notices to that person, or if no address, fax number or electronic address has been supplied, at or to the address, fax number or electronic address to which the notice might have been sent if the relevant Transmission Event had not occurred.
- (c) The fact that a person has supplied a fax number or electronic address for the giving of notices does not require the Corporation to give any notice to that person by fax or electronic mail.
- (d) A notice given to a member in accordance with rules 19.1(a) or (b) is, despite the occurrence of a Transmission Event and whether or not the Corporation has notice of that occurrence:
 - (i) duly given in respect of any shares registered in that person's name; and
 - (ii) sufficient service on any person entitled to the shares as a result of the Transmission Event.
- (e) A notice given to a person who is entitled to a share as a result of a Transmission Event is sufficient service on the member in whose name the share is registered.
- (f) Any person who, because of a transfer of shares, becomes entitled to shares registered in the name of a member is bound by every notice which, before that person's name and address is entered in the register of members in respect of those shares, is given to the member in accordance with this rule 19.1.
- (g) A signature to any notice given by the Corporation to a member under this rule 19.1 may be in writing or a facsimile printed or fixed by some mechanical or other means.
- (h) A certificate signed by a director or secretary of the Corporation to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

19.2 Notices by the Corporation to directors

Subject to this constitution, a notice may be given by the Corporation to any director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's usual residential or business address, or such other address, or by fax or electronic mail to such fax number or electronic address, as the director has supplied to the Corporation for the giving of notices.

19.3 Notices by members or directors to the Corporation

Subject to this constitution, a notice may be given by a member or director to the Corporation by serving it on the Corporation at, or by sending it by post in a prepaid envelope to, the registered office of the Corporation or by fax or electronic mail to the principal fax number or electronic address at the registered office of the Corporation.

19.4 Notices to members outside Australia

A notice to be sent to a member outside Australia and its external territories must be sent by airmail or by fax or by electronic mail, or in another way that ensures it will be received quickly.

19.5 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax, the notice is to be taken to be given on the business day after it is sent.
- (c) Where a notice is sent by electronic mail, service of the notice is taken to be effected if the sender receives a confirmation of delivery and is taken to have been effected on the business day after it is sent.
- (d) Where the Corporation gives a notice under rule 19.1(a)(ii) by exhibiting it at the registered office of the Corporation, service of the notice is to be taken to be effected when the notice was first so exhibited.

19.6 Other communications and documents

Rules 19.1 to 19.5 (inclusive) apply, as far as they can and with necessary changes, to the service of any communication or document.

19.7 Notices in writing

A reference in this constitution to a notice in writing includes a notice given by fax, electronic mail or another form of written communication.

20 General

20.1 Currency

An amount payable to the holder of a share, whether by way of or on account of dividend, return of capital, participation in the property of the Corporation on a winding up or otherwise, may be paid, with the agreement of the holder or pursuant to the terms of issue of the share, in the currency of a country other than Australia and the directors may fix a date up to 30 days before the payment date as the date on which any applicable exchange rate will be determined for that purpose.

20.2 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of Tasmania, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

20.3 Subsidiaries

- (a) The Corporation may not:
 - (i) form, or participate in the formation of, any company, trust, managed investment scheme, other body corporate, partnership or joint venture; or
 - (ii) acquire any:
 - (A) any shares or other securities in a company;
 - (B) any interest, including any units, in any trust;
 - (C) any interest in any managed investment scheme;
 - (D) any interest in any other body corporate; or

- (E) any interest in any partnership or joint venture, without the prior approval of the members of the Corporation.
- (b) The Corporation is, to the maximum extent practicable, to ensure that every subsidiary complies with the subsidiary's constitution (if any) and with the requirements of the *Water and Sewerage Corporation Act 2012* (Tas).
- (c) The constitution of a subsidiary is to be substantially consistent with this constitution except to the extent that changes are required to permit a subsidiary to:
 - (i) be a single member company;
 - (ii) have a single director; or
 - (iii) as otherwise necessary for the efficient operation of the subsidiary.

20.4 Limit on borrowings

- (a) In respect of a financial year, the members by special resolution may determine the maximum total amount that may be borrowed by the Corporation and all its subsidiaries during that financial year.
- (b) The secretary of the Corporation must notify all the subsidiaries of the Corporation, in writing, of a maximum total amount determined under rule 20.4(a) if it has been so determined.
- (c) The Corporation must ensure that the total of all amounts borrowed by the Corporation and all its subsidiaries during a financial year does not exceed the maximum total amount determined under rule 20.4(a) in respect of that financial year.
- (d) Except where approved by a special resolution of members and by the Minister in accordance with the *Water and Sewerage Corporation Act 2012* (Tas), the Corporation must not borrow from any person other than the Tasmanian Public Finance Corporation.
- (e) The terms and conditions of any borrowing is to be in accordance with any guidelines issued by the Treasurer.
- (f) For the purpose of rule 20.4(e), borrowing means any borrowing, loan, temporary accommodation, advance or other form of raising funds in relation to which the principle is repayable.

20.5 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

SCHEDULE 1 – DICTIONARY

1 Dictionary

In this constitution:

Business Day means a day on which banks are open for business in Hobart excluding Saturdays, Sundays and public holidays in Hobart.

Chief Owners' Representative means the chief of Owners' Representatives appointed under Rule 9.2(a).

Corporation means Tasmanian Water and Sewerage Corporation Pty Ltd (ACN 162 220 653).

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

Council means a council within the meaning of the *Local Government Act 1993* (Tas).

Crown means the Crown in Right of Tasmania.

Deputy Chief Representative means the deputy chief of Owners' Representatives appointed under Rule 9.2(b).

General Manager means a person appointed as, and currently holding the position of, general manager under section 61 of the *Local Government Act 1993*.

Government Member Resolution means a resolution in relation to which only the Crown's Owner's Representative is entitled to vote, and which the Crown's Owner's Representative votes in favour of.

Guarantee means a guarantee, indemnity, letter of credit, letter of comfort or other assurance or assumption of responsibility given at any time for a debt or liability of another person or the solvency or financial condition of that person.

Member means the member Councils and the Crown.

Northern Region has the same meaning as set out in the *Acts Interpretation Act 1931* (Tas).

North-western Region has the same meaning as set out in the *Acts Interpretation Act 1931* (Tas).

Ordinary Majority means a majority representing more than 50% of:

- (a) in relation to the members of the Corporation, all of the members;
- (b) in relation to the Owners' Representatives representing members of the Corporation from a particular Region, all the Owners' Representatives representing members of the Corporation from that Region;
- (c) in relation to the Owners' Representatives of the Corporation, all the Owners' Representatives of the Corporation; and
- (d) in relation to the Selection Committee, all the Selection Committee.

Owners' Representatives means the Owners' Representatives appointed under rule 9.

Region means the Northern Region, North-western Region or Southern Region.

Representative, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act or a corresponding previous law.

Seal means any common seal, duplicate seal, share seal or certificate seal of the Corporation.

Selection Committee means the selection committee established under rule 11.

Share Subscription and Implementation Agreement means the Share Subscription and Implementation Agreement between the Corporation and the Crown.

Southern Region has the same meaning as set out in the *Acts Interpretation Act 1931* (Tas).

Special Majority Members Resolution means a resolution of the members passed by at least 75% of the votes cast by members entitled to vote on the resolution.

Special Majority means a majority representing at least 75% of:

- (a) in relation to the Owners' Representatives representing members of the Corporation from a particular Region, all the Owners' Representatives representing members of the Corporation from that Region;
- (b) in relation to the Owners' Representatives of the Corporation, all the Owners' Representatives of the Corporation.

State Owned Business means any body or authority, whether incorporated or not, which is established or constituted by or under the *Government Business Enterprises Act 1995 (Tas)* or other Tasmanian statute, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor of Tasmania, a minister of the Crown or another government authority, but does not include a government department.

Transmission Event means in respect of a member of the Corporation which is a body corporate (including a Council or the Crown), the winding up or dissolution of the member or the succession by another body corporate to the assets and liabilities of the member.

2 Interpretation

2.1 General

- (a) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or Representative or by alternative means of simultaneous communication.
- (b) A director is to be taken to be present at a meeting of directors if the director is present in person or by alternative means of simultaneous communication.
- (c) Where a provision of this constitution establishes an office of chair, the chair may be referred to as a chairman or chairwoman, as the case requires.
- (d) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (e) In this constitution, headings and underlining are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to a person includes that person's successors and legal personal representatives;
 - (v) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
 - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2.2 Application of the Corporations Act

- (a) This constitution is to be interpreted subject to the Corporations Act and the *Water and*

Sewerage Corporation Act 2012 (Tas).

- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, has the same meaning as in that provision.
- (c) Subject to rule 2.2(b) of this Schedule 1, unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Act has the same meaning as in that section.

2.3 Exercise of powers

- (a) The Corporation may exercise in any manner permitted by the Corporations Act any power which under the Corporations Act a company limited by shares may exercise if authorised by its constitution.
- (b) Where this constitution provides that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- (e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
 - (i) to appoint a person to act in the office or position until a substitute person is appointed to the office or position;
 - (ii) subject to any contract between the Corporation and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (iii) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this constitution confers power on a person or body to delegate a function or power:
 - (i) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (ii) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (iii) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
 - (iv) the delegation may include the power to delegate;
 - (v) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion,

belief or state of mind of the delegate in relation to that matter; and

- (vi) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

2.4 Replaceable rules not to apply

The replaceable rules applicable to a proprietary company contained in the Corporations Act from time to time do not apply to the Corporation.

2.5 Best Efforts

Any provision of this constitution which requires a person to use best efforts to procure that something is performed or occurs does not include any liability:

- (a) (payment): to pay any money, or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person; or
- (b) (legal action): to commence any legal action against any person, to procure that that thing is done or happens;

except:

- (c) (fees): for payment of any applicable fee for the lodgement or filing of any relevant application with any governmental agency; or
- (d) (contrary provision): where that provision expressly specifies otherwise.

SCHEDULE 2 – SHARE CAPITAL STRUCTURE

Table 1.

Council	Class of Share	Number of Shares
Break O’Day	“A” ordinary shares	1,889,811
Dorset	“B” ordinary shares	953,905
Flinders	“C” ordinary shares	188,981
George Town	“D” ordinary shares	1,106,889
Launceston	“E” ordinary shares	13,318,668
Meander	“F” ordinary shares	2,717,728
Northern Midlands	“G” ordinary shares	2,267,773
West Tamar	“H” ordinary shares	3,194,681
Burnie	“I” ordinary shares	3,707,629
Central Coast	“J” ordinary shares	4,256,574
Circular Head	“K” ordinary shares	1,421,858
Devonport	“L” ordinary shares	4,895,510
Kentish	“M” ordinary shares	386,961
King Island	“N” ordinary shares	278,972
Latrobe	“O” ordinary shares	1,709,829
Waratah Wynyard	“P” ordinary shares	2,528,747
West Coast	“Q” ordinary shares	1,619,838
Brighton	“R” ordinary shares	2,636,736
Central Highlands	“S” ordinary shares	449,955
Clarence	“T” ordinary shares	9,521,048
Derwent Valley	“U” ordinary shares	1,169,883
Glamorgan-Spring Bay	“V” ordinary shares	1,790,821
Glenorchy	“W” ordinary shares	9,368,063
Hobart	“X” ordinary shares	9,350,065
Huon Valley	“Y” ordinary shares	1,835,816
Kingborough	“Z” ordinary shares	5,318,468
Sorell	“AA” ordinary shares	1,403,860
Southern Midlands	“BB” ordinary shares	665,933
Tasman	“CC” ordinary shares	44,996
Crown	“DD” ordinary shares	Refer to Table 2.

Table 2⁸

Subject to the Crown meeting its obligations to subscribe for shares in accordance with the Share Subscription and Implementation Agreement, the Crown’s shareholding shall progressively increase up to a maximum of 10,000,000 in 2024, as set out below:

Subscription Date	Number of Shares	Subscription Amount
1 January 2019	1,000,000	\$20,000,000
1 January 2020	1,000,000	\$20,000,000
1 January 2021	1,000,000	\$20,000,000
1 January 2022	2,000,000	\$40,000,000
1 January 2023	2,500,000	\$50,000,000
1 January 2024	2,500,000	\$50,000,000
	10,000,000	\$200,000,000

⁸ Amended by resolution on 24 June 2021.

SCHEDULE 3 – EQUITY PROPORTIONS PER MEMBER FOR DISTRIBUTION PURPOSES

Council	Class of Share	Percentage
Break O’Day	“A” ordinary shares	1.94%
Dorset	“B” ordinary shares	0.97%
Flinders	“C” ordinary shares	0.18%
George Town	“D” ordinary shares	1.13%
Launceston	“E” ordinary shares	13.62%
Meander	“F” ordinary shares	2.78%
Northern Midlands	“G” ordinary shares	2.34%
West Tamar	“H” ordinary shares	3.28%
Burnie	“I” ordinary shares	4.14%
Central Coast	“J” ordinary shares	4.77%
Circular Head	“K” ordinary shares	1.58%
Devonport	“L” ordinary shares	5.46%
Kentish	“M” ordinary shares	0.44%
King Island	“N” ordinary shares	0.33%
Latrobe	“O” ordinary shares	1.91%
Waratah Wynyard	“P” ordinary shares	2.81%
West Coast	“Q” ordinary shares	1.81%
Brighton	“R” ordinary shares	3.08%
Central Highlands	“S” ordinary shares	0.51%
Clarence	“T” ordinary shares	11.06%
Derwent Valley	“U” ordinary shares	1.36%
Glamorgan-Spring Bay	“V” ordinary shares	2.07%
Glenorchy	“W” ordinary shares	10.86%
Hobart	“X” ordinary shares	10.86%
Huon Valley	“Y” ordinary shares	2.12%
Kingborough	“Z” ordinary shares	6.16%
Sorell	“AA” ordinary shares	1.62%
Southern Midlands	“BB” ordinary shares	0.76%
Tasman	“CC” ordinary shares	0.05%
Crown	“DD” ordinary shares	0.00%

SCHEDULE 4 – SPECIAL MAJORITY MEMBERS RESOLUTION

The matters requiring a Special Majority Members Resolution are:

- (a) (strategic direction) any substantial alteration in the strategic direction of the business or the entry into any new business by the Corporation;
- (b) (sale) any sale, purchase or reconstruction, including by way of any buy-back of shares or capital reduction, by the Corporation which would result in a change in the level of the Corporation's ownership of any equity or shares or any trading business, including the Business;
- (c) (new issues) the issue and terms of issue of any Shares;
- (d) (consultancy fees) any proposal for or any changes to the consultancy fees payable to or other non-Board remuneration arrangements with the chairman;
- (e) (asset disposals) any sale, lease, exchange or other disposition of:
 - (i) all or a material part of the assets of the Corporation unless specified in the budget; or
 - (ii) all or a substantial part of the business.

SCHEDULE 5 – 75% BY MEMBER, 75% BY EQUITY RESOLUTION

Subject to the matters which require a Government Member Resolution in accordance with Schedule 6, the matters requiring a resolution of the members passed by:

- (a) at least 75% by number of the members of the Corporation entitled to vote; and
- (b) any combination of members that hold at least 75% of votes cast by members of the Corporation entitled to vote on the resolution

are:

- (c) any resolution to amend Schedule 2 or Schedule 3 of this constitution; and
- (d) any resolution as a result of the winding up, liquidation or dissolution of any member of the Corporation.

SCHEDULE 6 – GOVERNMENT MEMBER RESOLUTIONS

The matters requiring a Government Member Resolution are:

- (a) any amendment or revocation and substitution of the Shareholders' Letter of Expectations which involves a change to the process for adoption and amendment of the Corporation's corporate plan (including any mechanism for resolving any dispute regarding the adoption of amendments to the corporate plan);
- (b) any amendments to:
 - (i) the role of the Crown's Owner's Representative in the process to approve, or request amendments to, the corporate plan; or
 - (ii) the Crown's Owner's Representative's role in the mechanism to avoid deadlock in the event that there is any dispute over adopting any amendments to the corporate plan;
- (c) any amendments to the role of the Crown's Owner's Representative on the Selection Committee;
- (d) any amendments to the right of the Crown's Owner's Representative to be consulted in relation to the appointment of the Chief Executive Officer; and
- (e) any amendments to rule 6.8(d) or to this Schedule 6.