

CONSTITUTION

of

PUBLIC TRANSPORT OMBUDSMAN LIMITED

Version as at October 2008

CONSTITUTION

of

PUBLIC TRANSPORT OMBUDSMAN LIMITED

**A COMPANY LIMITED BY GUARANTEE AND
NOT HAVING SHARE CAPITAL**

CORPORATIONS ACT 2001 (CTH)

CONSTITUTION

of

PUBLIC TRANSPORT OMBUDSMAN LIMITED

1 NAME

The name of the Company is PUBLIC TRANSPORT OMBUDSMAN LIMITED.

2 INTERPRETATION

2.1 Definitions

In this Constitution and the Charter:

“**Annual Funding Figure**” in respect of a Financial Year means the figure to be contributed by the members towards the total funding of the Scheme for that Financial Year, approved by the members in general meeting in accordance with **clause 11.7** (as may have been varied under **clause 11.8**).

“**Annual Levy**” means the annual levy imposed on members to cover operating costs of the Scheme.

“**Authorised Officer**” has the same meaning as under the Transport Act 1983 (Vic).

“**BAV**” means the Bus Association Victoria (Inc).

“**Budget**” means the budget for each Financial Year set in accordance with **clause 11.9**.

“**Budget Committee**” has the meaning specified in **clause 11.5**.

“**Bus Company**” has the same meaning as under the Transport Act 1983 (Vic).

“**Chairperson**” has the meaning specified in **clause 14.8**.

“**Charter**” has the meaning ascribed in **clause 17.1**.

“**Company Secretary**” means any person appointed to perform the duties of Company Secretary of PTO Limited and includes any person appointed to perform the duties of a secretary of PTO Limited temporarily.

“**Constitution**” means this constitution as amended from time to time.

“**Consumer Directors**” means a Director appointed by the Minister described in **clause 14.5**.

“**Corporate Representative**” means a person authorised to act as the representative of a corporation pursuant to section 250D of the Corporations Act 2001 (Cth).

“**Defaulting Member**” means a defaulting member as described in **clause 10.3**.

“Director” means any director of PTO Limited for the time being and includes an alternate Director.

“Directors” or the **“Board”** means the whole or any number of Directors assembled at a meeting of Directors not being less than a quorum.

“DPT” means the Director of Public Transport under the Transport Act 1983 (Vic).

“Financial Year” means a financial year of PTO Limited, as described in **clause 21.3**.

“Founding Members” means V/Line Passenger Pty Ltd (Subject to Deed of Company Arrangement) A.C.N. 087 425 269, Connex Melbourne Pty Ltd A.C.N. 087 516 210, Metrolink Victoria Pty Limited A.C.N. 085 719 053, Bus Association Victoria (Inc), Victorian Rail Track, Southern Cross Station Authority and Metlink Victoria Pty Ltd A.C.N. 105 274 904.

“Free School Bus Service” means a passenger transport service provided by a Bus Company for the purpose of carrying students to or from school, pursuant to:

- (a) a contract with the Secretary to the Department of Infrastructure; and
- (b) the service provision and travel eligibility policies of the Department of Education and Training.

“Free School Bus Trip” means any passenger trip provided as part of a Free School Bus Service.

“Industry Director” means a Director appointed by a member described in **clause 14.3(a)(b) and (c)**.

“member” means any person for the time being admitted to membership of PTO Limited, all of whom thereby contract to be bound by and come within the auspices of the Scheme.

“Memorandum of Understanding” or **“MOU”** means the agreement to be entered into between the Ombudsman and the Victorian Ombudsman in relation to defining respective responsibilities, consultative and referral arrangements in respect of the investigation and facilitation of resolution of complaints about Authorised Officers and Public Statutory Bodies, where the jurisdiction and functions of the Ombudsman overlap with the jurisdiction and functions of the Victorian Ombudsman.

“month” means calendar month.

“Minister” means the Minister for Transport for Victoria.

“Ombudsman” means the Public Transport Ombudsman appointed pursuant to **clause 18**.

“Passenger Trips” means passenger trips provided in, or partly in, the State of Victoria, but does not include Free School Bus Trips.

“PTO Limited” means Public Transport Ombudsman Limited.

“Public Statutory Body” has the same meaning as in the Ombudsman Act 1973 (Vic).

“Scheme” means the public transport ombudsman scheme.

“Seal” means the Common Seal of PTO Limited.

“Secretary to the Department” has the same meaning as “Secretary” under section 2 of the Transport Act 1983 (Vic.).

“Train Operator” means a body that falls within the definition of train operator under the Transport Act 1983 (Vic) or the Rail Corporations Act 1996 (Vic).

“Tram Operator” has the same meaning as under the Transport Act 1983 (Vic).

“Victorian Ombudsman” has the same meaning as under the Ombudsman Act 1973 (Vic).

“Year” means a period of 12 consecutive months.

2.2 **Construction**

Unless expressed to the contrary in this Constitution:

- (a) Words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender shall include the other genders; and
 - (iii) persons shall include corporations, public bodies and any other bodies corporate.
- (b) References to "in writing" and "written" include typing, printing, lithography and any other mode of representing or reproducing words or figures in a visible form including words or figures displayed on an electronic screen.
- (c) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (d) Terms defined in the Corporations Act 2001 (Cth) and not defined in this Constitution have the same meaning when used in this Constitution.

2.3 **Replaceable Rules**

The replaceable rules contained in the Corporations Act 2001 (Cth) do not apply to PTO Limited and are replaced by the rules set out in this Constitution.

3 **OBJECTS**

- 3.1 The objects of PTO Limited are to establish a public transport ombudsman scheme and to appoint a public transport ombudsman with power on behalf of PTO Limited, subject to the limitations set out in the Charter, to receive, to investigate and to facilitate the resolution of:

- (a) complaints as to the provision or supply of (or the failure to provide or supply) public passenger transport or any goods or services related to the provision or supply (or the failure to provide or supply) public passenger transport services by or for a member;

- (b) complaints in relation to the sale of tickets including ticketing machines, ticket retailers and ticket refunds;
- (c) complaints relating to infrastructure related matters (including, without limitation graffiti, vandalism and cleanliness);
- (d) complaints regarding the conduct or behaviour of Authorised Officers, where under the MOU the Ombudsman is the appropriate body to receive, investigate and facilitate the resolution of the complaint;
- (e) complaints in relation to Public Statutory Bodies providing public transport services or related activities, where under the MOU the Ombudsman is the appropriate body to receive, investigate and facilitate the resolution of the complaint;
- (f) complaints regarding the conduct or behaviour of officers, employees, agents or contractors of members;
- (g) complaints in relation to a member's use of, or the effect of a member's conduct, operations or activities on or in relation to, land or premises;
- (h) complaints referred by the DPT in relation to the conduct, operation or activities of a member's public passenger transport business; and
- (i) such other complaints as may by agreement with the Ombudsman, the complainant and the member be referred to the Ombudsman by a member.

4 POWERS

PTO Limited has all of the powers of a natural person, as set out in section 124(1) of the Corporations Act 2001 (Cth).

5 INCOME & PROPERTY OF PTO LIMITED

- 5.1 The whole of the income and property of PTO Limited shall be applied solely towards the promotion of the objects of PTO Limited as set out in this Constitution and no part shall be paid or transferred directly or indirectly to the members of PTO Limited by way of dividend, bonus or otherwise provided that nothing in this Constitution shall prevent the payment in good faith of remuneration to any officers or employees of PTO Limited or to any member of PTO Limited in return for any goods supplied or services actually rendered in the ordinary and usual course of business or prevent the payment of interest at prevailing market rates on money borrowed from any member of PTO Limited or reasonable and proper rent for premises let by any member to PTO Limited.
- 5.2 True accounts shall be kept of all moneys received and expended by PTO Limited, the matters in respect of which such moneys are received and expended, and of the property, credits and liabilities of PTO Limited. Subject to any reasonable restrictions as to the time and manner of inspecting the same imposed in accordance with this Constitution and the Corporations Act 2001 (Cth), the accounts shall be open for inspection by the members. At least once in every year, the accounts of PTO Limited shall be examined by a properly qualified auditor or auditors who shall report to the members in accordance with the provisions of the Corporations Act 2001 (Cth).

6 LIABILITY OF MEMBERS LIMITED

6.1 The liability of the members is limited.

6.2 Every member undertakes that in the event that PTO Limited is wound up during the currency of the member's membership or within one year of the member ceasing membership, it will contribute to the property of PTO Limited for:

- (a) payment of the debts and liabilities of PTO Limited incurred before it ceased to be a member;
- (b) the costs, charges and expenses of winding up;
- (c) an adjustment of the rights of the contributories among themselves; and
- (d) such other amount as may be required,

provided the sum of the amounts payable under **paragraphs (a), (b), (c) and (d)** shall not exceed one hundred dollars (\$100).

7 MEMBERS OF PTO LIMITED

The members of PTO Limited shall consist of such persons who agree in writing to become members of PTO Limited and who are admitted to membership pursuant to this Constitution from time to time.

8 MEMBERSHIP

8.1 A person shall be eligible to become a member only if the person:

- (a) is:
 - (i) a Train Operator;
 - (ii) a Tram Operator;
 - (iii) the BAV;
 - (iv) Victorian Rail Track;
 - (v) Southern Cross Station Authority;
 - (vi) MetLink Victoria Pty Ltd A.C.N 105 274 904;
 - (vii) a body which the Board considers conducts either:
 - (A) operations of a public passenger transport nature in the State of Victoria; or
 - (B) activities which relate to or affects public passenger transport in the State of Victoria,

and which the Board determines should be admitted as a member of the Company;

- (viii) any body which the Board considers is a successor to, or has a similar role to, any of the bodies referred to in (i) to (vii) above (inclusive); and
- (b) completes an application for membership in the form prescribed by the Board at the time the application is made; and
- (c) provides an undertaking referred to in **clause 8.2** below.

8.2 Acceptance of Applications

- (a) When an application for membership by an eligible person is accompanied by an undertaking (in a form specified by the Board) to pay the Annual Levy determined in accordance with this Constitution and the Board is satisfied that the applicant is willing and able to meet the obligations of members under this Constitution including, without limitation, the obligations of members to make the payments required in **clauses 9** and **11** of this Constitution, then the Board shall accept the application. The Board is under no obligation to accept an application for membership unless the conditions of this clause have been satisfied or the Board considers that the person making an application for membership does not fall within the class of members eligible to become a member of the Company or should not be admitted as a member of the Company. The Board may impose any lawful conditions on a person or body to or as part of accepting an application for membership.
- (b) A person shall become a member when their application is accepted by the Board.
- (c) It is intended that the members of PTO Limited will include the Founding Members.

8.3 Transferability

- (a) Except as provided in this clause, the rights and privileges of a member shall not be transferable.
- (b) If:
 - (i) a member ("**Transferor**") has entered into an agreement to transfer a public passenger transport business conducted or operated by the member to another person ("**Transferee**"); and
 - (ii) the Transferee provides PTO Limited with a copy of an acknowledgment in writing in a form acceptable to the Board by the Transferor that the relevant public passenger transport business has been transferred to the Transferee by the Transferor; and
 - (iii) if the Transferee is not a member, it provides PTO Limited with an application for membership in the form prescribed by the Board accompanied by an undertaking (in a form specified by the Board) by the Transferee to pay the Annual Levy contribution determined in accordance with this Constitution; and
 - (iv) the Transferee provides PTO Limited with an undertaking (in a form specified by the Board) to assume all liabilities, claims and

responsibilities of the Transferor under the Scheme as at the date of transfer of the relevant public passenger transport business, including (without limitation) all liability for any outstanding amount of the Annual Levy and for any claims against the Transferor by complainants or prospective claimants arising before or after the date of transfer (if the Transferee is already a member it will be required to give such an undertaking promptly, or failing that will be taken to have given such an undertaking in the form determined by the Board); and

- (v) the Transferor (and the Transferee if applicable) is not in breach of this Constitution; and
- (vi) the Board is satisfied:
 - (A) as to those matters specified in **clause 8.2(a)** in respect of the Transferee, if the Transferee is not already a member; and
 - (B) that proper arrangements have been made for the satisfaction of any claims against the Transferor by complainants or prospective complainants arising before or after the date of the transfer of the member's public passenger transport business,

then the Board may resolve:

- (c) if the Transferee is not already a member of PTO Limited, to transfer the Transferor's membership of PTO Limited to the Transferee and the Transferee shall become a member and the Transferor shall cease to be a member of PTO Limited from the date of such transfer; or
- (d) if the Transferee is already a member of PTO Limited, to transfer the liabilities of the Transferor under the Scheme to the Transferee from a particular date and the Transferor shall cease to be a member of PTO Limited from that date; and
- (e) to credit any amounts paid by the Transferor in respect of the Annual Levy for any unexpired period to the Transferee.

8.4 **BAV Membership**

BAV acknowledges and agrees that it holds membership of PTO Limited only in its capacity as representative of Bus Companies excluding those Bus Companies exclusively providing Free School Bus Services.

9 ANNUAL LEVIES

- 9.1 Each member agrees to pay the Annual Levy in two tranches at six monthly intervals (or such other times as determined by the Board). The Annual Levy and the manner of payment shall be determined annually by the Board and shall be based on the amount required to fund the Annual Funding Figure for the relevant year.
- 9.2 Not used.
- 9.3 In relation to each Financial Year the Board will determine the allocation of the Annual Levy as between members having regard to the interests of all members.
- 9.4 All Annual Levy contributions shall be due and payable 30 days after the date on which the member is notified of the amount to be paid.

10 CESSATION OF MEMBERSHIP

- 10.1 Subject to **clause 10.2**, any member may withdraw from PTO Limited (subject to the member complying with any requirements for such withdrawal imposed by law or any agreement it has with the Crown, the Secretary to the Department of Infrastructure or the DPT for the provision by that member of any public passenger transport services) by giving to the Company Secretary not less than 12 months notice to that effect. A member's membership shall cease on expiry of such notice.
- 10.2 Not used.
- 10.3 If any member ("**Defaulting Member**") neglects or wilfully refuses to comply with the provisions of this Constitution, the Charter, or any rules of PTO Limited, the Directors may pass a resolution recommending the expulsion of the Defaulting Member from PTO Limited. The Directors must, within 21 days of the resolution of Directors being passed, convene a meeting of members and the recommendation must be put before the members to determine whether or not to adopt the Directors' recommendation and expel the Defaulting Member.
- 10.4 Any person who ceases to be a member of PTO Limited shall forfeit all and any rights and privileges of membership as at the date of cessation of membership and shall have no further rights against or claim upon PTO Limited or the property or funds of PTO Limited, except rights or claim as a creditor (if any), and any right or claim arising from actions or omissions during the period of membership.
- 10.5 Subject to **clause 8.3(b)**, any person who ceases to be a member shall:
- (a) continue to be liable for payment of monies due to PTO Limited by the member and unpaid as at the date of cessation of membership and in addition for any sum for which that person is liable as a member of PTO Limited under **clause 6.2** of this Constitution; and
 - (b) continue to be bound by (and shall discharge) any determination of the Ombudsman made in respect of any complaint unresolved or outstanding at the date of cessation of membership; and

- (c) continue to abide by provisions of the Constitution and Charter so far as they are applicable to the particular complaints which are being investigated by the Ombudsman and the time the membership ceases.

11 FUNDING

Special Levies

- 11.1 The Board may at any time and from time to time obtain money for the purposes of PTO Limited in addition to the Annual Levy by raising a special levy from the members.
- 11.2 Not used.

Loans

- 11.3 The Board may, by unanimous resolution, raise loan funds from members or third parties for particular purposes except that any such loan may not be raised without the approval of PTO Limited in general meeting, if the amount of the loan together with the amount of all other loans raised under this **clause 11.3** exceeds \$250,000.

Preparation by Ombudsman of Business Plans and draft Annual Funding Figures and Budgets

- 11.4 For each Financial Year, the Board shall require the Ombudsman to prepare a business plan for PTO Limited and to submit it to the Board at least 90 days before the commencement of that Financial Year. The Board shall require the Ombudsman to submit with the business plan a proposed Annual Funding Figure and a proposed Budget for the relevant Financial Year.

Annual Funding Figures and Budgets

- 11.5 The Board will, from time to time, appoint a committee to be known as the Budget Committee, comprising an equal number of Directors appointed by the members and Directors appointed by the Minister representing users of public passenger transport services (not being the Chairperson of the Board).
- 11.6 The Budget Committee will, for each Financial Year, formulate a proposed Annual Funding Figure for PTO Limited and a proposed Budget in consultation with the Ombudsman, and submit them to the Board at least 60 days before the commencement of that Financial Year.
- 11.7 The Board will, for each Financial Year, produce a proposed Annual Funding Figure for PTO Limited and a proposed Budget, taking into consideration the proposed Annual Funding Figure and proposed Budget formulated by the Budget Committee, and will ensure that the Board's proposed Annual Funding Figure is put before a general meeting of PTO Limited to be voted upon at least 30 days before the commencement of that Financial Year. In producing proposed Annual Funding Figures the Board will seek to ensure that the level of funding is such that the Ombudsman is able to carry out his or her functions under this Constitution and the Charter, provided the Annual Funding Figure does not increase from year to year by more than 10%, unless otherwise agreed by the members.

- 11.8 Variations to Annual Funding Figures of PTO Limited may be proposed by the Board but will only be effective once passed by PTO Limited in general meeting, except that if a motion to accept such a variation is not passed when put to a general meeting of PTO Limited, the Board may, if it considers appropriate, refer the proposed variation once only to a further general meeting of PTO Limited for reconsideration.
- 11.9 If the Annual Funding Figure put by the Board to a general meeting of PTO Limited in accordance with **clause 11.7** is passed by the meeting, the Board's proposed Budget will become the Budget for the relevant Financial Year. If the Annual Funding Figure put by the Board to a general meeting of PTO Limited in accordance with **clause 11.7** is not passed by the meeting, the Board must refer within 7 days a revised proposed Annual Funding Figure to a further general meeting of PTO Limited for reconsideration. If the revised Annual Funding Figure is not agreed by the members at the meeting, the Board shall refer the matter to the Director of Public Transport for decision. The members and the Board acknowledge that the decision of the Director of Public Transport will determine the Annual Funding Figure for that Financial Year and is final.

Goods and Services Tax

- 11.10 All dollar amounts stated in this Constitution are exclusive of goods and services tax ("GST"). If PTO Limited is required to pay GST in connection with any supply to a member, the member must at the time it pays PTO Limited for the supply also pay to PTO Limited the amount of GST payable (or if no payment is due to PTO Limited for the supply, must pay to PTO Limited promptly upon request the amount of GST payable), subject to receiving a valid tax invoice from PTO Limited for the supply. Without limiting this paragraph, when members pay to PTO Limited any levy due under this Constitution, they must at the same time pay to PTO Limited the GST calculated on that levy, subject to receiving a valid tax invoice from PTO Limited.

12 GENERAL MEETINGS

- 12.1 Annual General Meetings of PTO Limited shall be held in accordance with the provisions of the Corporations Act 2001 (Cth). All General Meetings other than Annual General Meetings shall be called General Meetings.
- 12.2 General Meetings may be convened by the Board whenever it thinks fit or by requisition as provided by the Corporations Act 2001 (Cth).
- 12.3 Subject to the provisions of the Corporations Act 2001 (Cth) relating to special resolutions and consent to short notice, at least twenty-one days' notice (exclusive of the day on which the notice is served or received or deemed to be served or received and exclusive of the day for which notice is given) specifying the place, the day and the time of meeting and, in the case of special business, the general nature of that business, shall be given to persons entitled to receive such notices from PTO Limited.
- 12.4 All business that is transacted at a General Meeting and also all business that is transacted at an Annual General Meeting (with the exception of the consideration of the accounts, financial statements and the reports of the Board and auditors) shall be special business.

- 12.5 Accidental omission to give notice of a General Meeting or Annual General Meeting by PTO Limited to, or the non-receipt of notice of a meeting by, any member shall not invalidate proceedings at a General Meeting or Annual General Meeting.

13 PROCEEDINGS AT GENERAL MEETINGS

Quorum

- 13.1 No business shall be transacted at a General Meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as otherwise provided in this Constitution, four members shall constitute a quorum at any General Meeting. For the purpose of this **clause 13.1**, persons attending as a proxy or Corporate Representative shall be counted as members.
- 13.2 If within 30 minutes of the time appointed for a General Meeting, a quorum is not present, the meeting shall, if convened upon the requisition of members, be dissolved or, in any other case, stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Chairperson may determine (being a day which is not more than 30 days after the originally scheduled date).

Adjourned Meetings

- 13.3 If a quorum of four members is not present within 30 minutes after the time appointed for the commencement of the adjourned meeting (and notice of the meeting having been properly given in accordance with this Constitution) then the quorum shall be any three members.

Chairperson

- 13.4 The Chairperson of the Board shall preside as Chairperson at General Meetings of PTO Limited. If the Chairperson of the Board is not present within 30 minutes of the time appointed for holding a General Meeting or if the Chairperson of the Board is unable or unwilling to act, then the members present shall elect one of their number to be Chairperson of the General Meeting.
- 13.5 The Chairperson of any General Meeting may, with the consent of the majority of those members present at the General Meeting (being a Meeting at which a quorum is present) adjourn the General Meeting. No business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place. Except as otherwise provided by this Constitution, it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned General Meeting.

Voting

- 13.6 At any General Meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded before or on the declaration of the result of the show of hands by any member present in person, by proxy, by attorney or by Corporate Representative and who is entitled to vote.

Unless a poll is so demanded, a declaration by the Chairperson of the General Meeting that a resolution has been carried, carried unanimously, carried by a particular majority or lost

on a show of hands and an entry to that effect in the book containing the minutes of the proceedings of PTO Limited shall be conclusive evidence of the fact of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

- 13.7 If a poll is duly demanded, it shall be taken either at once or after an interval or adjournment and in such manner as the Chairperson of the General Meeting directs. On a poll each member will have one vote.
- 13.8 The result of the poll shall constitute the resolution of the meeting at which the poll was demanded provided that a poll demanded on the election of a Chairperson of the General Meeting or on the question of adjournment shall be taken immediately.
- 13.9 In the case of an equality of votes on a show of hands or on a poll, the Chairperson of the General Meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote and the motion shall be lost.
- 13.10 A member may vote in person, by proxy, by attorney or by Corporate Representative. On a show of hands, every member shall have one vote.

Proxies and Other Authorities

- 13.11 The instrument appointing a proxy shall be in writing and signed by the appointor or his or her duly authorised attorney or, if the appointor is a corporation, either under seal or under the hand of an officer or duly authorised attorney of the corporation. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A member shall be entitled to instruct his or her proxy to vote in favour of or against any proposed resolution. Unless otherwise instructed, a proxy may vote as he or she thinks fit.
- 13.12 The instrument appointing a proxy may be in any common or usual form acceptable to the Directors.
- 13.13 The instrument appointing a proxy for a member and a copy of the power of attorney or other authority under which it is signed or notarially certified (if any) shall be deposited at the registered office of PTO Limited (or at such other place within the state of Victoria as is specified for that purpose in the notice convening the General Meeting) not less than 24 hours before the General Meeting or adjourned General Meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. In default of the foregoing requirements, the instrument of proxy shall at the discretion of the Chairperson of the General Meeting be invalid.
- 13.14 A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding:
 - (a) revocation of the instrument; or
 - (b) revocation of the authority under which the instrument was executed,

unless an indication in writing of such revocation has been received at the registered office of PTO Limited before the commencement of the General Meeting at which the instrument is used.

- 13.15 Any corporation or other body corporate which is a member of PTO Limited may authorise such person as it thinks fit to act as its Corporate Representative at any General Meeting of PTO Limited. The person so authorised shall be entitled to exercise the same powers on behalf of the appointor as the appointor could exercise if it were a human member of PTO Limited in accordance with his or her authority until his or her authority is revoked by the corporation or other body corporate.

Meetings by Electronic Means

13.16 If -

- (a) the members confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications,
- (b) all the members who for the time being are entitled to receive notice of a General Meeting receive notice of the conference and have access to the means by which the conference is to take place, and
- (c) each of the members taking part in the conference is able to hear each of the other members taking part in the conference,

then all the provisions of this Constitution relating to General Meetings and Annual General Meetings shall apply to the conference as if such conference were a meeting of members and as if the members taking part in the conference were physically present together at a meeting, and any resolution passed by such conference shall be deemed to have been passed at a General Meeting or Annual General Meeting (as the case may be) held on the day on which and at the time at which the conference was held.

The fact that a member is taking part in the conference shall be made known to all the other members taking part, and no member may disconnect or cease to have access to their means of communication or otherwise cease to take part in the conference unless they make known to all other members taking part that they are ceasing to take part in the conference. Until a member makes it known that they are ceasing to take part in the conference they shall be deemed to continue to be present and to continue to form part of the quorum.

Modifications to the Constitution

- 13.17 Subject to **clause 13.18**, the Constitution may be modified or repealed from time to time in accordance with section 136(2) of the Corporations Act 2001 (Cth).
- 13.18 Any resolution to modify or repeal the Constitution or any provision of the Constitution that would have the effect of:
- (a) fettering the Minister's power to appoint or remove a Consumer Director; or
 - (b) fettering the Minister's power to appoint or remove the Chairperson, or
 - (c) amending the objects of the PTO Limited; or

- (d) amending the Charter,

will have no effect unless the prior written consent to such amendment or repeal is obtained from the Minister.

Notification of proposed amendments to the Constitution

- 13.19 The Board must submit to the DPT a copy of any proposed resolution to modify or repeal the Constitution prior to the resolution being submitted to the members for consideration.

14 DIRECTORS AND MANAGEMENT OF PTO LIMITED

- 14.1 Subject to the Corporations Act 2001 (Cth) and to this Constitution, PTO Limited and the business, affairs and property of PTO Limited shall be managed by a Board of Directors consisting of up to eleven Directors.

The Board

- 14.2 Not used.

- 14.3 The following classes of members may appoint, between them three Directors to the Board (and shall also be entitled to fill any vacancy in those positions):

- (a) members who are Train Operators providing public passenger transport services;
- (b) members who are metropolitan Tram Operators providing public passenger transport services; and
- (c) the BAV.

(“Industry Directors”)

- 14.4 The members referred to in **clause 14.3** may appoint more than three Directors if agreed by the Board, provided that the number of Directors appointed by such members shall not exceed five. An independent Chairperson shall be appointed in accordance with **clause 14.8**.
- 14.5 The Minister shall appoint three Directors (or such other number as is equal to the number of Directors of the PTO Limited Board appointed by the members referred to in **clause 14.3**) representing the interests of users of public transport services (**“Consumer Directors”**).
- 14.6 Subject to this Constitution, if any Consumer Director ceases to hold a position as a Director, that vacancy must be filled within three calendar months (or such longer period as the Directors may otherwise resolve) by a person appointed by the Minister as representing users of public transport services.
- 14.7 Any decision by the Minister as to the appointment of a Consumer Director or a Chairperson may be made by the Minister in his or her absolute discretion.

Chairperson

- 14.8 The independent Chairperson of the Board shall be appointed by the Minister and is a Director of PTO Limited in addition to the Directors appointed under **clauses 14.3 and 14.5**. The independent Chairperson must not be associated with any member or Director of PTO Limited.

Vacation of Office

- 14.9 The office of a Director shall become vacant if the Director:
- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
 - (b) becomes prohibited from holding the office of a director of a company under the Corporations Act 2001 (Cth);
 - (c) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
 - (d) resigns his or her office by notice in writing to PTO Limited;
 - (e) is absent from meetings of the Board for more than 6 months without permission of the Board;
 - (f) holds any office of profit under PTO Limited or receives any payment from PTO Limited other than remuneration properly payable in accordance with this Constitution;
 - (g) is removed by the members described in clause 14.3 in the case of Industry Directors; by the Minister in the case of the Chairperson; or by the Minister, in the case of Consumer Directors; or
 - (h) in the case of Directors appointed by the members described in clause 14.3 ceases to be employed by or to be an officer of a member, or also in the case of the BAV cease to be employed by or to be an officer of a Bus Company, unless otherwise resolved by the members described in clause 14.3.

Remuneration

- 14.10 The members may in General Meeting approve a total annual figure for the remuneration of the Directors. If so (and in no other case), the Directors may, by resolution of the Board, be entitled to be paid out of the funds of PTO Limited, as remuneration for their ordinary services as Directors. Such remuneration must be the same for each Director, except that the Board may resolve that the independent Chairperson may receive greater remuneration than the other Directors. Remuneration fixed by the Board for the Directors' ordinary services must not exceed the relevant total annual figure approved by the members in General Meeting. If any Director performs services which, in the opinion of the Board, are outside the scope of the ordinary duties of a Director, he or she may be paid a sum determined by the Board, by way of special remuneration.

15 POWERS AND DUTIES OF THE DIRECTORS

- 15.1 The business, affairs and property of PTO Limited shall be managed by the Board who may pay all expenses incurred in promoting and registering PTO Limited out of the funds of PTO Limited and may exercise all the powers and do all the acts and things as may be exercised or done by PTO Limited that are not required to be exercised by PTO Limited in General Meeting, subject nevertheless to this Constitution, the Charter, the provisions of the Corporations Act 2001 (Cth) and such regulations as are not inconsistent with this Constitution, the Charter or the law as may be prescribed by the Board or PTO Limited in General Meeting.

Any rule, regulation or by-law made by the Board shall be circulated among members within one month of its coming into being.

- 15.2 Each officer of PTO Limited (including each Director) must comply with the following duties (insofar as the Corporations Act 2001 (Cth) imposes on them, or they are otherwise imposed by law, from time to time):

- (a) he or she must at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office;
- (b) in the exercise of his or her powers and the discharge of his or her duties, he or she must exercise the degree of care and diligence that a reasonable person in a like position in a corporation would exercise in PTO Limited's circumstances;
- (c) he or she must not make improper use of information acquired by virtue of his or her position to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to PTO Limited; and
- (d) he or she must not make improper use of his or her position to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to PTO Limited.

Each officer of PTO Limited (including each Director) must also comply with all other obligations imposed by law on him or her.

- 15.3 The Board may exercise all PTO Limited's borrowing powers, subject to **clause 11.3**.
- 15.4 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments drawn on bank accounts maintained by PTO Limited and all receipts for money paid to PTO Limited shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in the manner determined by the Board from time to time.
- 15.5 The Board shall cause Minutes to be made of:
- (a) all appointments of officers and employees of PTO Limited;
 - (b) the names of Board members present at all General Meetings and meetings of the Board; and
 - (c) all resolutions and proceedings at General Meetings and meetings of the Board.

Upon confirmation of any minutes made, the Chairperson of the meeting at which the proceedings are held or the Chairperson of the next succeeding meeting shall sign the minutes.

16 PROCEEDINGS OF THE DIRECTORS

- 16.1 The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Company Secretary shall on the requisition of a Director summon a meeting of the Board.

Voting

- 16.2 Subject to **clause 16.3**, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Board shall be deemed a determination of the Board.
- 16.3 Decisions of the Board in respect of levies and funding (other than loans) under **clauses 9 and 11** must be passed at a meeting of Directors by a majority of at least 75% of such Directors as, being entitled to do so, vote in person (or by their alternate) at that meeting. Decisions in respect of loan funding must, in accordance with **clauses 11.3** be passed unanimously.

Quorum

- 16.4 Subject to **clause 16.5** and this Constitution, the number of Directors necessary for a quorum shall be four, except that in the period between establishment of PTO Limited and the first time at which there are four or more Directors on the Board, the quorum shall be three.
- 16.5 In the event that there is unequal representation of Consumer and Industry Directors (excluding the independent Chairperson) present at a meeting of the Board then:
- (a) the Industry Directors present at such meeting will collectively have three votes;`
and
 - (b) the Consumer Directors present at such meeting will collectively have three votes.
- 16.6 The Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as a quorum of the Board, the Directors may only act for the purpose of calling a General Meeting and seeking such amendments to this Constitution as would be desirable in the circumstances to enable sufficient Directors to be appointed to constitute a quorum, or to amend **clause 16.4**.

Chairperson

- 16.7 If there is no Chairperson or if he or she is not present within 10 minutes after the time appointed for holding a meeting of the Board, then the Directors present may choose a Director to be Chairperson of the meeting.
- 16.8 The Chairperson of any meeting of the Board shall have a casting vote at that meeting.

Committees

- 16.9 The Board may delegate any of its powers and/or functions (except powers conferred and duties imposed on the Directors by law which are incapable of delegation) to one or more committees consisting of such persons as the Board thinks fit. The Budget Committee and any committee so formed shall:
- (a) conform to any regulation that may be imposed by the Board; and
 - (b) have power to co-opt any person or persons provided that any person so co-opted shall not have a vote on such committee unless so authorised by the Board.
- 16.10 Subject to this Constitution, a committee may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee members present and, in the event of an equality of votes, the Chairperson of the committee shall not have a second or casting vote, and the motion shall be lost.
- 16.11 All acts done by the Board, a committee or by any person acting as a Director or committee member shall be valid, notwithstanding that it is subsequently discovered that:
- (a) there was some defect in the appointment of any Board or committee member or person so acting; or
 - (b) a Board or committee member or any of them was disqualified,
- as if every such person had been duly appointed and was qualified to hold their purported office.

Resolutions in Writing

- 16.12 A resolution in writing signed by all the Directors for the time being entitled to receive notice of meetings of the Board shall be valid and effectual as if it had been passed at a duly convened meeting of the Board. Any such resolution may consist of several identical documents each signed by one or more Directors.

Meetings by Electronic Means

- 16.13 If -
- (a) the Directors confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications,
 - (b) all the Directors who for the time being are entitled to receive notice of a meeting of the Directors receive notice of the conference and have access to the means by which the conference is to take place, and

- (c) each of the Directors taking part in the conference is able to hear each of the other Directors taking part in the conference,

then all the provisions of this Constitution relating to meetings of the Board shall apply to the conference as if such conference were a meeting of the Board and as if the Directors taking part in the conference were physically present together at a meeting, and any resolution passed by such conference shall be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held.

The fact that a Director is taking part in the conference shall be made known to all the other Directors taking part, and no Director may disconnect or cease to have access to his or her means of communication or otherwise cease to take part in the conference unless he or she makes known to all other Directors taking part that he or she is ceasing to take part in the conference. Until a Director makes it known that he or she is ceasing to take part in the conference he or she shall be deemed to continue to be present and to continue to form part of the quorum.

Declarations of Interest

- 16.14 A Director may not be counted in any quorum considering any contract or proposed contract with PTO Limited in which he or she is interested nor vote in respect of any such contract or proposed contract unless the Director discloses the existence and nature of that interest to the Board prior to voting and if he or she does so vote without making disclosure, his or her vote shall not be counted. Such Director may attest the affixation of the seal to such a contract.
- 16.15 In addition to the requirements of **clause 16.14**, if a Director has a material personal interest in a matter being considered by the Board, the requirements of the Corporations Act 2001 (Cth) must be satisfied.

Alternate Directors

- 16.16 With the prior approval of the Board or, in the case of a Director appointed by the Minister, with the prior approval of the Minister, any Director may appoint:
 - (a) any person or another Director to be an alternate or substitute Director in his or her place during such period as he or she thinks fit; and
 - (b) a second person or Director to be an alternate or substitute Director to replace the first appointed alternate or substitute Director if he or she is unable or unwilling to act.

Any alternate or substitute director shall be entitled to notice of meetings of Directors, to attend and vote at such meetings and to exercise all the powers of the appointor in his or her place. An alternate or substitute director shall ipso facto vacate office if the appointor vacates or is removed from office. Any appointment or removal under this **clause 16.16** shall be effected by notice in writing signed by the appointor and delivered to the registered office of PTO Limited.

- 16.17 An alternate director who is also a Director in his or her own right shall be entitled to vote in his or her own capacity as Director and again for each alternate directorship held.

17 CHARTER

- 17.1 Subject to this Constitution, PTO Limited shall operate in accordance with and observe the roles, functions, powers and obligations set out in the Public Transport Ombudsman Charter (“**Charter**”) annexed to this Constitution for the time being in force and as that document may be modified or amended from time to time.
- 17.2 In becoming a member of PTO Limited each member agrees:
- (a) to be bound by and observe the terms of the Charter (to the extent that it is consistent with this Constitution); and
 - (b) that the Charter shall only be amended with the prior written consent of the Minister.

18 OMBUDSMAN

- 18.1 The Board shall appoint the Ombudsman of the Scheme whose terms of appointment shall include an undertaking by the Ombudsman to be bound by the provisions of the Charter and such other terms as the Board may recommend.
- 18.2 The Ombudsman must not be associated with any member or Director of PTO Limited.
- 18.3 The Board may terminate the appointment of any person as the Ombudsman.
- 18.4 The Board and each member shall use its reasonable endeavours to ensure that the Ombudsman complies with the Scheme.

19 COMPANY SECRETARY

The Company Secretary shall be appointed by the Board for such term and upon such terms and conditions as the Board thinks fit. The Company Secretary may be removed by the Board. If the Company Secretary is also a Director of PTO Limited, he or she shall not be entitled to receive any remuneration except as provided by this Constitution.

20 SEAL

The Board shall provide for the safe custody of the Seal which shall only be used by the authority of the Board or a committee of Directors authorised by the Board on their behalf. Every instrument to which the Seal is affixed shall be signed by a Director and shall be countersigned by the Company Secretary, a second Director or some other person appointed by the Board for that purpose.

21 ACCOUNTS

- 21.1 The Board shall cause proper accounts and other records to be kept and shall distribute copies of financial statements and related documents as required by law.
- 21.2 Subject to the Corporations Act 2001 (Cth), the Board shall determine the times and places at which and the conditions and regulations upon which the accounting and other records

of PTO Limited shall be open for inspection by the members in accordance with **clause 5.2** of this Constitution.

- 21.3 The financial year of PTO Limited shall be the period from 1 July in each year to the following 30 June.

22 NOTICES

- 22.1 Any notice required by law or by or under this Constitution to be duly given to any member shall be given (where permitted by the Corporations Act 2001 (Cth)) by delivery in person, by prepaid post, by facsimile transmission or by electronic mail sent to his or her street address, facsimile number or electronic mail address (as the case may be) in the register of members, and in the case of notice given by facsimile transmission or electronic mail, confirmed by prepaid post to the member's street address in the register of members, the confirmation being sent within one day after the sending of the facsimile transmission or electronic mail. Where a notice is sent by post from within Australia, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and to have been effected 2 days after the date of posting. Where a notice is sent by facsimile transmission or electronic mail its delivery shall be deemed to have been effected on the day of the sending of the facsimile transmission or electronic mail.
- 22.2 Notice of every General Meeting shall be given in any manner authorised by this Constitution to:
- (a) every member except those members who have not supplied an address to PTO Limited for the giving of notices; and
 - (b) the auditor or auditors for the time being of PTO Limited, if required by law.
- 22.3 No other person shall be entitled to receive notice of General Meetings.

23 REVIEWS OF SCHEME

The Board shall conduct reviews of the Scheme and develop proposals for its continued operation. Such a review shall be undertaken at least by the fifth anniversary of the inception of the Scheme. All reviews shall be conducted in consultation with interested parties, including groups representing users of public passenger transport services, community groups representing public interest issues relevant to public passenger transport services, members and the DPT.

24 WINDING UP

If upon the winding-up or dissolution of PTO Limited in accordance with the Corporations Act 2001 (Cth) and after satisfaction of all its debts and liabilities, there remains any property whatsoever, the same shall be paid to or distributed to a charitable institution and/or a society, association or club which is not carried on for the purposes of profit or gain to its individual members and is established for community services purposes.

25 INDEMNITY

25.1 Definition of “Officer”

In this **clause 25**:

- (a) “**Officer**” means any of:
 - (i) a Director or Secretary; or
 - (ii) the Ombudsman; and
- (b) references to “**Officers**” include references to former Officers.

25.2 Indemnity to Officers

- (a) Subject to **clause 25.2(b)**, every Officer of PTO Limited shall be indemnified out of the assets of PTO Limited against all costs, losses, expenses and liabilities incurred by that Officer in the person's capacity as an Officer of PTO Limited by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer of PTO Limited.
- (b) An Officer or auditor of PTO Limited is not entitled to be indemnified out of the assets of PTO Limited for a liability:
 - (i) which arises out of conduct involving a lack of good faith;
 - (ii) where the liability is to PTO Limited or a related body corporate; or
 - (iii) where the liability is for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Corporations Act 2001 (Cth).

25.3 Indemnity for proceedings

Without limiting **clause 25.2**, every Officer of PTO Limited shall be indemnified out of the assets of PTO Limited against any liability for costs and expenses incurred by that person arising out of his or her duties as an Officer:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application in relation to such proceedings in which the court grants relief to the person under the Corporations Act 2001 (Cth).

25.4 Liability as between Officers

Subject to the Corporations Act 2001 (Cth), an Officer is not liable for the negligence, default or breach of duty of any other Officer except to the extent of the Officer's own negligence, default or breach of duty.

25.5 Benefit to survive

The benefit of any indemnity given under this **clause 25** continues, despite any amendment to or deletion of this **clause 25**, in respect of liability arising from acts or omissions occurring before the amendment or deletion. The indemnity shall continue to operate despite the resignation or removal of the relevant Officer from any office with PTO Limited.

25.6 Insurance

The Directors may authorise PTO Limited to enter into any insurance policy for the benefit of any Officer, to the extent permitted by law and on such terms as the Directors approve.

25.7 Taxation

The amount of any indemnity payment to an Officer must be calculated having regard to the impact of taxation laws upon the Officer in relation to payments required to be made by, or to, the Officer.