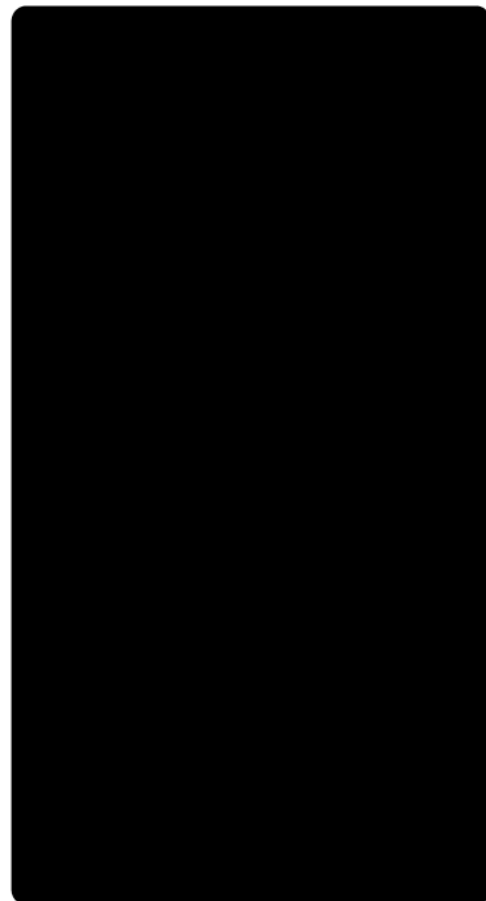
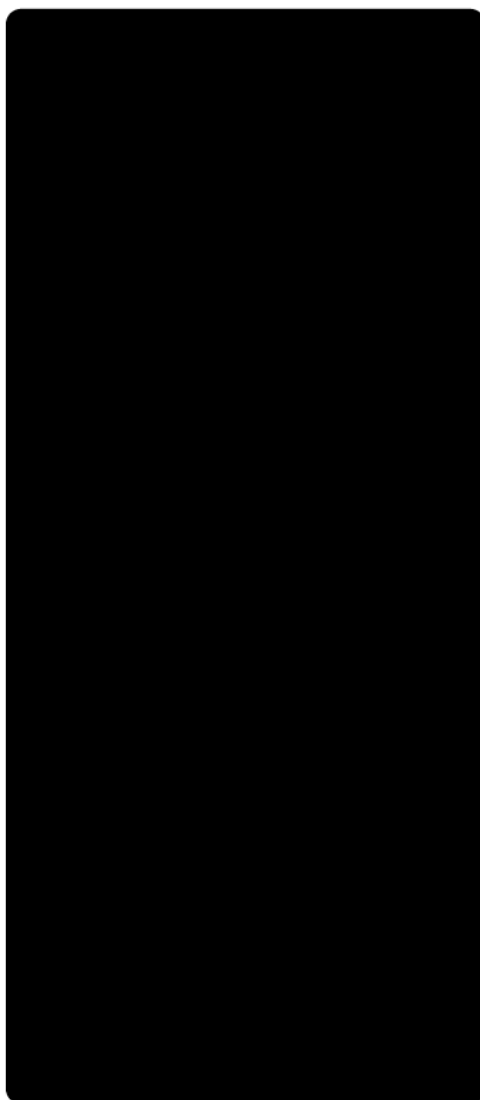


# The Tax Institute Constitution

Adopted on: 1 July 2025

A company limited by guarantee

ACN 008 392 372



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## 1 Definitions and interpretation

### 1.1 Definitions

In this Constitution, unless a contrary intention appears:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

**Additional Director** means an individual referred to in clause 11.2(a)(v) and appointed as a Director in accordance with clause 11.3(a)(ii).

**Annual General Meeting** has the same meaning as the term 'AGM' in the Corporations Act.<sup>1</sup>

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Licence** means the licence dated 10 July 1952 that was in force immediately before 1 July 1998 and the commencement of section 151(1) of the Corporations Act and allowed the Company to omit "Limited" from its name.

**By-Laws** means the By-Laws made by the Directors in accordance with clause 16.

**Company** means The Tax Institute being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 008 392 372.

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

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

**Director** means an individual holding office as director of the Company.

**Director Identification Number** has the same meaning it has in the Corporations Act.<sup>2</sup>

**Directors** means some or all of the Directors acting as a board.

**Division** means any group of people located in Australia or overseas that the Directors determines to be a Division in accordance with clause 27.1(a).

**Divisional Council** means a council for a Division established under 27.2(a).

**Divisional Councillor** means a member of the Divisional Council.

**Fit and Proper Person** has the same meaning it has in the *Tertiary Education Quality and Standards Agency Act 2011* (Cth).

**General Meeting** means a meeting of the Members of the Company and includes an Annual General Meeting.

**Immediate Past President** means the immediate past President of the National Council from time to time.

<sup>1</sup> At the time of adoption of this Constitution, section 9 provides that an AGM means an annual general meeting of a company that section 250N requires to be held.

<sup>2</sup> At the time of adoption of this Constitution, section 9 provides that a Director Identification Number means a director identification number given under:

(a) section 1272; or  
(b) section 308-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**Independent** means an individual who is independent from management and who does not have (or intend to have) any material or significant dealings with the Company (or Related Body Corporate) that could interfere with their exercise of independent judgment as a Director.

**Independent Director** means an individual who is referred to in clause 11.2(a)(iv) and appointed as a Director in accordance with 11.3(a)(i).

**Initial Director** means a person appointed as a director of the company on adoption of this constitution under clause 11.1(a).

**Legal Capacity** means, in relation to an individual, that the individual is at least 18 years of age, and that:

- (a) in the Directors' reasonable assessment, the individual is capable of understanding the nature and effect of their participation in the Company's affairs without the need of special assistance or explanation;
- (b) in the Directors' reasonable assessment, the individual is able to receive and understand communications and express their will in relation to the Company's affairs; or
- (c) their person or estate is not liable to be dealt with under the laws relating to mental health:
  - (i) on a permanent or ongoing basis;
  - (ii) in an involuntary manner; or
  - (iii) on a court ordered basis.

**Member** means a person entered on the Register of the Company as a member.

**National Council** means the National Council constituted under clause 26.

**National Council Director** means an individual appointed as a Director under clause 11.3(a)(iii).

**National Councillor** means a member of the National Council.

**Object** means the object of the Company as set out in clause 2.

**President** means the person appointed to the position of President of the National Council in accordance with the By-Laws.

**Register** means the register of members under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office for the time being of the Company.

**Related Body Corporate** has the same meaning it has in the Corporations Act.<sup>3</sup>

**Schedule** means a Schedule to this Constitution.

**Secretary** means an individual appointed as a secretary of the Company in accordance with clause 17.2.

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<sup>3</sup> At the time of adoption of this Constitution, section 9 provides that a related body corporate, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50.

**Special Resolution** has the same meaning it has in the Corporations Act.<sup>4</sup>

**State** means a State of Australia and unless the Directors resolve otherwise, for the purposes of this Constitution, includes the Australian Capital Territory and the Northern Territory.

**State Council** means a council for a State established under clause 27.2(a).

**State Councillor** means a member of a State Council.

**State Division** means the body of Members of the Institute registered in a State. Unless the Directors resolve to the contrary, the Australian Capital Territory shall be deemed to be part of the New South Wales State Division and the Northern Territory shall be deemed to be part of the South Australia State Division.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

**Taxation Laws** means laws relating to taxation including income tax, goods and services tax, capital gains tax, payroll tax, customs and excise duties, stamp duty, land and other property taxes, death, estate and gift duties and taxes and duties of any other kind whatsoever and taxation laws of any foreign country or place which affect in any way residents or citizens of Australia or persons carrying on business either in Australia or with residents or citizens of Australia.

**Vice-President** means the person appointed to the position of Vice-President of the National Council in accordance with the By-Laws.

**Virtual Meeting Technology** has the same meaning it has in the Corporations Act.<sup>5</sup>

**Voting Member** means a Member who is entitled to vote at a general meeting of Members under this Constitution or under the By-Laws.

## 1.2 Interpretation

In this Constitution, unless a contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;
- (d) a reference to a law includes regulations and instruments made under the law;
- (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a state, a territory, the Commonwealth of Australia or otherwise;

<sup>4</sup> At the time of adoption of this Constitution, section 9 provides that a Special Resolution means, in relation to a company, a resolution of the company that complies with section 250MA. Section 250MA provides that for a resolution to have effect as a Special Resolution:

- (a) the notice given to the Members in accordance with clause 9.3 must include the information required by section 249L(1)(c) in relation to the resolution; and
- (b) the resolution must be passed by at least 75% of the votes cast by Members who are entitled to vote on the resolution; and
- (c) the resolution must be otherwise valid.

<sup>5</sup> At the time of adoption of this Constitution, section 9 provides that Virtual Meeting Technology means any technology that allows a person to participate in a meeting without being physically present at the meeting.

- (f) a reference to a meeting includes a meeting by technology provided the technology gives the persons entitled to attend the meeting, as a whole, reasonable opportunity to participate without being physically present in the same place, and includes a General Meeting:
  - (i) at one or more physical venues;
  - (ii) at one or more physical venues and using Virtual Meeting Technology; or
  - (iii) using Virtual Meeting Technology only;
- (g) a reference to a person being present in person includes an individual participating in a meeting as described in clause 1.2(f);
- (h) a reference to a person being present includes an individual participating in a meeting in person or through a proxy or attorney;
- (i) a reference to a “place” includes the place or location where a General Meeting may be held, is held or is taken to be held under the Corporations Act if Virtual Meeting Technology is used in holding the meeting;
- (j) a reference to a person includes a natural person, corporation or other body corporate;
- (k) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (l) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

### **1.3 Signing and electronic communication**

Where, by a provision of this Constitution, a document including a notice is required to be signed or communicated, that requirement may be satisfied in any manner permitted by the applicable law of a state, a territory, or the Commonwealth of Australia relating to electronic signing and transmission of documents.

### **1.4 Corporations Act**

- (a) In this Constitution unless the contrary intention appears:
  - (i) expressions in this Constitution that deal with a matter dealt with by a particular provision of the Corporations Act have the same meaning as they have in the Corporations Act;
  - (ii) “section” means a section of the Corporations Act; and
  - (iii) while the Company is a registered charity under the ACNC Act:
    - (A) subject to clause 1.4(a)(iii)(B), the provisions of the Corporations Act in Part 2G.2 and Part 2G.3 apply as if section 111L(1) of the Corporations Act was not enacted; and
    - (B) if one of those provisions includes a reference to ASIC, including a reference to lodge any document with, or seek consent or approval from ASIC, that particular requirement does not apply to the Company.
- (b) The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

## **1.5 Headings**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

## **2 Object of the Company**

- (a) The Object of the Company is to pursue the charitable purpose of advancing education in relation to taxation and Taxation Laws.
- (b) The Company may pursue and promote its Object by, including but not limited to:
  - (i) encouraging the study, and advancing public knowledge and understanding, of taxation and Taxation Laws, the practices of public authorities administering Taxation Laws and the attitude of governments to Taxation Laws;
  - (ii) providing higher education that facilitates the study of taxation and Taxation Laws and encourages freedom of speech and academic freedom;
  - (iii) carrying out and encouraging research into the improvement or other reform of any Taxation Law; and
  - (iv) doing other things as are incidental or conducive to the attainment of the Object, including but not limited to:
    - (A) promoting enhanced expertise among those engaged in the provision of advice and services to the public, their employers, governments or public authorities in relation to taxation and Taxation Laws;
    - (B) promoting the sound administration of the law for the public benefit by promoting and enforcing standards of professional conduct amongst those engaged in the provision of advice and services in relation to taxation and Taxation Laws;
    - (C) providing services in relation to taxation and Taxation Laws which are appropriate for a public educational institution.

## **3 Powers**

The Company has the legal capacity and powers of:

- (a) an individual;
- (b) a body corporate under the Corporations Act.

## **4 Application of income for Object only**

### **4.1 Application of income and property**

The income and the property of the Company, however derived:

- (a) must be applied solely towards the promotion of the Object; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus, benefit or otherwise.



## **4.2 Payment in good faith**

Clause 4.1 does not prevent payment, directly or indirectly, in good faith to a Member:

- (a) of reasonable remuneration for services to the Company in the ordinary course of business;
- (b) for goods supplied by the Member to the Company in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed by the Company in the ordinary course of business from the Member at a rate not exceeding that fixed for the purposes of this clause 4.2(c) by the Company in a General Meeting;
- (d) of reasonable rent or equivalent payment (including licence fees) for use of premises let by the Member to the Company;
- (e) of out of pocket expenses incurred or goods supplied by a Member for or on behalf of the Company; or
- (f) in furtherance of the Object.

## **5 Winding up**

### **5.1 Guarantee by Members**

- (a) Each Member undertakes to contribute an amount not to exceed \$2 to the Company's property if the Company is wound up while they are a Member, or within 1 year after they cease to be a Member.
- (b) On winding up of the Company, this contribution is for:
  - (i) payment of the Company's debts and liabilities;
  - (ii) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves.

### **5.2 Application of property**

- (a) Subject to clause 4.2(f), if any property remains on the winding up or dissolution of the Company after satisfaction of all its debts and liabilities, then, that property may not be paid to or distributed among the Members but must be transferred to one or more funds or institutions:
  - (i) that have charitable purposes similar to, or inclusive of, the Object; and
  - (ii) are not-for-profit entities whose governing documents prohibit the distribution of its income and property among its members (if it has members) to at least the same extent as imposed on the Company under this Constitution.
- (b) The funds or institutions will be determined by the Directors at or before the time of dissolution.

## **6 ASIC Licence**

For so long as the Company holds the ASIC Licence, the Company must not:

- (a) breach a condition of the ASIC Licence;

- (b) pursue objects which would have prevented it being granted the ASIC Licence;
- (c) apply its income or property to promote objects which would have prevented it being granted the ASIC Licence; or
- (d) modify the Constitution to allow it to do anything which it is required not to do under this clause 6 or clause 5.

## **7 Membership**

### **7.1 Membership composition**

- (a) The Members at the date of adoption of this Constitution and any person the Directors admit to membership under clause 7.3 are the Members of the Company.
- (b) Each person who is a Member on the date of adoption of this Constitution will continue to be a Member until the end of the membership term that applied to their membership immediately prior to the adoption of this Constitution.
- (c) Each person who belongs to a particular class of membership on the date of adoption of this Constitution will continue in that same class of membership that applied immediately prior to the adoption of this Constitution.

### **7.2 Membership classes**

- (a) Membership classes, the qualifications required to become a Member in a particular class and the rights, obligations and privileges of Members of a particular class may be prescribed in the By-Laws from time to time.
- (b) The rights attached to any class of Voting Member may be varied or cancelled only with the written consent of 75% of Voting Members in that class or with the sanction of a Special Resolution passed at a meeting of the class of Voting Members whose rights are being varied or cancelled.

### **7.3 Admission as a Member**

The Directors may admit any person as a Member if the person is eligible under clause 7.4 and makes an application in accordance with clause 7.5.

### **7.4 Membership criteria**

To be eligible to be a Member, a person must:

- (a) satisfy the qualification requirements set out in the By-Laws;
- (b) consent in writing to become a Member; and
- (c) agree to be bound by this Constitution and the By-Laws as amended from time to time.

### **7.5 Membership process**

- (a) The application for membership or renewal of membership must be:
  - (i) in such form as the Directors may from time to time prescribe, signed by the applicant and returned to the Company as directed on the form; and
  - (ii) accompanied by the membership fee, if any, prescribed by the Directors.



- (b) Each application for membership or renewal of membership must be considered by the Directors in accordance with the By-Laws.
- (c) When an applicant has been accepted or rejected for membership, the Secretary must notify the applicant of the decision of the Directors within a reasonable period.

#### **7.6 Directors' discretion to admit or refuse admission as a Member**

The Directors have the discretion to refuse any person admission as a Member without giving any reason for refusing.

#### **7.7 Registration as Member**

If the Directors accept an application for membership, as soon as practicable, the Directors must cause the name of the person to be entered in the Register.

#### **7.8 Membership terms**

Members are to be admitted as Members for such terms as determined by the Directors and in accordance with the By-Laws.

#### **7.9 Membership fees**

The Members must pay such membership fees as prescribed from time to time by the Directors and in accordance with the By-Laws.

#### **7.10 Register**

- (a) The Company must establish and maintain a Register. The Register must be kept by the Secretary and must contain:
  - (i) for each current Member:
    - (A) name;
    - (B) address;
    - (C) any alternative address nominated by the Member for the service of notice;
    - (D) class of membership; and
    - (E) date the Member was entered on to the Register.
  - (ii) for each person who stopped being a Member in the last 7 years:
    - (A) name;
    - (B) address;
    - (C) any alternative address nominated by the Member for the service of notices;
    - (D) class of membership; and
    - (E) date the membership started and ended.
- (b) The Company must provide access to the Register in accordance with the Corporations Act.

#### **7.11 Rights not transferable**

The rights of a Member are not transferable.

### **7.12 Duty to notify**

A Member must notify the Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership, a class of Members or to membership of a Division no later than 28 days after the Member becomes aware of the change in circumstances.

### **7.13 Limited liability**

The Members have no liability as Members except as set out in clause 5.1.

## **8 Ceasing to be a Member**

- (a) A Member ceases to be a Member in the circumstances set out in the By-Laws.
- (b) A Member ceases to be a Member at the end of their membership term, or such other additional period as provided by the By-Laws, unless they have applied and been accepted for renewal of their membership pursuant to clause 7.5.
- (c) Subject to this Constitution, the By-Laws and in accordance with the law, the Board may discipline a Member or suspend or terminate a Member's membership at any time.
- (d) For a decision of the Directors under this clause to be effective, the general nature of the allegations made against the Member must be notified to the Member in writing and the Member must be given a reasonable opportunity to respond.

## **9 General Meetings**

### **9.1 Annual General Meetings**

Annual General Meetings are to be held in accordance with the Corporations Act.

### **9.2 Convening a General Meeting**

- (a) The Directors may convene and arrange to hold a General Meeting when they think fit and must do so if required to do so under the Corporations Act.
- (b) The National Council may convene and arrange to hold a General Meeting.

### **9.3 Notice of a General Meeting**

- (a) Notice of a General Meeting must be given in accordance with the Corporations Act and served in accordance with clause 33.
- (b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

### **9.4 Calculation of period of notice**

In computing the period of notice under clauses 9.3 and 9.6(c), both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **9.5 Cancellation or postponement of General Meeting**

- (a) Where a General Meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.

- (b) This clause 9.5 does not apply to a meeting convened in accordance with the Corporations Act by Members, by the Directors on the request of Members or to a meeting convened by a Court.

#### **9.6 Notice of cancellation or postponement of a meeting**

- (a) Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:
  - (i) to each Member individually; and
  - (ii) to each other person entitled to be given notice of a General Meeting under the Corporations Act.
- (b) A notice of postponement of a General Meeting must specify:
  - (i) the postponed date and time for the holding of the meeting;
  - (ii) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
  - (iii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.
- (c) The number of days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of days' notice of the General Meeting required to be given under clause 9.3.

#### **9.7 Business at postponed meeting**

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

#### **9.8 Proxy at postponed meeting**

Where by the terms of an instrument appointing a proxy:

- (a) the proxy is authorised to attend and vote at one or more General Meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by operation of this clause 9.8, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

#### **9.9 Non-receipt of notice**

The non-receipt of notice of a General Meeting or the convening, cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or the convening, cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the convening, cancellation or postponement of a meeting.

## **10 Proceedings at General Meetings**

### **10.1 Number of a quorum**

- (a) 15 Voting Members present are a quorum at a General Meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy appointed under clause 10.15 is to be counted, except that:
  - (i) where a Member has appointed more than one proxy, only one is to be counted; and
  - (ii) where an individual (whether a Member or not) is attending holding more than one proxy, that individual is to be counted only once.

### **10.2 Requirement for a quorum**

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.
- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairperson of the meeting (on the chairperson's own motion or at the request of a Member or proxy who is present) declares otherwise.

### **10.3 If quorum not present**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

### **10.4 Adjourned meeting**

At a meeting adjourned under clause 10.3(b), 2 Voting Members present at the meeting are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

### **10.5 Appointment and powers of chairperson of General Meeting**

If the Directors have elected one of their number as chairperson of their meetings under clause 21.1, that individual is also entitled to preside as chairperson at a General Meeting.

### **10.6 Absence of chairperson at General Meeting**

If a General Meeting is held and:

- (a) a chairperson has not been elected by the Directors; or
- (b) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following individuals may preside as chairperson of the meeting (in order of precedence):

- (c) the President (if the President is a Director under clause 11.2(a)(i)); or

- (d) a Director or Member elected by the Members present in person to preside as chairperson of the meeting.

#### **10.7 Conduct of a General Meeting**

- (a) The chairperson of a General Meeting:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
  - (ii) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
  - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the chairperson under this clause 10.7 is final.

#### **10.8 Adjournment of a General Meeting**

- (a) The chairperson of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
  - (i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present; and
  - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

#### **10.9 Notice of an adjourned General Meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned General Meeting unless it is adjourned for 1 month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

#### **10.10 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution at a General Meeting is taken to be carried if a simple majority of the votes cast on the resolution by Voting Members are in favour of it.

#### **10.11 Equality of votes – no casting vote for chairperson**

If there is an equality of votes, either on a show of hands or on a poll, then the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney, and consequently the resolution fails.

## **10.12 Voting at a General Meeting**

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on:
  - (i) a show of hands by Voting Members; or
  - (ii) where the meeting is being conducted by Virtual Meeting Technology, such other similar method as determined by the chairperson,
 unless a poll is properly demanded, and the demand is not withdrawn.
- (b) A declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, is conclusive evidence of the fact.
- (c) Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

## **10.13 Poll**

If a poll is demanded at a General Meeting:

- (a) it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairperson or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

## **10.14 Votes of Members**

- (a) Every Voting Member has one vote.
- (b) Subject to this Constitution, including clause 10.14(c):
  - (i) on a show of hands at a General Meeting, each Voting Member present in person and each other person present as a proxy of a Voting Member has one vote; and
  - (ii) on a poll at a General Meeting, each Voting Member present in person has one vote and each person present as proxy of a Voting Member has one vote for each Member that the person represents.
- (c) If the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands.

## **10.15 Right to appoint proxy**

- (a) Subject to the Corporations Act, a Member entitled to attend a General Meeting is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.



- (b) The instrument appointing a proxy must be in writing signed by the appointor or their attorney duly authorised in writing or, if the appointor is a corporation, either under seal or signed by an officer or attorney duly authorised.
- (c) The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- (d) A Voting Member is entitled to instruct their proxy to vote in favour of or against any proposed resolutions. The proxy may vote as they think fit unless otherwise instructed.
- (e) The instrument appointing a proxy may be in the form set out in Schedule 1 to this Constitution.
- (f) The instrument appointing a proxy (along with a certified copy of the power of attorney or other authority, if any, under which it is signed) must be received at:
  - (i) the Registered Office;
  - (ii) such other place within the state or territory in which the Company has its Registered Office, or to an email address, as is specified for that purpose in the notice convening the meeting; or
  - (iii) if the notice convening the meeting specifies other electronic means by which a proxy document may be received by the Company, by those other electronic means;

not less than 48 hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. Documents received after this time will not be treated as valid.
- (g) The Company receives a document referred to in clause 10.15(f):
  - (i) if the document is given by other electronic means as specified for that purpose in the notice convening the meeting, when the document is received by the Company as prescribed by the Corporations Act; and
  - (ii) otherwise, when the document is received at:
    - (A) the Registered Office; or
    - (B) a place specified for the purpose in the notice of meeting.

#### **10.16 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of a General Meeting at which a person votes as a proxy or attorney, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member revokes the appointment or authority; or
- (c) the Member is mentally incapacitated.

#### **10.17 Objection to voting qualification**

- (a) An objection to the right of a person to attend or vote at a General Meeting or adjourned meeting:
  - (i) may not be raised except at that meeting or adjourned meeting; and
  - (ii) must be referred to the chairperson of that meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

### **11 Directors**

#### **11.1 Number of Directors and composition of the Board**

- (a) On the date of adoption of this Constitution the Directors shall be:
  - (i) the person holding office as the independent chair of the National Council immediately prior to the adoption of the Constitution; and
  - (ii) the Directors under clauses 11.2(a)(i), 11.2(a)(ii), and 11.2(a)(iii);

**(Initial Directors)** subject to each person meeting the eligibility requirements in clause 11.4.
- (b) As soon as practicable after the adoption of this Constitution, the National Council shall meet to appoint the Independent Directors or Additional Directors who are to hold office until the next Annual General Meeting but are eligible for re-appointment.
- (c) Except in relation to the Initial Directors, the number of Directors must be such number between 5 and 7 as the Members determine. In the absence of any such determination, the number of Directors will be 6.

#### **11.2 Composition of the Directors**

- (a) Subject to clauses 11.1, 11.3(a)(iii) and 11.4, the Directors are to be comprised of:
  - (i) the President by virtue of their office;
  - (ii) the Vice-President by virtue of their office;
  - (iii) the Immediate Past President;
  - (iv) 2 to 3 individuals appointed under clause 11.3 to bring on expertise, skills and experience as the National Council regards as necessary or useful from time to time and who are Independent **(Independent Directors)**; and
  - (v) 0 to 2 individuals appointed under clause 11.3 **(Additional Directors)**.
- (b) At least half of the Directors must be Members.

#### **11.3 Directors appointed by National Council**

- (a) National Council must appoint:
  - (i) the Independent Directors;
  - (ii) the Additional Directors; and

- (iii) another National Councillor as Director should the President, Vice-President or Immediate Past President of the National Council decline to serve as a Director under either of clauses 11.2(a)(i), 11.2(a)(ii) or 11.2(a)(iii) during the term of that President, Vice-President and Immediate Past President, respectively.
- (b) Prior to each Annual General Meeting, the National Council must appoint a person to fill the office of each Individual Director and Additional Director who is retiring in accordance with clause 11.1(b) or clause 11.5(b).
- (c) The National Council's appointments of Independent Directors and Additional Directors under this clause 11.3 take effect from and must be announced at the Annual General Meeting.

#### **11.4 Qualifications of Directors**

- (a) To be eligible for the office of Director an individual must:
  - (i) be a Fit and Proper Person;
  - (ii) have a Director Identification Number; and
  - (iii) consent in writing to act as a Director.

#### **11.5 Terms and retirement of a Director**

- (a) Subject to clause 11.1(b), clause 11.5(b) and clause 11.7 an Independent Director or an Additional Director is appointed for a term of 3 years.
- (b) At each Annual General Meeting, any Independent Director or Additional Director who has held office for 3 years or more since last being appointed must retire from office but, subject to clause 11.6 is eligible for reappointment. A retiring Director holds office until the conclusion of the Annual General Meeting at which that Director retires.
- (c) The National Council may by ordinary resolution, remove any Director before the expiration of that Director's period of office and may, by an ordinary resolution, appoint another individual in the place of that Director.
- (d) In addition to the right to remove Directors under section 203D of the Corporations Act, the Members may by ordinary resolution remove any Director before the expiration of that Director's period of office.

#### **11.6 Reappointment of a Director**

An Independent Director or an Additional Director is entitled to seek reappointment as a Director on 2 occasions provided that a Director's period of continuous service to the Company does not exceed a period of 9 years, excluding any period of service under clauses 11.1(b) and 11.8 unless National Council, by ordinary resolution, elect to waive this requirement for a particular Director.

#### **11.7 Retirement of Directors – transitional rule**

- (a) At each of the second and third Annual General Meetings from the date of adoption of this Constitution, 1 Independent Director must retire from office but is eligible for reappointment.
- (b) The Independent Director who must retire at each of these meetings under clause 11.7(a) will be decided by lot, unless the National Council prescribes otherwise.

- (c) For the avoidance of doubt, this clause 11.7 ceases to have any application following the third Annual General Meeting from the date of adoption of this Constitution.

#### **11.8 Casual vacancy**

- (a) Subject to clauses 11.1, 11.2(a)(iv) and 11.2(a)(v), the Directors may at any time appoint any individual meeting the requirements of clause 11.4 to fill a casual vacancy as either an Independent Director or Additional Director, provided the total number of Directors does not exceed the number determined in clause 11.1(c).
- (b) A Director appointed under clause 11.8(a) holds office until the conclusion of the next Annual General Meeting but, subject to this Constitution and the By-Laws are eligible for appointment at that meeting.

#### **11.9 Appointment of officers**

The Directors are to appoint the other officers with such frequency as the Directors from time to time determine.

#### **12 Remuneration of Directors**

The Directors may, with the prior approval of the Members, be paid reasonable remuneration for their services as Directors.

#### **13 Expenses of Directors**

- (a) A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee of Directors or when otherwise engaged on the business of the Company.
- (b) Any payment to a Director must be approved by the Directors.

#### **14 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) ceases to be eligible under clause 11.4;
- (b) in the case of a National Council Director ceases to be a National Councillor;
- (c) resigns from the office by notice in writing to the Company having immediate effect or with effect from a specified date in the notice;
- (d) is not present at 3 successive meetings of the Directors without leave of absence from the Directors;
- (e) does not have Legal Capacity;
- (f) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditors;
- (g) becomes prohibited, disqualified or removed from being a Director by reason of any order of any court of competent jurisdiction or regulator; or
- (h) dies.

## **15 Powers and duties of Directors**

### **15.1 Directors to manage the Company**

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the National Council or by the Company in General Meeting.

### **15.2 Specific powers of Directors**

Without limiting the generality of clause 15.1, and subject to any trusts relating to the assets of the Company, the Directors may exercise all the powers of the Company to:

- (a) borrow or raise money;
- (b) charge any property or business of the Company; and
- (c) give any security for a debt, liability or obligation of the Company or of any other person.

### **15.3 Compliance with duties**

While the Company is a registered charity under the ACNC Act, each Director must comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the ACNC Act or the Corporations Act from time to time.

### **15.4 Delegation**

- (a) The Directors may resolve to delegate any of their powers to:
  - (i) the National Council;
  - (ii) a committee in accordance with clause 25;
  - (iii) a Director;
  - (iv) an employee of the Company on terms and subject to any restrictions to be decided by the Directors; or
  - (v) any other person on terms and subject to any restrictions to be decided by the Directors.
- (b) The power may be delegated for such time as determined by the Directors and the Directors may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.
- (d) The Directors may continue to exercise any power they have delegated.

## **16 By-Laws**

- (a) Subject to clause 16(b) and this Constitution, the Directors may from time to time by resolution make and rescind or alter By-Laws which are binding on the Directors, National Councillors and Members for the management and conduct of the business of the Company.

- (b) No resolution under clause 16(a) has any effect unless the National Council has provided their prior approval in writing or by resolution.

## **17 Chief Executive Officer, Secretary and Public Officer**

### **17.1 Chief Executive Officer**

- (a) The Directors may appoint a Chief Executive Officer on such terms and conditions (including as to remuneration) as they think fit.
- (b) The Directors may delegate any of their powers to the Chief Executive Officer and the Chief Executive Officer must exercise those powers:
  - (i) in accordance with the terms and subject to any restrictions or the directions of the Directors; and
  - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Directors,
 and may revoke the delegation at any time.
- (c) The Chief Executive Officer may be invited to attend all meetings of the Directors, but may not hold the office of a Director and is not entitled to vote.

### **17.2 Secretary**

- (a) There must be at least one Secretary who is to be appointed by the Directors.
- (b) The Directors may suspend or remove a Secretary from that office.
- (c) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

### **17.3 Public Officer**

The Directors must appoint an individual as Public Officer of the Company in accordance with the *Income Tax Assessment Act 1936* (Cth).

## **18 Appointment of attorney**

- (a) By power of attorney, the Directors may appoint any individual to be an attorney of the Company, with such powers, authorities and discretions of the Directors as the Directors think fit and for such purposes, period and conditions as determined by the Directors.
- (b) A power of attorney granted under clause 18(a) may contain any provisions for the protection and convenience of the attorney and persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

## **19 Conflicts of interest**

### **19.1 Disclosure of conflict of interest**

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the Directors; or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

### **19.2 Disclosure recorded in minutes**

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

### **19.3 Material personal interest**

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause 19.4:

- (a) be present at the meeting while the matter is being discussed; or
- (b) vote on the matter.

### **19.4 Present and voting**

A Director with a material personal interest in a matter may still be present and vote if:

- (a) their interest arises because they are a Member of the Company and the other Members have the same interest;
- (b) their interest arises in relation to remuneration as a Director of the Company;
- (c) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 34.2);
- (d) their interest relates to a payment by the Company under clause 34.1, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (e) ASIC makes an order allowing the Director to vote on the matter; or
- (f) the Directors who do not have material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Company; and
  - (ii) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## **20 Proceedings of Directors**

### **20.1 Directors' meetings**

- (a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

### **20.2 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

## **21 Chairperson and deputy chairperson of Directors**

### **21.1 Election of chairperson and deputy chairperson**

- (a) The Directors may elect from their number a chairperson of their meetings and may also determine the period for which the persons elected as chairperson and deputy chairperson are to hold office.
- (b) Ideally the chairperson will be an Independent Director.

### **21.2 Absence of chairperson at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairperson has not been elected under clause 21.1; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chairperson, if elected under clause 21.1, must be the chairperson of the meeting or, if the deputy chairperson is not present, the Directors present must elect one of their number to be a chairperson of the meeting.

### **21.3 No casting vote for chairperson at Directors' meetings**

In the event of an equality of votes cast for and against a resolution, the chairperson of the Directors' meeting does not have a second or casting vote, and consequently the resolution will not be passed.

## **22 Quorum for Directors' meeting**

- (a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is the greater of:
  - (i) 3; or
  - (ii) a majority of Directors holding office,
 of whom at least half must be Members.
- (b) The Directors may act despite a vacancy in their number but if the number of Directors falls below 3 the remaining Directors may, except in an emergency, act only for the purpose of filling casual vacancies to the extent necessary to bring



their number up to 3 (of which at least half are Members) or to convene a General Meeting.

## **23 Circular resolutions of Directors**

- (a) The Directors may pass a resolution without a Directors' meeting being held in the manner set out in this clause.
- (b) A circular resolution is passed if each Director entitled to vote on the resolution signs a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

## **24 Validity of acts**

All acts done at a meeting of the Directors, of a committee of Directors, the National Council, State Council or Division Council or by an individual acting as a Director, are taken as valid as if the relevant individual had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of an individual as a Director or of the individual so acting; or
- (b) an individual acting as a Director was disqualified or was not entitled to vote.

## **25 Committees**

### **25.1 Delegation to committees**

- (a) The Directors may delegate any of their powers, to a committee consisting of one or more Directors and such other individuals as they think fit and may revoke the delegation at any time.
- (b) A committee to which any powers have been delegated under clause 25.1(a) must exercise those powers:
  - (i) in accordance with the terms and subject to any restrictions and any directions of the Directors; and
  - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Directors,

and a power so exercised is taken to have been exercised by the Directors.

### **25.2 Meetings of committees**

A committee may meet and adjourn as it thinks proper.

### **25.3 Chairperson of a committee**

The members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members involved may elect one of their number to be chairperson of the meeting.

#### **25.4 Determination of questions**

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members present and voting.
- (b) In the event of an equality of votes, the chairperson of the meeting does not have a casting vote.

### **26 National Council**

#### **26.1 National Council**

- (a) There shall be constituted a National Council comprised of such Members appointed or elected by the Divisional Councils or State Councils in accordance with the By-Laws.
- (b) The National Council at the date of adoption of this Constitution is deemed to be the National Council constituted under clause 26.1(a).

#### **26.2 Powers and duties of the National Council**

- (a) The National Council shall exercise such powers and duties as is set out in this Constitution and the By-Laws or delegated by the Directors including, but not limited to:
  - (i) representing to the Directors the interests and views of Members;
  - (ii) liaising with and assisting Divisional Councils and State Councils;
  - (iii) advising and consulting with the Directors on matters critical to taxation and on such other matters as requested by the Directors from time to time;
  - (iv) appointing the Directors in accordance with clause 11.3; and
  - (v) removing the Directors in accordance with clause 11.5(c).
- (b) The National Council is an advisory council only. Any recommendations of the National Council do not bind the Directors.

#### **26.3 National Councillors**

- (a) The number of National Councillors and their terms of office shall be prescribed in the By-Laws.
- (b) National Councillors shall be elected or appointed by the Divisional Councils and State Councils in accordance with the By-Laws.
- (c) All National Councillors at the date of adoption of this Constitution will complete the remainder of their term, but, subject to the By-Laws, are eligible to be re-elected or re-appointed.

#### **26.4 Proceedings at meetings of the Council**

The meetings of National Council shall be governed in accordance with the By-Laws.

## **27 Divisions, State Divisions, Divisional Councils and State Councils**

### **27.1 Divisions and State Divisions**

- (a) The Directors may, from time to time, declare a group of people to be a Division, or a State or Territory of Australia to be a State Division, and may administer a Division or a State Division in any way they see fit, including:
  - (i) determining the geographical area or other criteria of a Division or State Division;
  - (ii) dissolving, merging, dividing or otherwise administering Divisions or State Divisions; and
  - (iii) allocating the Members to Divisions or State Divisions.
- (b) Any State Divisions existing at the date of adoption of this Constitution are deemed to be State Divisions established under clause 27.1(a).

### **27.2 Divisional Councils and State Councils**

- (a) The Directors may, from time to time, establish a council for a Division (a **Divisional Council**) or a State (a **State Council**).
- (b) No more than one council shall be created for a State or Division.
- (c) Any State Councils existing at the date of adoption of this Constitution are deemed to be State Councils established under clause 27.2(a)

### **27.3 Powers and duties of Divisional Councils and State Councils**

The Divisional Councils and State Councils shall exercise such powers and duties as are delegated by the Directors and prescribed in the By-Laws.

### **27.4 Divisional Councillors and State Councillors**

- (a) The number of Divisional Councillors and State Councillors and their terms of office shall be prescribed in the By-Laws.
- (b) Divisional Councillors and State Councillors shall be elected by the Voting Members of the relevant Division or State with guidance from the National Council and in accordance with the By-Laws.
- (c) All State Councillors at the date of adoption of this Constitution will complete the remainder of their term, but, subject to the By-Laws, are eligible to be re-elected.

### **27.5 Proceedings at meetings of the Divisional Councils and State Councils**

The meetings of Divisional Councils and State Councils shall be governed in accordance with the By-Laws.

## **28 Dispute resolution**

### **28.1 Handling a dispute**

Where there is a dispute, grievance or other disagreement between a Member and the Company, whether arising out of the application of this Constitution, the Rules or otherwise (**Dispute**), then either party must, prior to the commencement of any proceedings in a

Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) the Member and the Company must in the period of 14 days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute;
- (b) if the Company and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company;
- (c) if the disputants are unable to agree on a mediator within 7 days of the expiration of the Initial Period, the Member or the Company may request the chairperson of Resolution Institute<sup>6</sup> to nominate a mediator to whom the Dispute will be referred;
- (d) the costs of the mediation must be shared equally between the Member and the Company; and
- (e) where:
  - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 28.1(b);
  - (ii) the mediation has not occurred within 6 weeks of the date of the notice of the Dispute; or
  - (iii) the mediation fails to resolve the Dispute;

then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

## **28.2 Urgent interlocutory relief**

The procedure in clause 28.1 will not apply in respect of proceedings for urgent interlocutory relief.

## **29 Execution of documents**

Documents executed for and on behalf of the Company must be executed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; or
- (c) such other individuals as the Directors by resolution appoint from time to time.

## **30 Accounts**

- (a) The Directors must cause proper financial records to be kept and, if required by a law, regulation or guideline applicable to the Company or otherwise considered by the Directors to be appropriate, cause the accounts of the Company to be audited or reviewed accordingly.
- (b) The Directors must distribute to the Members copies of the annual financial reports of the Company accompanied by a copy of the report of the auditor or reviewer (as

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<sup>6</sup> Resolution Institute is a not-for-profit organisation facilitating dispute resolution – further information can be found at [www.resolution.institute](http://www.resolution.institute).

required) and report of Directors in accordance with the requirements of a relevant law, regulation or guideline.

## **31 Seals**

### **31.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **31.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

## **32 Inspection of records**

### **32.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Members (other than Directors).

### **32.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in General Meeting.

## **33 Service of documents**

### **33.1 Document includes notice**

In this clause 33, a reference to a document includes a notice.

### **33.2 Methods of service**

- (a) The Company may give a document to a Member or Director:
  - (i) personally;
  - (ii) by sending it by post to the address for the Member or Director in the Register or an alternative address nominated by the Member or Director;
  - (iii) by sending it to an electronic address nominated by the Member or Director; or
  - (iv) by any other method of service provided by the Corporations Act.
- (b) A Member or Director may give a document to the Company:
  - (i) by serving it on the Company at the Registered Office;
  - (ii) by sending it by post to the Registered Office; or

- (iii) by sending it to the electronic address nominated by the Company.
- (c) A Member may elect to be sent notices of General Meetings and other certain documents that are required or permitted to be sent to a Member by the Company under the Corporations Act either:
  - (i) in physical form; or
  - (ii) in electronic form;
 by notifying the Company of the election.
- (d) Except in relation to service of a document referred to in clause 10.15(f), a document is taken to be given:
  - (i) if it is sent by post, on the 3<sup>rd</sup> business day after the date of its posting;
  - (ii) if it is sent by electronic transmission:
    - (A) by properly addressing and transmitting the electronic transmission; and
    - (B) if the document is properly addressed and transmitted in accordance with clause 33.2(d)(ii)(A), on the day following its transmission; and
  - (iii) if it is given in any other way permitted under the Corporations Act, then when it is taken to have been given under the Corporations Act.

### **33.3 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member or Director by post or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

## **34 Indemnity and insurance**

### **34.1 Indemnity**

- (a) The Company must indemnify any current or former Director, Secretary, National Councillor, member of a committee constituted under clause 25, or executive officer of the Company, or of a Related Body Corporate of the Company out of the property of the Company against:
  - (i) every liability incurred by the individual in that capacity; and
  - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the individual becomes involved because of that capacity;
 except to the extent that:
  - (iii) the Company is forbidden by law (including the Corporations Act) to indemnify the individual against the liability or legal costs;
  - (iv) an indemnity by the Company of the individual against the liability or legal costs would, if given, be made void by any law; or
  - (v) the individual is entitled to be, and is actually, indemnified by another person (including an insurer under any insurance policy).

- (b) The indemnity is a continuing obligation and is enforceable by an individual even though they are no longer a Director, Secretary, National Councillor, member of a committee constituted under clause 25, or executive officer of the Company, or of a Related Body Corporate of the Company.

### **34.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an individual who is or has been a Director, Secretary, National Councillor, member of a committee constituted under clause 25, or executive officer of the Company, or of a Related Body Corporate of the Company, against liability arising out of conduct by the individual in that capacity (**Relevant Conduct**), including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium in respect of the Relevant Conduct (whether or not the law applies in the particular case); or
- (b) the contract would, if the Company paid the premium, be made void by any law (including the Corporations Act).

### **34.3 Contract**

The Company may enter into an agreement with an individual referred to in clauses 34.1 and 34.2 with respect to the matters covered by these clauses. An agreement entered into in accordance with this clause 34 may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

## **35 Amendment to Constitution**

- (a) Subject to clause 35(c), this Constitution may only be amended by Special Resolution.
- (b) While the Company is a registered charity under the ACNC Act, the Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.
- (c) Any modification of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.



## Schedule 1

Appointment of Proxy - (see clause 10.15(e))

**The Tax Institute**  
**ACN 008 392 372**

I/We, ..... (name)

of ..... (address)

being a member/members of the abovenamed Company hereby appoint

..... (name)

of ..... (address)

or in their absence ..... (name)

of ..... (address)

as my/our proxy to vote for me/us on my/our behalf at the meeting of the members of the Company to be held on the ..... day of ..... 20 ..... and at any adjournment of that meeting.

[TO BE INSERTED IF DESIRED] This form is to be used in favour of / against the resolution (Strike out whichever is not desired)

[INSERT DETAILS OF SPECIFIC RESOLUTIONS IF DESIRED]

Signed: .....

Name: .....

Dated: .....

This notice must be returned to The Tax Institute ACN 008 392 372 at:

[ADDRESS/EMAIL ADDRESS/FAX No]

by [TIME] on [DATE]

[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME FOR THE MEETING]