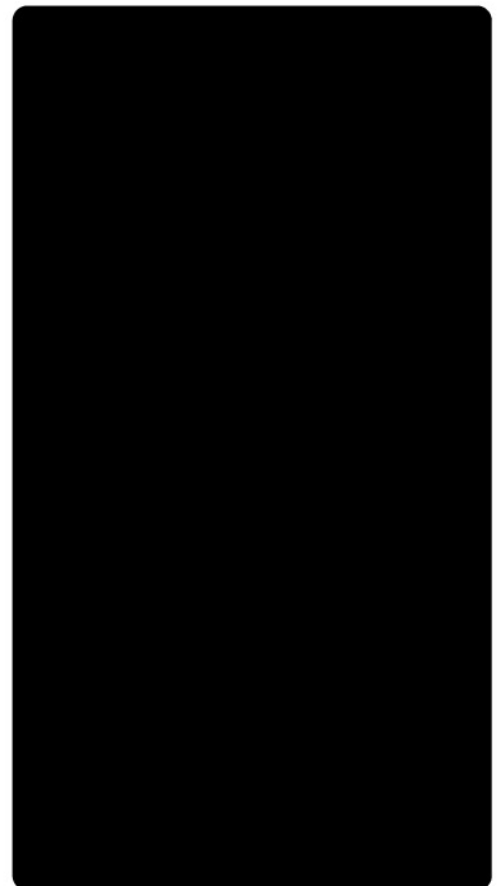
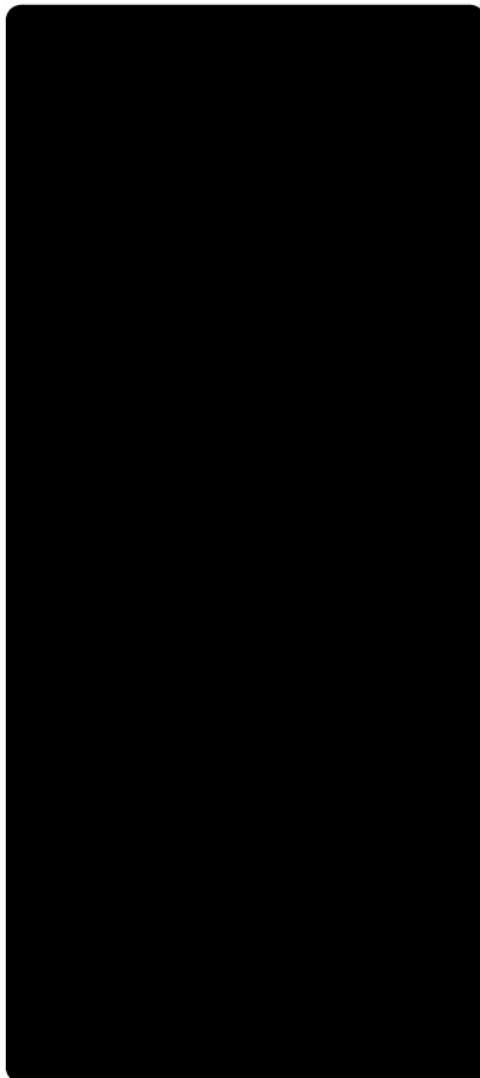
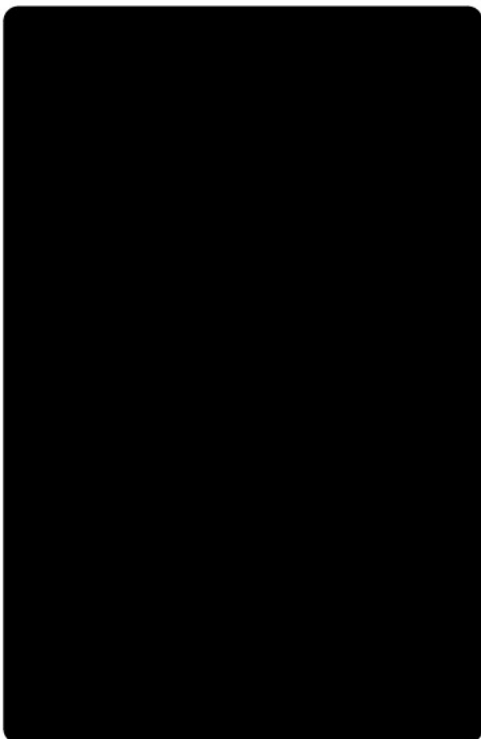


# The Tax Institute Constitution

Adopted on: 24 November 2021

A company limited by guarantee  
ACN 008 392 372



# Document Control Guidelines

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# STATUS AND GOVERNANCE

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## 1 Company name and type

- 1.1 The name of the company is “The Tax Institute” (in this Constitution called “the Institute”).
- 1.2 The Institute is:
- (a) a public company limited by guarantee; and
  - (b) by licence that was in force immediately before 1 July 1998 and the commencement of section 151(1) of the Corporations Act allowed to omit “Limited” from its name.
- 

## 2 Member liability and guarantee

- 2.1 The liability of Members is limited.
- 2.2 Every Member undertakes to contribute a maximum of \$2.00 to the Institute for payment of the debts and liabilities of the Institute, the costs, charges and expenses of any winding up and the adjustment of the rights of Members amongst themselves, if the Institute is wound up while the Member is a Member or within one year after the member ceased to be a Member.
- 

## 3 Replaceable rules

- 3.1 The replaceable rules in the Corporations Act do not apply to the Institute.
- 

## 4 Objects

- 4.1 The objects of the Institute are to:
- (a) advance public knowledge and understanding of Taxation Laws, the practices of public authorities administering Taxation Laws and the attitude of Governments to Taxation Laws;
  - (b) advance education in relation to taxation and Taxation Laws;
  - (c) encourage and facilitate the study of taxation and Taxation Laws;
  - (d) encourage research into the reform of any Taxation Law; and
  - (e) disseminate information concerning the work of the Institute.
- 4.2 The income and property of the Institute must be applied solely to promote the objects of the Institute.
- 

## 5 No distribution to Members

- 5.1 The Institute must not make any distributions to Members, whether by way of dividend, bonus, surplus in winding up or otherwise.
- 5.2 Clause 5.1 does not prevent the Institute, with the approval of the National Council acting in good faith, paying:
- (a) reasonable remuneration to a Member for professional or technical services actually rendered to the Institute as an employee, contractor or consultant;

- (b) for goods supplied by a Member to the Institute in the ordinary course of business;
- (c) interest, at a reasonable rate on money borrowed by the Institute from a Member;
- (d) reasonable rent for premises leased to the Institute by a Member;
- (e) out of pocket expenses incurred by a Member for or on behalf of the Institute;
- (f) reasonable remuneration to the Chairperson or President of the Institute for professional or technical services rendered to the Institute; or
- (g) any other reasonable amount of similar character to those described in paragraphs (a) to (f) of this clause.

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## **6 ASIC Licence**

For so long as the Institute holds the ASIC Licence, the Institute 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 its Constitution to allow it to do anything which it is required not to do under this clause or clause 5.

## **MEMBERS**

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### **7 Membership**

The rights and privileges of every Member are personal to that Member and may not be transferred by any act of the Member or by operation of law.

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### **8 Admission to Membership**

The National Council may admit any person as a Member on the terms and conditions in this Constitution and as prescribed in the By-Laws from time to time.

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### **9 Classes of Membership**

The National Council may establish different classes of membership and prescribe the qualifications required to become a Member in a particular class and the rights, obligations and privileges of Members of a class in the By-Laws from time to time.

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### **10 Register of Members**

10.1 The Institute must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary and must contain:

- (a) for each current Member:
  - (i) their name;
  - (ii) their address;

- (iii) any alternative address nominated by the Member for the service of notices; and
    - (iv) date the Member was entered on to the Register of Members; and
  - (b) for each person who stopped being a Member in the last 7 years:
    - (i) their name;
    - (ii) their address;
    - (iii) any alternative address nominated by the Member for the service of notices; and
    - (iv) dates the membership started and ended.
- 10.2 The Institute must give current Members access to the Register of Members.
- 10.3 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

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## **11 Member Fees**

- 11.1 The Institute may require the payment of any membership application fees, annual subscriptions and other membership levies by Members in the amounts and at such times and in such manner as determined by the National Council from time to time in accordance with the By-Laws.
- 11.2 The National Council may in its discretion:
- (a) set different fees for different classes of membership;
  - (b) determine that no membership application fees, annual subscriptions or other membership levies are payable by a Member or Members (in whole or in part) for any year; and
  - (c) extend the time for payment of membership application fees, annual subscriptions and other membership levies by any Member or class of Members.

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## **12 Conduct of Members**

- 12.1 Each Member is bound by and must comply with this Constitution and any By-Laws prescribed by the National Council as amended from time to time.
- 12.2 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 membership or to membership of a Division.

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## **13 Suspension or termination of Membership**

The National Council may prescribe the grounds for and procedures related to the suspension and termination of membership from time to time in the By-Laws.



## GENERAL MEETINGS

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### 14 Calling of meetings of Members by a Director

Not less than one third of the Directors may call a meeting of Members.

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### 15 Calling of general meetings

15.1 The National Council may call a general meeting.

15.2 If Members with at least 5% of the votes that may be cast at a general meeting make a request to the Institute for a general meeting to be held, the National Council must:

- (a) within 21 days of the Members' request, give all Members notice of general meeting; and
- (b) arrange to hold a general meeting within 2 months of the Members' request under clause 15.2(a).

15.3 Members with more than 50% of all the votes of the Members who made the request to call the general meeting may call and arrange to hold a general meeting.

---

### 16 Annual general meetings

16.1 The Institute must hold an annual general meeting at least once in each calendar year and within five months after the end of its Financial Year to:

- (a) receive the statements, accounts and report of the National Council and the Auditor for the preceding Financial Year;
- (b) receive the report of the chairperson of the annual general meeting identifying all current Directors and the date on which the term of each such Director is due to expire;
- (c) consider any matter submitted to the meeting in accordance with this Constitution or the Corporations Act; and
- (d) transact any other business which under this Constitution ought to be transacted at an annual general meeting of the Institute.

16.2 Before or at the annual general meeting, the National Council must give information to the Members on the Institute's activities and finances during the period since the last annual general meeting.

16.3 The chairperson of the annual general meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Institute.

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### 17 Amount of notice of meetings

Subject to the Corporations Act, at least 21 days' notice must be given of a meeting of Members.

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### 18 Notice of meetings

18.1 Written notice of a meeting of Members must be given individually to each Member entitled to receive notice of the meeting, to the Auditor and to each Director in the manner provided in this Constitution and in accordance with the Corporations Act.

- 18.2 Subject to the Corporations Act, notice of a meeting of Members required to be served or given by the Institute may be served upon or given to Members:
- (a) by public advertisement of the notice in the official journal of the Institute, and the sending of the journal addressed to the Member as provided in clause 67.1 will be deemed to be appropriate notice; and/or
  - (b) by providing notice to the Member in accordance with clause 67.1.
- 18.3 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by a person entitled to notice, does not invalidate any proceedings at the meeting.
- 

## **19 Notice of adjourned meetings**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

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## **20 Members' resolutions**

Members may propose a resolution to be moved at a general meeting only in accordance with the provisions of the Corporations Act.

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## **21 Time and place for meetings of Members**

A meeting of Members must be held at a reasonable time and place.

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## **22 Members' Meetings - Technology**

The Institute may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

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## **23 Quorum**

- 23.1 The quorum for a meeting of Members is fifteen Members and the quorum must be present at all times during the meeting.
- 23.2 In determining whether a quorum is present:
- (a) subject to sub-clause (c) an individual who attends as a proxy or body corporate representative is counted;
  - (b) if a Member has appointed more than one proxy or representative, only one of them is to be counted; and
  - (c) an individual who attends both as a Member and as a proxy or representative, is counted only once.
- 23.3 Subject to clause 23.5, a meeting of the Institute's Members that does not have a quorum present within 15 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date (not being more than 14 days after such meeting), time and place the chairperson of the meeting specifies. If the chairperson of the meeting does not specify one or more of those requirements, the meeting is adjourned to:
- (a) if the date is not specified, the same day in the next week;
  - (b) if the time is not specified, the same time; or

- (c) if the place is not specified, the same place.
- 23.4 If a quorum is not present at the resumed meeting of the Institute's Members within 15 minutes after the time for the meeting, the Members present constitute a quorum.
- 23.5 If a meeting of the Institute's Members that does not have a quorum present within 15 minutes after the time set for the meeting was a meeting convened on the requisition of the Members, the meeting is dissolved.

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## **24 Chairperson and adjournment of meetings of Members**

- 24.1 The Chairperson will chair meetings of Members. If the Chairperson is not present within 15 minutes after the time set for the meeting or decline to act as chair of the meeting, the Members may elect an individual to chair the meeting.
- 24.2 The chairperson of a meeting may adjourn the meeting and must if the Members present with a majority of votes at the meeting agree or direct the chairperson to do so. No business may be transacted at an adjourned meeting other than the business left unfinished from the earlier meeting from which the adjournment took place. If a meeting is adjourned for more than 21 days, new notice of the adjourned meeting must be given.

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## **25 Auditor's right to attend meetings**

- 25.1 The Auditor is entitled to attend any general meeting and to be heard by the Members on any part of the business of the meeting that concerns the Auditor in the capacity of auditor.
- 25.2 The Institute must give the Auditor any communications relating to the general meeting that a Member of the company is entitled to receive.

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## **26 Proxies and body corporate representatives**

- 26.1 A Member who is entitled to attend and cast a vote at meetings of Members may appoint a proxy or, if the Member is a body corporate, a representative, to attend and cast a vote at that meeting.
- 26.2 A proxy or representative appointed under clause 26.1 must be appointed in accordance with the Corporations Act.
- 26.3 The instrument appointing a proxy and the power of attorney or other authority under which it is signed or a copy certified as a true copy by a person qualified to witness statutory declarations of that power or authority must be received at the Registered Office not less than 24 hours before the time for holding the meeting or adjourned 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, and in default the instrument of proxy will not be treated as valid. The Secretary shall endorse the time of receipt of every instrument appointing a proxy.
- 26.4 A vote given in accordance with the terms of an instrument of proxy or attorney is valid despite the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, provided that no intimation in writing of such death, unsoundness of mind or revocation has been received by the Institute at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used.
- 26.5 Only Members who have voting rights and are Financial Members are entitled to vote at meetings of Members, either personally or by proxy, or be reckoned in a quorum.
- 26.6 A proxy is entitled to vote on a show of hands.

- 26.7 If a Member appoints a proxy to attend and vote for the Member at a meeting and the Member is present at the meeting for which the proxy was appointed, the proxy's authority to speak and vote for the Member at the meeting is suspended while the Member is present at the meeting.

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## **27 Voting at meetings of Members**

- 27.1 Subject to any rights or restrictions attached to any class of membership, each Member has one vote, both on a show of hands and a poll.
- 27.2 The chairperson of a meeting does not have a casting vote. If there is an equality of votes, the question or resolution is not carried.

---

## **28 Objections to right to vote**

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairperson of the meeting whose decision is final.

---

## **29 How voting is carried out**

- 29.1 A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded by at least five Members present in person or by proxy and entitled to vote.
- 29.2 A declaration by the chairperson of the meeting that a resolution has been passed, passed by a particular majority or lost and an entry to that effect in the minutes of the meeting are sufficient evidence of that fact.

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## **30 Matters on which a poll may be demanded**

- 30.1 A poll may be demanded on any resolution including resolutions concerning the election of the chairperson of the meeting or the adjournment of the meeting in accordance with the Corporations Act.
- 30.2 A demand for a poll may be withdrawn.

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## **31 When and how polls must be taken**

- 31.1 Subject to clause 31.2, a poll must be taken when and in the manner the chairperson of the meeting directs.
- 31.2 A poll on the election of a chairperson or on the question of an adjournment must be taken immediately without adjournment.

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# **NATIONAL COUNCIL**

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## **32 Number and Qualification of Directors**

- 32.1 The Institute must have at least three Directors. At least two Directors must ordinarily reside in Australia.
- 32.2 Aside from a Director who is appointed in accordance with clause 33.7, a Director must be a Member who is eligible to be a member of a State or Divisional Council.

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### 33 Appointment

- 33.1 Each State Council is entitled to appoint one of its current or former State Councillors to be a Director.
- 33.2 A State Council is entitled to appoint one of its current or former State Councillors as an additional Director once there are two thousand Members registered as residing in the State Division as at 30 September immediately preceding the date of appointment (“**Additional Director**”). A State Council is entitled to appoint one of its current or former State Councillors as a further additional Director for every additional two thousand Members beyond the first two thousand Members who are registered as residing in the State Division as at 30 September immediately preceding the date of appointment (each also an “**Additional Director**”).
- 33.3 If, during the term of an Additional Director, the number of Members registered as residing in the relevant State Division falls below the number required under clause 33.2 to appoint the Additional Director, the Additional Director may remain in office but during that period the State Council of that State Division will not be entitled to appoint a replacement Director to fill the vacancy created if one of the other Directors appointed by the State Council subsequently resigns or is removed pursuant to clause 35 or becomes the President or Vice President.
- 33.4 A Director who becomes the President or Vice President continues to be a Director while they hold the office of President or Vice President. Subject to clause 35.3 a past President will be entitled to continue as a Director for a period of 12 months from the date they cease to be President, or if they do not so continue may be appointed by the National Council as a Director at any time during that 12 months for the remainder of that 12 months.
- 33.5 A State Council is entitled to appoint one of its current or former State Councillors as a new Director to the National Council if a Director appointed by it becomes the President or Vice President.
- 33.6 If a vacancy occurs on the National Council in the position of a Director appointed under clauses 33.1, 33.2 or 33.5 the State Council who appointed the former Director is entitled to appoint one of its current or former State Councillors as a replacement Director for a term determined in accordance with clause 34.2 or to fill the position as a casual vacancy under clause 36.1.
- 33.7 The National Council may appoint an independent director to the National Council to, among other matters, be Chairperson. A Chairperson appointed under this clause is not required to be a Member of the Institute. The Directors may, amongst other matters and as they see fit, determine the period for which this Director is to be the Chairperson and the terms of appointment of the Chairperson, including reasonable remuneration.
- 33.8 If the National Council chooses not to appoint an independent director to be Chairperson under clause 33.7, the President is taken to be the Chairperson. In this case, the President is only entitled to reasonable remuneration as President and is not entitled to additional remuneration as Chairperson.

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### 34 Term

- 34.1 Subject to the other provisions of this Constitution, Directors will be appointed for a term of three years commencing on 31 December in a year and ending on the third anniversary of the date of appointment.
- 34.2 If a Director is appointed by a State Council under clauses 33.1, 33.2, 33.5 or 33.6:
- (a) during the period from 1 January to 30 June in a year, the term of appointment of that Director ends on 31 December third occurring after the date of appointment; and

- (b) during the period from 1 July to 30 December in a year, the term of the appointment of that Director ends on 31 December fourth occurring after the date of appointment.

34.3 A Director is eligible for re-appointment for one further consecutive term of three years.

34.4 A Director is not precluded from appointment to President or Vice-President by virtue of having served as a Director for the maximum terms prescribed by this clause.

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## **35 Removal & Vacation of Office**

35.1 A Director may at any time resign from the National Council by giving written notice of resignation to the Secretary at the Registered Office.

35.2 Subject to compliance with the Corporations Act, the Members in general meeting may by special resolution remove any Director before the expiration of their period of office and may by an ordinary resolution appoint another person in their stead from the State Division the removed Director represented, for the balance of the term of appointment of the Director removed.

35.3 The office of Director shall be vacated if they:

- (a) resign or are removed from office pursuant to clause 35.1 or 35.2;
- (b) become bankrupt or make any arrangement or composition with their creditors generally;
- (c) cease to be a Member (except for a Director appointed as Chairperson under clause 33.7);
- (d) are suspended for any period from membership of the Institute;
- (e) cease to be a Director by virtue of the Corporations Act or become prohibited from being a Director by reason of any order made under the Corporations Act;
- (f) are absent from three consecutive meetings of the National Council without permission of the National Council; or
- (g) are charged with a Serious Offence.

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## **36 Casual Vacancies**

36.1 If a vacancy occurs on the National Council as a result of clause 35.3(a)-(g), the State Council which appointed the vacating Director may treat the vacancy as a casual vacancy and appoint one of its current or former State Councillors as an interim replacement Director who shall hold office until 31 December next following the occurrence of the vacancy.

36.2 If a State Council fails to appoint a replacement Director pursuant to clause 36.1 within two months of the departure of the vacating Director, the National Council may appoint one of that State Council's current or former State Councillors as a replacement Director who shall hold office until 31 December next following the occurrence of the vacancy.

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## **37 Alternate Director**

37.1 With the National Council's approval, a Director may appoint a Member from their State Council to be their Alternate Director to exercise some or all of the Director's powers for any period.

37.2 If the appointing Director requests, the National Council must give the Alternate Director notice of National Council meetings.

- 37.3 When an Alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the appointing Director exercised the powers.
- 37.4 The appointing Director may terminate the Alternate Director's appointment at any time.
- 37.5 An appointment or termination of an Alternate Director must be in writing. A copy of the appointment must be given to the Secretary and ASIC must be notified of the appointment or termination.

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## **38 Powers**

- 38.1 Subject to the Corporations Act, the National Council shall manage the business and affairs and control the funds and property of the Institute.
- 38.2 In addition to the powers and authorities expressly conferred upon the National Council by this Constitution, the National Council may exercise all such powers and do all such acts and things as may be exercised or done by the Institute and are not by this Constitution or by the Corporations Act expressly directed or required to be exercised or done by the Institute in general meeting.
- 38.3 The National Council may resolve from time to time how negotiable instruments are signed, drawn, accepted, endorsed or otherwise executed including execution by two Directors.

---

## **39 Calling National Council meetings**

- 39.1 A National Council meeting may be called at any time by:
- (a) the President;
  - (b) the Chairperson; or
  - (c) the Chief Executive Officer at the written request of a Director.
- 39.2 Not less than seven days' notice in writing will be given of a National Council meeting except where, in the opinion of the President or Chairperson, a matter requires the immediate consideration of the National Council, in which event a meeting of the National Council may be called on not less than 24 hours' notice in writing, or an even shorter period of notice if all Directors have consented to that even shorter period of notice.
- 39.3 Notice of meetings of the National Council must specify the place, date and time of the meeting and the business to be conducted at the meeting.

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## **40 Use of Technology**

- 40.1 As long as all Directors consent, a National Council meeting may be called or held using any technology which allows all of the Directors participating in the meeting to hear each other at the same time. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.
- 40.2 As long as all Directors consent, a National Council resolution may be passed using any technology which allows all of the Directors to pass a resolution. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the resolution is circulated.

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## **41 Chairing National Council meetings**

- 41.1 The Chairperson will chair National Council meetings.

- 41.2 If the Chair is not present at the meeting within 15 minutes after the time appointed for the meeting or is unable or unwilling to act, the National Council shall choose a Director present to chair all or part of the meeting.

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## **42 Quorum at National Council meetings**

A quorum for a National Council meeting is a simple majority of Directors (unless the National Council determines otherwise) and a quorum must be present at all times during the meeting.

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## **43 Passing of National Council resolutions**

- 43.1 A National Council resolution must be passed as an ordinary resolution.
- 43.2 In the case of equality of votes:
- (a) the person chairing the meeting does not have a second or casting vote; and
  - (b) the resolution is not carried.

---

## **44 Circulating resolutions of National Council**

- 44.1 The National Council may pass a resolution without a National Council meeting being held if 75 percent or more of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 44.2 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.
- 44.3 The resolution is passed when the last Director constituting 75 percent or more of the Directors entitled to vote on the resolution signs.

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## **45 Delegation**

- 45.1 The National Council may delegate any of its powers to a State Council or a committee of any one or more Directors or the Chief Executive Officer.
- 45.2 The delegate must exercise the delegated powers in accordance with any directions of the National Council.
- 45.3 The effect of the delegate exercising a delegated power is the same as if the National Council exercised it.
- 45.4 The National Council may withdraw any delegated power at any time.

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## **46 Treasurer and Standing Committees**

- 46.1 The National Council shall each year or from time to time nominate Directors to be treasurer and to chair the Standing Committees.

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## **47 Validity of Actions**

All acts done by any meeting of the National Council, a Standing Committee or State Council or by any Director, Alternate Director or State Councillor will despite it afterwards being discovered that there was some defect in the appointment of any such body or person or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified.



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## **48 Institute's attorney**

The National Council may appoint a company, firm, person or body of persons to be the Institute's attorney under a power of attorney for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the National Council under this Constitution.

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## **PRESIDENT AND VICE PRESIDENT**

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### **49 Appointment**

49.1 No later than 31 December each year, the National Council shall in meeting:

- (a) subject to clause 49.1(b), appoint a new Vice-President from amongst the Directors;
- (b) appoint the current Vice-President to the position of President unless:
  - (i) the person currently holding office as President is re-elected by the National Council to that position; or
  - (ii) the National Council resolves otherwise, in which event the National Council shall appoint a new President from amongst the Directors; and
- (c) appoint other office holders (if any) from amongst the Directors.

49.2 Subject to clause 50, the President and Vice President may stand for re-election.

49.3 The duties and responsibilities of the President, the Vice President and other office holders (if any) will be as determined by the National Council from time to time.

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### **50 Term**

A person may hold office as President, Vice President or any other office holder appointed under clause 49.1(c) for up to a total of two consecutive years (in addition to any period served in the office to fill a casual vacancy) at any time.

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## **CHIEF EXECUTIVE OFFICER**

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### **51 Chief Executive Officer**

51.1 The National Council may appoint a person as the Chief Executive Officer of the Institute for the period and on the terms (including as to remuneration) as the National Council resolves.

51.2 The Chief Executive Officer shall:

- (a) be responsible for the day to day management and operation of the Institute;
- (b) implement the strategic direction of the Institute; and
- (c) have such other powers as the National Council may delegate to the Chief Executive Officer from time to time.

51.3 The National Council may revoke or vary:

- (a) the appointment of the Chief Executive Officer; or
- (b) any of the powers conferred on the Chief Executive Officer.

## SECRETARY

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### 52 Appointment of Secretary

- 52.1 The Institute must have a Secretary or Secretaries. At least one of them must ordinarily reside in Australia.
- 52.2 The Secretary shall be appointed by the National Council on such terms and conditions as the National Council thinks fit.

## STATE DIVISIONS & STATE COUNCILS

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### 53 State Divisions

- 53.1 The National Council 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.
- 53.2 Nothing in this Constitution affects the validity of any of the State Divisions existing at the date of adoption of this Constitution.

### 54 Establishment & Management by the National Council

- 54.1 The National Council may from time to time establish a council for a State (a “**State Council**”) or Division (a “**Divisional Council**”) for the purpose of managing any affairs of the Institute in that State or Division.
- 54.2 Members of a State Council or Divisional Council shall be elected by the members of the relevant State or Division with guidance from the National Council pursuant to clause 55.
- 54.3 No more than one council shall be created for a State or Division.
- 54.4 The National Council shall from time to time delegate for such period and on such terms as it thinks fit such of its powers to State Councils and Divisional Councils and amend and revoke such delegated powers at any time in its discretion.
- 54.5 The operation of State Councils and Divisional Councils shall be as prescribed by the National Council from time to time.
- 54.6 The National Council may at any time remove a State Council or Divisional Council, or suspend the operation of a State Council or Divisional Council for such period of time as determined by the National Council, if two-thirds of the Directors resolve that the State Council or Divisional Council is unable to carry on its affairs in accordance with the directions of the National Council and in the best interests of the Institute.

### 55 Operation

- 55.1 Without limiting clause 54, the National Council may from time to time:
  - (a) provide recommendations to the Members of the relevant State or Division for the election or appointment of Members to State or Divisional Councils; and

- (b) define the powers, authorities and procedures of the Divisions and State or Divisional Councils in the By-Laws,

and vary, amend, add to and remove such powers, authorities and procedures from time to time.

- 55.2 Power exercised by a State or Divisional Council in accordance with a delegation of the National Council is treated as exercised by the National Council.

## **BY-LAWS**

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### **56 By-Laws**

- 56.1 The National Council may from time to time prescribe By-Laws of the Institute on such matters considered necessary or expedient to carry out the purposes of the Institute or for the regulation, management and control of the Institute's affairs.
- 56.2 By-Laws shall be adopted, amended or repealed by the National Council in meeting by a majority of no less than two thirds of the Directors.
- 56.3 In the event of any inconsistency between this Constitution and any By-Law, this Constitution prevails.
- 56.4 The National Council must publish By-Laws adopted or amended pursuant to this clause in either the Institute's journal or on the Institute's website as soon as practicable.

## **RECORDS & AUDIT**

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### **57 Minutes**

The Institute must keep minute books of Members' meetings and National Council meetings (including Standing Committee meetings) and allow access to the minute books for meetings of Members in accordance with applicable law, including, as relevant, the Corporations Act and the ACNC Act.

### **58 Financial Records**

- 58.1 The Institute must:
  - (a) keep written financial records and allow access to such financial records;
  - (b) prepare, disclose, report and lodge financial reports (as required),
  - (c) keep written records that correctly record the Institute's operations; and
  - (d) retain its records for at least 7 years.
- 58.2 The Directors must take reasonable steps to ensure that the Institute's records are kept safe.

### **59 Audit**

The Institute must appoint an Auditor and provide assistance to the Auditor in accordance with the Corporations Act.

## WINDING UP

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### 60 Distribution of Property

- 60.1 Subject to any applicable law, including, as relevant, the Corporations Act, the ACNC Act or any court order, if upon the winding up or dissolution of the Institute there remains after the satisfaction of all its debts and the liabilities any property whatsoever the same shall be given or transferred to some other institution or institutions in Australia:
- (a) having objects similar to the Institute;
  - (b) which prohibits the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Institute under or by virtue of clause 5; and
  - (c) if at the time of winding up or dissolution the Institute is endorsed as an income tax exempt charity pursuant to the Tax Act, which is endorsed as an income tax exempt charity for the purposes of the Tax Act.
- 60.2 If the Institute obtains deductible gift recipient endorsement within the meaning of the Tax Act and this endorsement is later revoked (whether or not the Institute is to be wound up), any surplus Gift Funds must be transferred to one or more institutions who meet the requirements of clauses 60.1(a) to 60.1(c) and have deductible gift recipient endorsement.
- 60.3 The selection of institution or institutions pursuant to this clause is to be determined by the National Council and in default thereof by the Chief Judge in Equity of the Supreme Court of New South Wales or any Judge of that Court as may have or acquire jurisdiction in the matter.

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### 61 Prohibition

The Members have no right to participate in any distribution or payment of the assets or property of the Institute in the event of the winding up or dissolution of the Institute.

## INDEMNITY & INSURANCE

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### 62 Indemnity of Directors

The Institute must indemnify every Director against a liability incurred as a Director or former Director other than:

- (a) a liability owed to the Institute or a related body corporate;
- (b) a liability for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H of the Corporations Act; or
- (c) a liability that is owed to a person other than the Institute or a related body corporate and did not arise out of conduct in good faith.

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### 63 Indemnity of Officers or Employees

Every Officer or employee of the Institute must by resolution of the National Council be indemnified by the Institute against a liability incurred as an Officer or an employee of the Institute other than:

- (a) a liability owed to the Institute or a related body corporate;

- (b) a liability for a pecuniary penalty order or a compensation order under the Act for contravention of a civil penalty provision; or
- (c) a liability that is owed to a person other than the Institute or a related body corporate and did not arise out of conduct in good faith.

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## 64 Indemnity for legal costs

Every Director and other Officer or employee of the Institute must by resolution of the National Council be indemnified out of the assets of the Institute against a liability for legal costs incurred by that person as a Director other Officer or employee of the Institute in defending an action for liability incurred in that capacity unless the costs arise:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clauses 62 or 63;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (other than costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

For the purposes of this clause 64:

- (a) “proceedings” includes the outcome of the proceedings and any appeal in relation to the proceedings; and
- (b) legal costs include costs incurred in any court, arbitration, mediation, tribunal or commission however constituted and however named.

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## 65 Limit of indemnity

Subject to the provisions of the Corporations Act, a Director, Officer or employee of the Institute shall not be liable for:

- (a) the acts, receipts, neglect or defaults of any other Director, Officer or employee of the Institute;
- (b) joining in any receipt or other act of conformity or for any loss happening to the Institute through:
  - (i) an insufficiency or deficiency of title to any property acquired by order of the Directors, Officer or employee of the Institute for or on behalf of the Institute; or
  - (ii) an insufficiency or deficiency of any security in or upon which any of the moneys of the Institute shall be invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited;
- (d) any loss occasioned by any error of judgment or oversight on the part of a Director, Officer or employee of the Institute; or

- (e) any other loss, damage or misfortune which occurs in the execution of the duties of the office of Director, Officer or employee of the Institute,

unless the liability was incurred against the Institute or through the dishonesty of the Director, Officer or employee of the Institute.

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## 66 Payment of insurance premiums

The Institute may by resolution of the National Council pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been a Director, Officer or employee of the Institute against:

- (a) a liability for legal costs; and
- (b) any other liability except a liability incurred by the person as such a Director, Officer or employee and arising out of conduct involving:
  - (i) a wilful breach of duty in relation to the Institute; or
  - (ii) a misuse of their position or information acquired because of their position as prohibited by the Corporations Act.

## NOTICES

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### 67 Notices

- 67.1 Any notice required to be given by any clause of this Constitution or by any By-Law shall be served in writing upon any Member or person either personally or by sending the same through the post in a prepaid letter addressed to such Member or person at their address as entered in the Register of Members or at their last known place of residence or business, by faxing to a number nominated by the Member or person or by sending it to an electronic address (if any) nominated by the Member or person. The non-receipt of such notice shall not invalidate the proceedings of any meeting referred to in the notice.
- 67.2 If the address of a Member in the Register of Members is not within Australia and the Member has not nominated an alternate address in Australia, subject to the Corporations Act, the Institute may give a notice to that Member by posting it on the Institute's website.
- 67.3 A notice sent by pre-paid post may be included separately with or as part of any other publication sent by the Institute to Members.
- 67.4 Any notice sent by:
  - (a) post shall be deemed to have been served three business days after posting if within Australia or seven business days after posting if to a place outside Australia; and
  - (b) fax or electronic message or publication shall be deemed to have been served on the same day if transmitted on a business day by 5:00pm local time in the place of service and otherwise the next business day.
- 67.5 Where a given number of days' notice or notice extending over any period is required to be given the day of service is counted in such number of days or other period.

# DEFINITIONS & INTERPRETATION

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## 68 Definitions

In this Constitution, unless the context otherwise requires:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and where any provision of the ACNC Act is referred to, the reference is to such provision as amended, modified or re-enacted from time to time;

**Alternate Director** means a person appointed to this position pursuant to clause 37;

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

**ASIC Licence** means the licence noted in clause 1.2(b);

**Auditor** means the Auditor for the time being of the Company;

**By-Laws** means the by-laws of the Institute prescribed, adopted or amended by the National Council from time to time in accordance with clause 56;

**Chairperson** means the director appointed by the National Council to fill the role of Chairperson of the National Council.

**Chief Executive Officer** means the person appointed as the Chief Executive Officer of the Institute from time to time;

**Constitution** means this Constitution as amended from time to time;

**Corporations Act** means the *Corporations Act 2001* and where any provision of the Corporations Act is referred to, the reference is to such provision as amended, modified or re-enacted from time to time;

**Director** means a director on the National Council and includes the President, Vice-President, Chairperson and others described and appointed in accordance with clause 32.2, and Alternate Directors, unless stated otherwise;

**Division** means any group of people located in Australia or overseas that the National Council determines to be a Division;

**Divisional Council** means a council for a Division;

**Financial Member** means a Member whose application fees, annual subscriptions and other membership levies (if any) are paid or are not outstanding for more than one month from the due date of payment;

**Financial Year** means the period of twelve months commencing from 1 July and ending on 30 June of that year;

**Gift Fund** means:

- (a) gifts of money or property for the principal purpose of the Institute;
- (b) contributions made in relation to a fundraising event held for the principle purpose of the Institute; and

- (c) money received by the Institute because of such gifts and contributions; and
- (d) for the purposes of this definition, **contributions** and **fundraising events** have the same meaning as in Division 30 of the Tax Act;

**Guarantee** means the maximum amount each Member agrees to pay to the Institute in accordance with clause 2;

**Institute** means the company named in clause 1;

**Member** means a person admitted as a member of the Institute in accordance with this Constitution;

**Month** means calendar month;

**National Council** means the board of Directors of the Institute;

**Officer** means where the context permits:

- (a) a Director or Secretary of the Institute; or
- (b) a person:
- (c) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Institute; or
- (d) who has the capacity to affect significantly the Institute's financial standing; or
- (e) in accordance with whose instructions or wishes the National Council of the Institute are accustomed to act (excluding advice given by a person in a professional or business capacity).

**President** means the person appointed to that office pursuant to clause 49;

**Register of Members** means the Register of Members to be kept as required under the ACNC Act;

**Registered Office** means the registered office for the time being of the Institute;

**Secretary** means any person appointed in accordance with this Constitution and the Corporations Act as a Secretary of the Institute and includes an assistant or acting Secretary or any substitute for the time being for the Secretary;

**Serious Offence** means:

- (a) an offence against the laws of a State, a Territory or the Commonwealth of Australia or against the laws of a foreign country that:
- (b) is punishable by imprisonment for a period greater than 12 months; or
- (c) involves fraud or dishonesty and is punishable by imprisonment for at least 3 months; and
- (d) an offence that involves a breach of a Taxation Law and is punishable by imprisonment for at least 12 months.



**Standing Committee** means any committees established by the National Council from time to time;

**State** means a State of Australia and unless the National Council resolves otherwise, for the purposes of this Constitution, includes the Australian Capital Territory and the Northern Territory;

**State Council** means the committee of State Councillors for a State Division and reference to State Councils includes reference to Divisional Councils;

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

**State Division** means the body of Members of the Institute registered in a State and, unless the contrary intention appears, reference to “State Divisions” includes Divisions. Unless the National Council resolves 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; and

**Vice President** means the person appointed to that office pursuant to clause 49.

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## 69 Interpretation

- (a) Words and phrases which are given a special meaning by the ACNC Act or Corporations Act have the same meaning in this Constitution, unless the contrary intention appears.
- (b) Words in the singular include the plural and vice versa.
- (c) Words importing a gender include all other genders.
- (d) Persons include companies and corporations and vice versa.
- (e) A reference to the ACNC Act, Corporations Act or any other statute or regulation is to be read as though the words “as modified or substituted or re-enacted from time to time” were added to the reference.
- (f) Headings are inserted for convenience and do not affect the interpretation of this Constitution.
- (g) “Including” and other similar words are not words of limitation.
- (h) General words following words describing a particular class or category are not restricted to that class or category.
- (i) A duty, obligation, covenant or agreement on the part of two or more persons binds them jointly and severally.

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## **70 Reading this constitution**

- 70.1 While the Institute is a registered charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- 70.2 If the Institute is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with the Corporations Act.