

# CONSTITUTION

AUSTRALIAN INSTITUTE OF PROFESSIONAL PHOTOGRAPHY LIMITED

ACN: 050 167 498  
ABN: 77 050 167 498

PUBLIC COMPANY LIMITED BY GUARANTEE  
(UNLISTED PUBLIC COMPANY - NON-PROFIT COMPANY)

The logo consists of the lowercase letters 'aiipp' in a bold, rounded, sans-serif typeface. The letters are light blue and are positioned in the lower half of the page. The 'a' is a simple circle with a vertical stem. The 'i' is a vertical stem with a small square dot above it. The first 'p' has a circular bowl and a vertical stem that extends downwards. The second 'p' is identical to the first. The overall style is clean and modern.

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*Corporations Act 2001*  
A Company Limited by Guarantee

Constitution  
of

AUSTRALIAN INSTITUTE OF PROFESSIONAL PHOTOGRAPHY LIMITED (AIPP)

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## Preliminary

### 1 The Company

#### 1.1 Name of company

The name of the company is the **Australian Institute of Professional Photography Limited** (the **Institute**).

#### 1.2 Type of company

The **Institute** is a not-for-profit public company limited by guarantee.

#### 1.3 The guarantee

Each member must contribute an amount not more than AUD\$25.00 (the **guarantee**) to the property of the **Institute** if it is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- a) debts and liabilities of the **Institute** incurred before the member stopped being a member, or
- b) costs of winding up.

## 2 Definitions and Interpretation

### 2.1 Definitions

In this constitution:

**accredited member** means **Accredited Professional Photographer (APP member), Accredited Professional Video Producer (APVP member)** and/or other accreditation's as determined by the directors from time to time.

**Board Convener** means a person elected by the directors to be the **Institute's** board's chairperson under clause 10.3.

**Co-Opted Directors** means persons nominated by the directors, or persons from reciprocal organisations with similar objects, and appointed as directors of the **Institute**, to provide specialist skills and/or diversity.

**Institute** means the company referred to in clause 1.1.

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

**electronic means** means via email as a scanned copy, via facsimile, or via an internet-based form that can be identifiably determined (for example: digital based signature systems).

**existing members** means all members in all categories of membership of the **Institute** at the date of adoption of this constitution.

**general meeting** means a meeting of members and includes the annual **general meeting**.

**general voting member** means a member eligible to vote at general meetings as outlined in the relevant by-law.

**members present** means, in connection with a **general meeting**, all **general voting members** present in person, by representative or by proxy at the venue or venues for the meeting.

**National President** means a person elected by the directors to be the National President of the **Institute** under clause 10.3.

**National Vice President** means a person elected by the directors to be the National Vice President of the **Institute** under clause 10.3.

**Patron** means a person as defined by the Oxford Dictionary as a Patron.

**Privacy Laws** means Privacy Act (1988) and the Privacy Amendment (Enhancing Privacy Protection) Act 2012.

**special resolution** has the same meaning as defined in section 9 in the Dictionary of the **Corporations Act**.

**surplus assets** means any assets of the **Institute** that remain after paying all debts and other liabilities of the **Institute**, including the costs of winding up.

**Treasurer** means treasurer of the **Institute** as defined in the **Corporations Act**.

## 2.2 Reading this constitution with the Corporations Act

- 1) The replaceable rules set out in part 2B.4 of the **Corporations Act** do not apply to this Constitution of the **Institute**.
- 2) The **Corporations Act** overrides any clauses in this constitution which are inconsistent with the Act.
- 3) A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## 2.3 Interpretation

In this constitution:

- 1) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- 2) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

# 3 Status of the Constitution

## 3.1 Constitution of the Institute

This is the Constitution of the **Institute** and replaces all previous Constitutions, effective from the date of adoption of this Constitution by special resolution of the members of the Institute.

## 3.2 Amending the Constitution

The members may amend this constitution by passing a **special resolution**.

## 3.3 Replaceable Rules

This Constitution displaces the Replaceable Rules as stated in part 2B.4 of the Corporations Act, and accordingly, none of the Replaceable Rules apply.



# Purposes & Powers

## 4 Institute Objects and Powers

### 4.1 Objects

- 1) To improve the technical knowledge and professional status of the profession, its members and persons engaged in photography, video production, image making and ancillary occupations, and to promote and achieve uniformly high standards of professional conduct.
- 2) To promote the interests of its members in their professional work and to educate and inform the general public on the importance of hiring a professional.
- 3) To recognise and support diversity in all aspects of the **Institute's** membership and operations, to foster respect, collaboration and a shared responsibility between members, community and all cultural traditions.
- 4) To provide safe work and training practices in compliance with state and federal laws.
- 5) To be aware of parliamentary, community or public action affecting the interests of the professional photographic and imaging industry and advocate to defend those interests, through establishing and maintaining communication and liaison with governments, educational institutions, statutory bodies, community organisations and other associations.
- 6) To admit persons to membership of the **Institute** upon such terms and conditions and with such rights and privileges and in such manner as are specified within the relevant by-laws.
- 7) To maintain a framework for members to promote excellence through a program of Continuing Professional Development.
- 8) To administer a code of professional conduct and ethical practices, along with a disciplinary process for members, and a complaints process for consumers, in the interests of quality services and the ongoing reputation of the profession.
- 9) To hold or arrange fair competitions in the art or profession of photography, video production, imaging and ancillary occupations; provide or contribute towards prizes and awards in connection with such competitions; and to advocate for creator rights within competitions.
- 10) To acknowledge significant and ongoing industry contributions through the use of honours and distinctions.
- 11) To build relationships and seek out industry and non-industry related sponsors; to assist financially for specific events or projects; and to provide such sponsors with recognition at all levels, both publicly as well as within the membership.
- 12) To publish or cause to be published, either in print, electronic or other format as the directors deem appropriate, a periodical, dealing with the interests of the professional photography, video production, imaging and ancillary occupations.

- 13) To affiliate, collaborate and liaise with other organisations, and to subscribe to, become a member of, and/or co-operate with, or amalgamate with, any other association or organisation, whose objects are similar to those of the **Institute** either nationally and internationally.
- 14) To subscribe to, or support, any events or bodies affiliated with the art of imaging and to provide grant donations, where considered to be in the advancement of the objects of the **Institute**.
- 15) To establish, if deemed appropriate, a fund for the purpose of receiving donations or bequests, the funds of which are to be used, or will be used, in support of the **Institute**, profession and/or members, as specified in the by-laws of the **Institute** and/or at the direction of the governing laws.

## 4.2 Powers

Subject to clause 4.3, the **Institute** has the following powers, which may only be used to carry out its purpose(s) set out in clause 4.1:

- a) the powers of an individual, and
- b) all the powers of a company limited by guarantee under the **Corporations Act**.

## 4.3 Not-for-profit

- 1) The **Institute** must not distribute any income or assets directly or indirectly to its members, except as provided in clause 4.3 (2), clause 11.3 (2) (c) and clause 20.2.
- 2) Clause 4.3 (1) does not stop the **Institute** from doing the following things, provided they are done in good faith:
  - a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **Institute**, or
  - b) making a payment to a member in carrying out the **Institute's** purpose(s).

# Membership

## 5 Members

### 5.1 Membership and register of members

- 1) The members of the **Institute** are:
  - a) **existing members**, and
  - b) any other person that the directors allow to be a member, in accordance with this constitution.
- 2) The **Institute** must establish and maintain a register of members. The register of members must be kept by the **Institute** and must contain:
  - a) for each current member:
    - i. name,
    - ii. address (both electronic and postal),
    - iii. any alternative address nominated by the member for the service of notices, and
    - iv. date the member was entered on to the register and member number.
  - b) for each person who stopped being a member in the last 7 years:
    - i. name,
    - ii. address (both electronic and postal),
    - iii. any alternative address nominated by the member for the service of notices, and
    - iv. dates the membership started and ended and member number.
- 3) The **Institute** must give current members access to the register of members, within the constraints of the **Privacy Laws**, which shall not be unduly withheld.
- 4) Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

### 5.2 Who can be a member

- 1) A person who is over the age of 18 years and supports the purposes of the Institute is eligible to apply to be a member of the **Institute** under clause 5.3.
- 2) A person honoured by the Institute with Honorary Membership or Life Membership.
- 3) In this clause, 'person' means an individual or incorporated body.

### 5.3 How to apply to become a member

A person (as defined in clause 5.2) may apply to become a member of the **Institute** by writing to the **Institute** stating that they:

- a) want to become a member,

- b) support the purpose(s) and objects of the **Institute**,
- c) agree to any entry requirements as decided by the board from time to time, and
- d) agree to comply with the **Institute**'s constitution, including paying the guarantee under clause 1.3 if required.

#### **5.4 Directors decide whether to approve membership**

- 1) The directors must consider an application for membership within a reasonable time after the **Institute** receives the application.
- 2) If the directors approve an application, the **Institute** must as soon as possible:
  - a) enter the new member on the register of members, and
  - b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 5.5).
- 3) If the directors reject an application, the **Institute** must write to the applicant as soon as possible to tell them that their application has been rejected, including reasons why, if deemed appropriate.
- 4) For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clause 5.3. In that case, by applying to be a member, the applicant agrees to those four matters.

#### **5.5 When a person becomes a member**

Other than **existing members**, an applicant will become a member when they are entered on the register of members.

#### **5.6 When a person stops being a member**

A person immediately stops being a member if they:

- a) die,
- b) are wound up or otherwise dissolved or deregistered (for an incorporated member),
- c) resign, by writing to the **Institute**,
- d) are expelled under clause 6.2, or
- e) have not responded within three months to a written request from the **Institute** that they confirm in writing that they want to remain a member.

## 5.7 Member Elected or Appointed Terms of Office

- 1) Any member having completed six years of service on a committee or council as outlined in clause 11.1 (4), must retire and is not eligible to renominate or be appointed to that committee or council for a period of two years.
- 2) The **board** may request a member to remain on a committee or council after six years, if specific knowledge or experience is required to maintain the ongoing function of that committee or council.

## 6 Dispute resolution and disciplinary procedures

### 6.1 Dispute resolution

- 1) The dispute resolution procedure in this clause applies to disputes (disagreements) between:
  - a) a consumer and a member.
  - b) a member or director and:
    - i. one or more members,
    - ii. one or more directors, or
    - iii. the **Institute**.
- 2) Disputes under clause 6.1 (a) will be referred to the relevant committee or committees and/or, may be outsourced for independent assessment, as the **board** determines from time to time.
- 3) Disputes under clause 6.2 (b) shall be governed by the following clauses 6.1 (4) to 6.1 (9).
- 4) A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 6.2 until the disciplinary procedure is completed.
- 5) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 6) If those involved in the dispute do not resolve it under clause 6.1 (3), they must within 10 days:
  - a) tell the directors about the dispute in writing,
  - b) agree or request that a mediator be appointed, and
  - c) attempt in good faith to settle the dispute by mediation.
- 7) The mediator must:
  - a) be chosen by agreement of those involved, or
  - b) where those involved do not agree:
    - i. for disputes between members, a person chosen by the directors, or
    - ii. for other disputes, a person chosen by the president of the law institute or society in the state or territory in which the **Institute** has its registered office.
- 8) A mediator chosen by the directors under clause 6.1 (7) (b) (i):
  - a) may be a member or former member of the **Institute**,
  - b) must not have a personal interest in the dispute, and
  - c) must not be biased towards or against anyone involved in the dispute.
- 9) When conducting the mediation, the mediator must:
  - a) allow those involved a reasonable chance to be heard,
  - b) allow those involved a reasonable chance to review any written statements,
  - c) ensure that those involved are given natural justice, and
  - d) not make a decision on the dispute.

## 6.2 Disciplining members

- 1) In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **Institute** if the directors consider that:
  - a) the member has breached this Constitution and/or member codes, or
  - b) the member's behaviour is causing, has caused, or is likely to cause harm to the **Institute**.
- 2) At least 14 days before the directors meeting at which a resolution under clause 6.2 (1) will be considered, the **Institute** must notify the member in writing:
  - a) that the directors are considering a resolution to warn, suspend or expel the member,
  - b) that this resolution will be considered at a directors meeting and the date of that meeting,
  - c) what the member is said to have done or not done,
  - d) the nature of the resolution that has been proposed, and
  - e) that the member may provide an explanation to the directors, and details of how to do so.
- 3) Before the directors pass any resolution under clause 6.2 (1), the member must be given a chance to explain or defend themselves by:
  - a) sending the directors a written explanation before that directors meeting, and/or
  - b) speaking at the meeting.
- 4) After considering any explanation under clause 6.2 (3), the directors may:
  - a) take no further action,
  - b) warn the member,
  - c) suspend the member's rights as a member for a period of no more than 12 months,
  - d) expel the member,
  - e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
  - f) require the matter to be determined at a **general meeting**.
- 5) The directors cannot fine a member.
- 6) The **Institute** must give written notice to the member of the decision under clause 6.2 (4) as soon as possible.
- 7) Disciplinary procedures, which may be outsourced for independent assessment, must be completed as soon as reasonably practical.
- 8) There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **7 Meetings of members**

### **7.1 General meetings called by directors**

- 1) The directors may call a **general meeting**.
- 2) If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **Institute** for a **general meeting** to be held, the directors must:
  - a) within 21 days of the members request, give all members notice of a **general meeting**, and
  - b) hold the **general meeting** within 2 months of the members request.
- 3) The percentage of votes that members have (in clause 7.1 (2)) is to be worked out as at midnight on the date before the members request the meeting.
- 4) The members who make the request for a **general meeting** must:
  - a) state in the request any resolution to be proposed at the meeting,
  - b) sign the request, and
  - c) give the request to the **Institute**.
- 5) Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### **7.2 General meetings called by members**

- 1) If the directors do not call the meeting within 21 days of being requested under clause 7.1 (2), 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 2) To call and hold a meeting under clause 7.2 (1) the members must:
  - a) as far as possible, follow the procedures for **general meetings** as set out in this Constitution,
  - b) call the meeting using the list of members on the **Institute's** member register, which the **Institute** must provide to the members making the request at no cost, and
  - c) hold the **general meeting** within three months after the request was given to the **Institute**.
- 3) The **Institute** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.



### 7.3 Annual general meeting

- 1) A **general meeting**, called the annual **general meeting**, must be held at least once in every calendar year.
- 2) Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
  - a) a review of the **Institute's** activities,
  - b) a review of the **Institute's** finances,
  - c) any auditor's report,
  - d) the results of election of directors, if any,
  - e) the adoption of by-laws amendments, and
  - f) the appointment and payment of auditors, if any.
- 3) By way of notice or at the annual **general meeting**, the directors must give information to the members on the **Institutes** activities and finances during the period since the last annual **general meeting**.
- 4) The chairperson of the annual **general meeting** is the **National President**, or if the **National President** is unavailable, the **National Vice President** under clause 7.9, and must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **Institute**.

### 7.4 Notice of general meetings

- 1) Notice of a **general meeting** must be given to:
  - a) each member entitled to vote at the meeting,
  - b) each director, and
  - c) the auditor (if any).
- 2) Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 3) Subject to clause 7.4 (4), notice of a meeting may be provided less than 21 days before the meeting if:
  - a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand, or
  - b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 4) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
  - a) remove a director,
  - b) appoint a director in order to replace a director who was removed, or
  - c) remove an auditor.
- 5) Notice of a **general meeting** must include:

- a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this),
- b) the general nature of the meeting's business,
- c) if applicable, that a member resolution is to be proposed and the words of the proposed resolution,
- d) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution,
- e) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
  - i. the proxy does not need to be a member of the **Institute**,
  - ii. the proxy form must be delivered to the **Institute** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
  - iii. the proxy form must be delivered to the **Institute** at least 48 hours before the meeting.
- 6) If a general **meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## 7.5 Quorum at general meetings

- 1) For a **general meeting** to be held, at least five **general voting members** (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member) and shall not include any directors present.
- 2) Where a **general meeting** includes voting on a **special resolution**, at least fifty **members present** (a **special resolution** quorum) must be present (in person, by proxy or by representative) for the whole meeting and shall not include any directors present.
- 3) No business may be conducted at a **general meeting** if a quorum is not present.
- 4) If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, 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, and
  - c) if the place is not specified – the same place.
- 5) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 7.6 Auditor's right to attend meetings

- 1) The auditor (if any) 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.
- 2) The **Institute** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **Institute** is entitled to receive.

## 7.7 Representatives of members

- 1) An incorporated member may appoint as a representative:
  - a) one individual to represent the member at meetings and to sign circular resolutions under clause 8.3, and
  - b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 2) The appointment of a representative by an incorporated member must:
  - a) be in writing,
  - b) include the name of the representative,
  - c) be signed on behalf of the member, and
  - d) be given to the **Institute** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 3) A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 4) The appointment may be standing (ongoing).

## 7.8 Using technology to hold meetings

- 1) The **Institute** may hold a **general meeting** at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 2) Anyone using this technology is taken to be present in person at the meeting.

## 7.9 Chairperson for general meetings

- 1) The **National President** and in the absence of the **National President**, the **National Vice President** is entitled to chair **general meetings**.
- 2) The members present and entitled to vote at a **general meeting** may choose a director or member to be the chairperson for that meeting if:
  - a) there is no **National President** or **National Vice President**, or
  - b) the **National President** and **National Vice President** are not present within 30 minutes after the starting time set for the meeting, or
  - c) the **National President** and/or **National Vice President** are present but says they do not wish to act as chairperson of the meeting.

### 7.10 Role of the chairperson

- 1) The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor, (if any)).
- 2) The chairperson does have a casting vote.

### 7.11 Adjournment of meetings

- 1) If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.
- 2) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## 8 Members resolutions and statements

### 8.1 Members resolutions and statements

- 1) Members with at least 5% of the votes that may be cast on a resolution may give:
  - a) written notice to the **Institute** of a resolution they propose to move at a **general meeting** (members resolution), and/or
  - b) a written request to the **Institute** that it give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members statement).
- 2) A notice of a members resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 3) A request to distribute a members statement must set out the statement to be distributed and be signed by the members making the request.
- 4) Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 5) The percentage of votes that members have (as described in clause 8.1 (1) is to be worked out as at midnight before the request or notice is given to the **Institute**.
- 6) If the **Institute** has been given notice of a members' resolution under clause 8.1 (1) (a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 7) This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

### 8.2 Notice of proposed resolution or to distribute statement

- 1) If the **Institute** has been given a notice or request under clause 8.1:

- a) in time to send the notice of proposed members resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **Institute's** cost, or
  - b) too late to send the notice of proposed members resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **Institute** in giving members notice of the proposed members resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **Institute** will pay these expenses.
- 2) The **Institute** does not need to send the notice of proposed members resolution or a copy of the members' statement to members if:
- a) it is more than 1,000 words long,
  - b) the directors have a reasonable basis for believing that the content may be defamatory,
  - c) clause 8.2 (1) (b) applies, and the members who proposed the resolution or made the request have not paid the **Institute** enough money to cover the cost of sending the notice of the proposed members resolution or a copy of the members' statement to members, or
  - d) in the case of a proposed members resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

### 8.3 Circular resolutions of members

- 1) Subject to clause 8.3 (3), the directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 2) The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 3) Circular resolutions cannot be used:
  - a) for a resolution to remove an auditor, appoint a director or remove a director,
  - b) for passing a **special resolution**, or
  - c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 4) A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 8.3 (5) or clause 8.3 (6).
- 5) Members may sign:
  - a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - b) separate copies of that document, if the wording is the same in each copy.

- 6) The **Institute** may:
  - a) send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply, or
  - b) provide access to a secure electronic means of members agreement.

## 9 Voting at general meetings

### 9.1 How many votes a member has

Each **general voting member** has one vote.

### 9.2 Challenge to member's right to vote

- 1) A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 2) If a challenge is made under clause 9.2 (1), the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 9.3 How voting is carried out

- 1) Voting must be conducted and decided by:
  - a) a show of hands,
  - b) a vote in writing, or
  - c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 2) Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 3) On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 4) The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### 9.4 When and how a vote in writing must be held

- 1) A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
  - a) at least five **members present**,
  - b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
  - c) the chairperson.
- 2) A vote in writing must be taken when and how the chairperson directs, unless clause 9.4 (3) applies.
- 3) A vote in writing must be held immediately if it is demanded under clause 9.4 (1):
  - a) for the election of a chairperson under clause 7.9 (2), or
  - b) to decide whether to adjourn the meeting.
- 4) A demand for a vote in writing may be withdrawn.

## 9.5 Appointment of proxy

- 1) A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 2) A proxy does not need to be a member.
- 3) A proxy appointed to attend and vote for a member has the same rights as the member to:
  - a) speak at the meeting,
  - b) vote in a vote in writing (but only to the extent allowed by the appointment), and
  - c) join in to demand a vote in writing under clause 9.4 (1).
- 4) An appointment of proxy (proxy form) must be signed (including via **electronic means**) by the member appointing the proxy and must contain:
  - a) the member's name and address,
  - b) the **Institute's** name,
  - c) the proxy's name or the name of the office held by the proxy, and
  - d) the meeting(s) at which the appointment may be used.
- 5) A proxy appointment may be standing (ongoing).
- 6) Proxy forms must be received by the **Institute** at the address stated in the notice under clause 7.4 (5) (e) or at the **Institute's** registered address at least 48 hours before a meeting.
- 7) A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 8) Unless the **Institute** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
  - a) Dies,
  - b) is mentally incapacitated,
  - c) revokes the proxy's appointment, or
  - d) revokes the authority of a representative or agent who appointed the proxy.
- 9) A proxy appointment may specify the way the proxy must vote on a particular resolution.



## 9.6 Voting by proxy

- 1) A person holding a written authority to vote as proxy for a member or members is appointed proxy of the purpose of voting, and the proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 2) When a vote in writing is held, a proxy:
  - a) does not need to vote, unless the proxy appointment specifies the way they must vote,
  - b) if the way they must vote is specified on the proxy form, must vote that way, and
  - c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

# Directors

## 10 Directors

### 10.1 Number of directors

- 1) The **Institute** must have:
  - a) at least five and no more than eight directors elected by the members, and
  - b) the directors may appoint up to three additional Co-opted Directors.
- 2) Notwithstanding unusual circumstances, the directors shall at all times aim to ensure a board majority of directors are elected under clause 10.2 (3) (a).

### 10.2 Election and appointment of directors

- 1) The initial directors are persons who hold a director position as at the date of adoption of this Constitution.
- 2) Apart from the directors under clause 10.2 (4), the members may elect a director, or directors by a vote called by the Company Secretary which should normally be aligned to the annual **general meeting** as outlined in the relevant by-law/s, notwithstanding unusual circumstances.
- 3) A person is eligible for election as a director of the **Institute** if they:
  - a) are an **accredited member** with more than five years membership of the **Institute** including at least two years' service on a council or standing committee under clause 11.2 (1), or
  - b) have held a director's position as a **Co-Opted Director** for a period of at least twelve months, and
  - c) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting),
  - d) give the **Institute** their signed consent to act as a director of the **Institute**,
  - e) must be in good standing with no unresolved compliance actions prior to the published nomination date, and
  - f) are not ineligible to be a director under the **Corporations Act**.
- 4) The directors, after consultation with the relevant committee if defined within the by-law/s, may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
  - a) is an **accredited member** with more than five years membership of the **Institute** including at least two years' service on a council or standing committee under clause 11.2 (1),
  - b) gives the **Institute** their signed consent to act as a director of the **Institute**,
  - c) must be in good standing with no unresolved compliance actions, and

- d) is not ineligible to be a director under the **Corporations Act**.
- 5) If the number of directors is reduced to fewer than five or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to five (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

### 10.3 Office Bearers

- 1) The office bearers of the **Institute**, and in order of precedence are, the **National President**, the **National Vice President**, the **Board Convener** and the **Treasurer**.
- 2) Office bearers must retire at the first directors meeting following an annual **general meeting** but may be re-elected subject to clause 10.3 (4).
- 3) At the first directors meeting following an annual **general meeting**, the directors must:
  - a) elect a director as the **Institute's National President**,
  - b) elect a director as the **Institute's National Vice President**,
  - c) elect a director as the **Institute's Board Convener**,
  - d) elect a director as the **Institute's Treasurer**, and
  - e) review appointments on all committees and sub-committees.
- 4) Directors may hold any single office bearer position for a maximum period of three consecutive years and may, within their term of office under clause 10.4, hold any or all office bearer positions.
- 5) The positions of **National Vice President** and **Board Convener** may be held concurrently by the same director.

### 10.4 Term of office

- 1) The term of office for each director shall be two years from the end of the annual **general meeting** in the year in which they are elected.
- 2) No person may serve as a director for more than three consecutive terms and may only be re-appointed or re-elected under clause 10.4 (9).
- 3) Upon adoption of this constitution,
  - a) existing directors terms greater than one year previously served, shall be converted to a single two-year term, and
  - b) at the completion of any additional two-year term, existing directors must retire and may renominate subject to clause 10.4 (8).
- 4) Upon nominations being called:
  - a) directors appointed under clause 10.2 (4) must state their intent to retire but may renominate,
  - b) each director who will have completed a two-year term must state their intent to retire but may renominate subject to subject to clause 10.4 (8),

- c) at least 25% of the remaining directors must state their intent to retire but may renominate subject to clause 10.4 (8). These directors will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 5) Other than a director appointed under clause 10.2 (4), a director's term of office starts at the end of the annual **general meeting** in the year in which they are elected and ends at the end of the annual **general meeting** in the year in which they retire.
- 6) Each director must retire at least once every two years.
- 7) A director who retires under clause 10.4 (4) may nominate for election or re-election, subject to clause 10.4 (8).
- 8) A director who has held office for a continuous period of six years or more may only continue to hold office until the end of the annual **general meeting** in the year in which they retire.
- 9) Any director having completed three terms must retire and is not eligible to renominate for a period of two years.

## 10.5 When a director stops being a director

A director stops being a director if they:

- a) give written notice of resignation as a director to the **Institute**,
- b) die,
- c) are removed as a director by a resolution of the members,
- d) stop being an **accredited member** of the **Institute**,
- e) are a representative of a member, and that member stops being a member,
- f) are a representative of a member, and the member notifies the **Institute** that the representative is no longer a representative,
- g) are absent for three consecutive directors meetings without approval from the directors,
- h) been found in breach of compliance of **Institute** guidelines, or
- i) become ineligible to be a director of the **Institute** under the **Corporations Act**.

## 10.6 Co-Opted Directors

Co-Opted Directors:

- a) may be appointed for a maximum two-year term commencing upon the date of appointment,
- b) cannot hold an office bearer position in the first year of their term,

- c) are exempt from clause 10.2 (3) (a) and clause 10.5 (d), even if subsequently elected, and
- d) their appointment must be confirmed by a resolution of members at the **Institute's** next annual **general meeting**.

## **11 Powers of directors**

### **11.1 Powers of directors**

- 1) The directors are responsible for managing and directing the activities of the **Institute** to achieve the purpose(s) set out in clause 4.1.
- 2) The directors may use all the powers of the **Institute** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 3) The directors have the power to perform all such acts and do all such things as appear to the directors to be necessary or desirable for the proper management of the affairs of the **Institute**.
- 4) The directors may:
  - a) create, combine, split or disband any business structures including, but not limited to, committees or councils of the **Institute**, and
  - b) create and adopt by-laws for each business structure or part thereof subject to clause 16.2.
- 5) The directors must decide on the responsible financial management of the **Institute** including:
  - a) any suitable written delegations of power under clause 11.2, and
  - b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 6) The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members resolution at a **general meeting**.

### **11.2 Delegation of directors powers**

- 1) The directors may delegate any of their powers and functions to a committee, a council, a director, an employee or contractor of the **Institute** (such as a general manager) or any other person or group of persons, as they consider appropriate.
- 2) The delegation must be recorded in the **Institute's** minute book.
- 3) Any **member** elected or appointed to a committee, a sub-committee, a council or a division shall serve on terms and conditions as outlined in the relevant by-law subject to clause 5.7.

### **11.3 Payments to directors**

- 1) The **Institute** must not pay fees to a director for acting as a director.

- 2) The **Institute** may:
  - a) pay a director for work they do for the **Institute**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **Institute**.
  - c) Recognise exceptional voluntary effort by the **National President** by way of an honorarium as provided for in the **Corporations Act**.
- 3) Any payment made under clause 11.3 (2) (a) or (b) must be approved by the directors.
- 4) Any payment made under clause 11.3 (2) (c) must be approved by the relevant committee.
- 5) The **Institute** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

#### **11.4 Execution of documents**

The **Institute** may execute a document if the document is signed by two directors of the **Institute**.

#### **11.5 Appointment of Patron**

The directors may select and appoint a **Patron** for the **Institute**, on such terms as they see appropriate, provided that the members have been provided with details of suitable candidates, and have approved a candidate by resolution at a **general meeting**.

## 12 Duties of directors

### 12.1 Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), which are:

- a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **Institute**,
- b) to act in good faith in the best interests of the **Institute** and to further the purpose(s) of the **Institute** set out in clause 4.1,
- c) not to misuse their position as a director,
- d) not to misuse information they gain in their role as a director,
- e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 12.2,
- f) to ensure that the financial affairs of the **Institute** are managed responsibly, and
- g) not to allow the **Institute** to operate while it is insolvent.

### 12.2 Conflicts of interest

- 1) 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 other 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.
- 2) The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 3) Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 12.2 (4):
  - a) be present at the meeting while the matter is being discussed, or
  - b) vote on the matter.
- 4) A director may still be present and vote if:
  - a) their interest arises because they are a member of the **Institute**, and the other members have the same interest,
  - b) 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 **Institute** (see clause 19.2),
  - c) their interest relates to a payment by the **Institute** under clause 19.1 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**,

- d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- e) the directors who do not have a 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 relates to the affairs of the **Institute**, and
  - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## **13 Directors meetings**

### **13.1 When the directors meet**

The directors may decide how often, where and when they meet.

### **13.2 Calling directors meetings**

- 1) A director may call a directors meeting by giving reasonable notice to all of the other directors.
- 2) A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### **13.3 Chairperson for directors meetings**

- 1) The **Board Convener** is entitled to chair directors meetings.
- 2) The directors at a directors meeting may choose a director to be the chairperson for that meeting if the **Board Convener** is:
  - a) not present within 30 minutes after the starting time set for the meeting, or
  - b) present but does not want to act as chairperson of the meeting.

### **13.4 Quorum at directors meetings**

- 1) Unless the directors determine otherwise, the quorum for a directors meeting is a majority (more than 50%) of directors.
- 2) A quorum must be present for the whole directors meeting.

### **13.5 Using technology to hold directors meetings**

- 1) The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 2) The directors agreement may be a standing (ongoing) one.



- 3) A director may only withdraw their consent within a reasonable period before the meeting.

### **13.6 Passing directors resolutions**

A directors resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

### **13.7 Circular resolutions of directors**

- 1) The directors may pass a circular resolution without a directors meeting being held.
- 2) A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 13.7 (3) or clause 13.7 (4).
- 3) Each director may sign:
  - a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 4) The **Institute** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 5) A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 13.7 (3) or clause 13.7 (4).

# Secretary & Minutes

## 14 Secretary

### 14.1 Appointment and role of secretary

- 1) The **Institute** must have at least one secretary, the Company Secretary, who may also be a director.
- 2) A secretary must be appointed by the directors (after giving the **Institute** their signed consent to act as secretary of the **Institute**) and may be removed by the directors.
- 3) The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 4) All **general meetings** and directors meetings must be recorded by the secretary or an appointed person for the purpose of preparing the minutes and records as outlined in clause 15.1.
- 5) Recording of the meeting electronically may be held on digital file until adopted and signed as a true record of the meeting by the directors and for a maximum of three months.
- 6) The role of the secretary includes:
  - a) maintaining a register of the **Institute's** members, and
  - b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors meetings and circular resolutions.

## 15 Minutes and records

### 15.1 Minutes and records

- 1) The **Institute** must, within one month, make and keep the following records:
  - a) minutes of proceedings and resolutions of **general meetings**,
  - b) minutes of circular resolutions of members,
  - c) a copy of a notice of each **general meeting**, and
  - d) a copy of a members statement distributed to members under clause 8.2.
- 2) The **Institute** must, within one month, make and keep the following records:
  - a) minutes of proceedings and resolutions of directors meetings (including meetings of any committees), and
  - b) minutes of circular resolutions of directors.
- 3) To allow members to inspect the **Institute's** records:
  - a) the **Institute** must give a member access to the records set out in clause 15.1 (1), and

- b) the directors may authorise a member to inspect other records of the **Institute**, including records referred to in clause 15.2 (1).
- 4) The directors must ensure that minutes of a **general meeting** or a directors meeting are signed within a reasonable time after the meeting by:
  - a) the chairperson of the meeting, or
  - b) the chairperson of the next meeting.
- 5) The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## **15.2 Financial and related records**

- 1) The **Institute** must make and keep written financial records that:
  - a) correctly record and explain its transactions and financial position and performance, and
  - b) enable true and fair financial statements to be prepared and to be audited.
- 2) The **Institute** must also keep written records that correctly record its operations.
- 3) The **Institute** must retain its records for at least seven (7) years.
- 4) The directors must take reasonable steps to ensure that the **Institute's** records are kept safe.

# Rules and By-Laws

## **16 Rules and By-laws**

### **16.1 Rules and By-laws**

- 1) The directors may pass a resolution to make, alter and rescind rules and by-laws to give effect to this constitution.
- 2) Members and directors must comply with rules and by-laws as if they were part of this constitution.

### **16.2 Adoption of Rules and By-Laws**

Rules and By-Laws may only be adopted when they have been ratified and approved by the members at a **general meeting** or by way of a circular resolution of members.

# Notices

## 17 Notice

### 17.1 What is notice

- 1) Anything written to or from the **Institute** under any clause in this constitution is written notice and is subject to clauses 17.2, 17.3 and 17.4, unless specified otherwise.
- 2) Clauses 17.2, 17.3 and 17.4 do not apply to a notice of proxy under clause 9.5 (6).

### 17.2 Notice to the Institute

Written notice or any communication under this constitution may be given to the **Institute**, the directors or the secretary by:

- a) delivering it to the **Institute's** registered office,
- b) posting it to the **Institute's** registered office or to another address chosen by the **Institute** for notice to be provided,
- c) sending it to an email address or other electronic address notified by the **Institute** to the members as the **Institute's** email address or other electronic address, or
- d) sending it to the fax number notified by the **Institute** to the members as the **Institute's** fax number.

### 17.3 Notice to members

- 1) Written notice or any communication under this constitution may be given to a member:
  - a) in person,
  - b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices,
  - c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any),
  - d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
  - e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 2) If the **Institute** does not have an address for the member, the **Institute** is not required to give notice in person.

#### **17.4 When notice is taken to be given**

A notice:

- a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered,
- b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs,
- c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- d) given under clause 17.3 (1) (e) is taken to be given on the business day after the notification that the notice is available is sent.

## Miscellaneous

### 18 Financial year

#### 18.1 Institute's financial year

The **Institute's** financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

### 19 Indemnity, insurance and access

#### 19.1 Indemnity

- 1) The **Institute** indemnifies each officer of the **Institute** out of the assets of the **Institute**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **Institute**.
- 2) In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 3) In this clause, 'to the relevant extent' means:
  - a) to the extent that the **Institute** is not precluded by law (including the Corporations Act) from doing so, and
  - b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 4) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **Institute**.

#### 19.2 Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **Institute** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **Institute** against any liability incurred by the person as an officer of the **Institute**.

#### 19.3 Directors access to documents

- 1) A director has a right of access to the financial records of the **Institute** at all reasonable times.
- 2) If the directors agree, the **Institute** must give a director or former director access to:
  - a) certain documents, including documents provided for or available to the directors, and
  - b) any other documents referred to in those documents.

## **20 Winding up**

### **20.1 Surplus assets not to be distributed to members**

If the **Institute** is wound up, any surplus assets must not be distributed to a member or a former member of the **Institute**.

### **20.2 Distribution of surplus assets**

- 1) Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **Institute** is wound up must be distributed to one or more organisations in Australia:
  - a) with purpose(s) similar to, or inclusive of, the purpose(s) in clause 4.1, and
  - b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **Institute**.
- 2) The decision as to the organisation or organisations to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **Institute** may apply to the Supreme Court to make this decision.