



CONSTITUTION OF NATIONAL AGEING RESEARCH INSTITUTE LIMITED (NARI)

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A company limited by guarantee

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Preliminary

1. Name

The name of the institute is

National Ageing Research Institute Limited

2. Type of company

The Institute is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each member must contribute an amount not more than \$20 (the guarantee) to the property of the Institute if the Institute 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.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 71 and 73.

Charitable purposes and powers

6. Object

The Institute's object is to pursue the following charitable purposes:

- (a) conduct research into all aspects of ageing including, but not limited to, the cause, prevention and cure of disease, and the relief of sickness and suffering, associated with ageing;
- (b) conduct and promote research and inquiry into the provision and effectiveness of health services (including public and preventative health services), clinical care and biomedical and other technologies provided to the aged;
- (c) conduct and promote research into the health status and health needs of the aged;
- (d) develop the highest academic standards of study and practice in medicine and allied health as it relates to the aged;
- (e) participate in the provision of clinical services and preventive health for the aged;
- (f) provide and promote education throughout the community concerning ageing by the expansion, advancement and dissemination of knowledge concerning all aspects of ageing; and
- (g) take over the assets, liabilities, rights and obligations of the Former Institute.

7. Powers

Subject to clause 8, the Institute has the following powers, which may only be used to carry out its purposes set out in clause 6:

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

8. Not-for-profit

- 8.1 The Institute must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 70.
- 8.2 Clause 8.1 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 charitable purposes.

9. Amending the constitution

- 9.1 Subject to clause 9.2, Members may amend this constitution by passing a special resolution.
- 9.2 The members must not pass a special resolution that amends this constitution if passing it causes the Institute to no longer be a charity.

Members

10. Membership and Register of Members

- 10.1 The members of the Institute are:
 - (a) Board Members,
 - (b) Life Members, and
 - (c) Honorary Members
- 10.2 All Members are bound by this Constitution.
- 10.3 The Board Members, also known as Directors, of the Institute are the persons who comprise the Board from time to time. Board members have voting rights.
- 10.4 Life Members of the Institute are any person who has been granted life membership of NARI. Life members are not entitled to vote.
- 10.5 An Honorary Member of the Institute is any person whose name is entered in the Register of Members and who is not also a Board Member or Life Member. For the avoidance of doubt, Honorary Members include all existing Members who had previously been granted membership of the Institute as members and are not Board Members or Life Members.
- 10.6 The Institute must establish and maintain a register of all members. The register of members must be kept by the secretary and must contain:
 - (a) for each current member:
 - i. name
 - ii. 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.
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address

- iii. any alternative address nominated by the member for the service of notices, and
 - iv. dates the membership started and ended.
- 10.7 The Institute must give current members access to the register of members.
- 10.8 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

11. Who can be an Honorary Member

- 11.1 A person who supports the purposes of the Institute is eligible to apply to be an Honorary Member of the Institute under clause 10.
- 11.2 In this clause, 'person' means an individual or incorporated body.

12. How to apply to become an Honorary Member

A person (as defined in clause 11.2) may apply to become an Honorary Member of the Institute by writing to the secretary stating that they:

- (a) want to become a member
- (b) support the purposes of the Institute, and
- (c) agree to comply with the Institute's constitution.

13. Directors decide whether to approve honorary membership

- 13.1 The directors must consider an application for honorary membership within a reasonable time after the secretary receives the application.
- 13.2 If the directors approve an application, the secretary 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 honorary membership started.
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be an Honorary Member, the applicant agrees to those three matters.

14. When a person becomes an Honorary Member

An applicant will become a member when they are entered on the register of members.

15. When a person stops being an Honorary Member

A person immediately stops being an Honorary Member if they:

- (a) die
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member)
- (c) resign, by writing to the secretary
- (d) are expelled under clause 17, or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain an Honorary Member.

General meetings of members

16. General meetings called by Members or directors

- 16.1 The directors may call a general meeting.
- 16.2 If at least 25% of members of the Institute 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.
- 16.3 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.
- 16.4 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.

17. Annual general meeting

- 17.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year.
- 17.2 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 election of directors, and
 - (e) the appointment and payment of auditors, if any.
- 17.3 Before or at the annual general meeting, the directors must give information to the members on the Institute's activities and finances during the period since the last annual general meeting.
- 17.4 The Chair 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.

18. Notice of general meetings

- 18.1 Notice of a general meeting must be given to:
 - (a) each member, and
 - (b) the auditor (if any).
- 18.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 18.3 Subject to clause 18.4, 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, Board Members with at least 80% of the votes that may be cast at the meeting agree beforehand.
- 18.4 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.
- 18.5 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 special resolution is to be proposed and the words of the proposed resolution
 - (d) a statement that Board members have the right to appoint proxies and that, if a Board 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.
- 18.6 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

19. Quorum at general meetings

- 19.1 For a general meeting to be held, at least a majority of members (entitled to vote) (a quorum) must be present (in person, by proxy or by representative) for the whole meeting.
- 19.2 No business may be conducted at a general meeting if a quorum is not present.
- 19.3 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 Chair specifies. If the Chair 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.
- 19.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

20. Auditor's right to attend meetings

- 20.1 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.
- 20.2 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.

21. Representatives of members

- 21.1 An incorporated member may appoint as a representative:
 - (a) one individual to represent the member at meetings.
- 21.2 The appointment of a representative by a 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 Chair before the meeting starts.

- 21.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 21.4 The appointment may be standing (ongoing).

22. Using technology to hold meetings

- 22.1 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.
- 22.2 Anyone using this technology is taken to be present in person at the meeting.

23. Chair for general meetings

- 23.1 The elected Chair is entitled to chair general meetings.
- 23.2 The members present and entitled to vote at a general meeting may choose a director or member to be the Chair for that meeting if:
 - (a) there is no elected Chair, or
 - (b) the elected Chair is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the elected Chair is present but says they do not wish to act as Chair of the meeting.

24. Role of the Chair

- 24.1 The Chair 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)).
- 24.2 The Chair has a casting vote unless they have material interest in the outcome.

25. Adjournment of meetings

- 25.1 If a quorum is present, a general meeting must be adjourned if a majority of Board members present direct the Chair to adjourn it.
- 25.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Board Members' resolutions and statements

26. Board Members' resolutions and statements

- 26.1 Board Members with at least 25% 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 the Institute 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).
- 26.2 A notice of a board members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 26.3 A request to distribute a board members' statement must set out the statement to be distributed and be signed by the members making the request.
- 26.4 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.

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- 26.5 The percentage of votes that members have (as described in clause 26.1) is to be worked out as at midnight before the request or notice is given to the Institute.
- 26.6 If the Institute has been given notice of a resolution under clause 26.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 26.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

27. Institute must give notice of proposed resolution or distribute statement

- 27.1 If the Institute has been given a notice or request under clause 26:
- (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 Institutes' 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.
- 27.2 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 consider it may be defamatory
 - (c) clause 27.1(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.

28. Circular resolutions of members

- 28.1 Subject to clause 28.3, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 28.2 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.
- 28.3 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.
- 28.4 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 28.5 or clause 28.6.
- 28.5 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, as long as the wording is the same in each copy.

- 28.6 The Institute may 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.

Voting at general meetings

29. How many votes a member has

Each Board Member has one vote. Life and Honorary members are not entitled to vote at any general meeting of the Institute.

30. Challenge to member's right to vote

- 30.1 A member or the Chair may only challenge a person's right to vote at a general meeting at that meeting.
- 30.2 If a challenge is made under clause 30.1, the Chair must decide whether or not the person may vote. The Chair's decision is final.

31. How voting is carried out

- 31.1 Voting must be conducted and decided by:
- (a) a show of hands
 - (b) a vote in writing, or
 - (c) another method chosen by the Chair that is fair and reasonable in the circumstances.
- 31.2 Before a vote is taken, the Chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 31.3 On a show of hands, the Chair's decision is conclusive evidence of the result of the vote.
- 31.4 The Chair 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.

32. Appointment of proxy

- 32.1 A board member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 32.2 A proxy does not need to be a member.
- 32.3 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).
- 32.4 An appointment of proxy (proxy form) must be signed 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.
- 32.5 A proxy appointment may be standing (ongoing).
- 32.6 Proxy forms must be received by the Institute at the address stated in the notice under clause 18.5(d) or at the Institute's registered address at least 48 hours before a meeting.
- 32.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

- 32.8 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.
- 32.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

33. Voting by proxy

- 33.1 A 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).
- 33.2 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

34. Number of directors

- 34.1 The Institute must have at least five and no more than nine directors. All directors must be members of the Institute.

35. Election and appointment of directors

- 35.1 Apart from the initial directors and directors appointed under clause 35.4, the members may elect a director by a resolution passed in a general meeting.
- 35.2 Each of the directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 35.3 A person is eligible for election as a director of the Institute if they:
- (a) are a member of the Institute,
 - (b) are nominated by two 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),
 - (c) give the Institute their signed consent to act as a director of the Institute, and
 - (d) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 35.4 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the Institute,
 - (b) gives the Institute their signed consent to act as a director of the company, and
 - (c) is not ineligible to be a director under the Corporations Act or the ACNC Act.

36. Election of Chair

The directors must elect a director as the Institute's elected Chair.

37. Term of office

- 37.1 At each annual general meeting:
- (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire, and
 - (b) any director who has not been elected at the previous two annual general meetings must retire.
- 37.2 Other than a director appointed under clause 35.4, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 37.3 Each director must retire at least once every three years.
- 37.4 A director who retires under clause 37.1 may nominate for election or re-election, subject to clause 37.5.
- 37.5 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution.

38. 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 a 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 3 consecutive directors' meetings without approval from the directors, or
- (h) become ineligible to be a director of the Institute under the Corporations Act or the ACNC Act.

Powers of directors

39. Powers of directors

- 39.1 The directors are responsible for managing and directing the activities of the Institute to achieve the purposes set out in clause 6.
- 39.2 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.
- 39.3 The directors must decide on the responsible financial management of the Institute including:
- (a) any suitable written delegations of power under clause 40, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 39.4 Directors and auditors may only be removed by a members' resolution at a general meeting.

40. Delegation of directors' powers

- 40.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Institute (such as a chief executive officer) or any other person, as they consider appropriate.
- 40.2 The delegation must be recorded in the Institute's minute book.

41. Payments to directors

- 41.1 The Institute must not pay fees to a director for acting as a director.
- 41.2 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.
- 41.3 Any payment made under clause 41.2 must be approved by the directors.
- 41.4 The Institute may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

42. Execution of documents

The Institute may execute a document without using a common seal if the document is signed by:

- (a) two directors, or
- (b) a director and the secretary.

Duties of directors

43. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act 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 a company
- (b) to act in good faith in the best interests of the Institute and to further the charitable purpose(s) of the Institute set out in clause 6
- (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 44
- (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.

44. Conflicts of interest

- 44.1 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.
- 44.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 44.3 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 44.4:
 - (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 44.4 A director may still be present and vote if:
 - (a) their interest arises because they are a member of the Institute, and the other directors 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 67)
 - (c) their interest relates to a payment by the Institute under clause 66 (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.

Directors' meetings

45. When the directors meet

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

46. Calling directors' meetings

- 46.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 46.2 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.

47. Chair for directors' meetings

- 47.1 The elected Chair is entitled to chair directors' meetings.
- 47.2 The directors at a directors' meeting may choose a director to be the Chair for that meeting if the elected Chair 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 Chair of the meeting.

48. Quorum at directors' meetings

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

49. Using technology to hold directors' meetings

- 49.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 49.2 The directors' agreement may be a standing (ongoing) one.
- 49.3 A director may only withdraw their consent within a reasonable period before the meeting.

50. 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.

51. Circular resolutions of directors

- 51.1 The directors may pass a circular resolution without a directors' meeting being held.
- 51.2 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 51.3 or clause 51.4.
- 51.3 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.
- 51.4 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.
- 51.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 51.3 or clause 51.4.

Director of the Institute

52. Director of the Institute

- 52.1. The Board may from time to time appoint a Director of the Institute.
- 52.2. The terms and conditions of appointment, and the role, of the Director of the Institute will be governed by a written agreement negotiated by the Board (excluding the proposed Director of the Institute if a Board member) and the Director of the Institute.
- 52.3. The Director of the Institute is an ex officio member of the Board. If he or she ceases to be the Director of the Institute for any reason he or she ceases to be a Board Member unless elected a director under clause 35.1 or appointed as a director under clause 35.4.

Secretary

53. Appointment and role of secretary

- 53.1 The Institute must have at least one secretary, who may also be a director.
- 53.2 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.
- 53.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

- 53.4 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.

Dispute resolution and disciplinary procedures

54. Dispute resolution

- 54.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members
 - (b) one or more directors, or
 - (c) the Institute.
- 54.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 55 until the disciplinary procedure is completed.
- 54.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 54.4 If those involved in the dispute do not resolve it under clause 54.3, 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.
- 54.5 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 either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Institute has its registered office.
- 54.6 A mediator chosen by the directors under clause 54.5(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.
- 54.7 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.

55. Disciplining members

- 55.1 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, or
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Institute.
- 55.2 At least 14 days before the directors' meeting at which a resolution under clause 55.1 will be considered, the secretary must notify the member in writing:

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- (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.
- 55.3 Before the directors pass any resolution under clause 55.1, 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.
- 55.4 After considering any explanation under clause 55.3, 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.
- 55.5 The directors cannot fine a member.
- 55.6 The secretary must give written notice to the member of the decision under clause 55.4 as soon as possible.
- 55.7 Disciplinary procedures must be completed as soon as reasonably practical. 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.

Minutes and records

56. Minutes and records

- 56.1 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 27.
- 56.2 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.
- 56.3 To allow members to inspect the Institute's records:
- (a) the Institute must give a member access to the records set out in clause 56.1, and
 - (b) the directors may authorise a member to inspect other records of the Institute, including records referred to in clause 57.2 and clause 58.1.

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- 56.4 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 Chair of the meeting, or
 - (b) the Chair of the next meeting.
- 56.5 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.

57. Financial and related records

- 57.1 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.
- 57.2 The Institute must also keep written records that correctly record its operations.
- 57.3 The Institute must retain its records for at least 7 years.
- 57.4 The directors must take reasonable steps to ensure that the institute's records are kept safe.

58. Gift Fund

- 58.1 Any Gift Fund under this Constitution:
- (a) must be kept in a bank account separate from the other accounts of the Institute; and
 - (b) will, unless the Board determines otherwise, be governed by this Constitution.
- 58.2 If any Gift Fund is wound up or has its endorsement (if any) as a deductible gift recipient revoked, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it, will be transferred to the gift fund of an entity:
- (a) that has similar objects to the Institute;
 - (b) that also prohibits the distribution of income and property to its members to at least as great an extent as this Constitution; and
 - (c) whose relevant gift fund is endorsed as a deductible gift recipient on the same basis as the Gift Fund was endorsed under the ITAA 1997.

59. Specific Purpose Funds

All gifts, donations and bequests to the Institute which are expressed by the donor to be given for a specific purpose or project of the Institute, or otherwise subject to conditions, will, so far as possible, be used or applied only for the designated purpose or project, or in accordance with the relevant conditions, in such a manner as the Board determines.

By-laws

60. By-laws

- 60.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 60.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

61. What is notice

- 61.1 Anything written to or from the Institute under any clause in this constitution is written notice and is subject to clauses 61 to 63, unless specified otherwise.
- 61.2 Clauses 61 to 63 do not apply to a notice of proxy under clause 32.6.

62. 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, or
- (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.

63. Notice to members

- 63.1 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) 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).
- 63.2 If the Institute does not have an address for the member, the Institute is not required to give notice in person.

64. When notice is taken to be given

A notice:

- (a) delivered in person, or left at a 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 63.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

65. 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.

Indemnity, insurance and access

66. Indemnity

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.

- 66.1 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 66.2 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).
- 66.3 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Institute.

67. 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.

68. Directors' access to documents

- 68.1 A director has a right of access to the financial records of the Institute at all reasonable times.
- 68.2 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.

Winding up

69. 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, unless that member or former member is a charity described in clause 70.1.

70. Distribution of surplus assets

- 70.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 71) that remain after the Institute is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 71, and
 - (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Institute and
 - (c) that is or are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997 (Cth).

- 70.2 The decision as to the charity or charities 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. If the company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 70.1(a), 70.1(b) and 70.1(c), as decided by the directors.

Definitions and interpretation

71. Definitions

In this constitution:

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

Institute means the **Institute** referred to in clause 1

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

Elected Chair means a person elected by the directors to be the **Institute's** Chair under clause 36

General meeting means a meeting of members and includes the annual general meeting, under clause 17.1

gift funds means:

- i. gifts of money or property for the principal purpose of the company
- ii. contributions made in relation to a fund-raising event held for the principal purpose of the company,
- iii. money received by the company because of such gifts and contributions.

Member present means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting

registered charity means a charity that is registered under the **ACNC Act**

special resolution means a resolution:

- i. of which notice has been given under clause 18.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution, and

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.

72. Reading this constitution with the Corporations Act

- 72.1 The replaceable rules set out in the Corporations Act do not apply to the Institute.
- 72.2 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.
- 72.3 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.

73. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression,
- (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth), and
- (c) 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).