



INSTITUTE OF  
**PUBLIC  
ACCOUNTANTS®**

# Constitution

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## Chapter 1 Definitions

1. The following words and expressions in this Constitution have the several meanings hereby assigned to them unless such meanings are excluded by or are repugnant to the context or subject matter (that is to say):

### **Board of Directors**

means the Board of Directors of the Institute constituted under this Constitution for the management and control of the Institute and of its funds.

### **Book**

includes an account deed writing or document and any other record of information however compiled recorded or stored whether in written or printed form on a microfilm or by electronic process or otherwise.

### **By-laws**

means the By-laws of the Institute created in accordance with this Constitution.

### **Chief Executive Officer**

means the Chief Executive Officer appointed in accordance with this Constitution.

### **Committee Member**

means a Member of a committee established under this Constitution.

### **Director**

means a natural person appointed to the Board of Directors.

### **Divisional Advisory Committee**

means a Committee of the Institute established to assist, advise and guide the Division towards the policy objectives established by the Board of Directors.

### **Divisional Advisory Committee Member**

means a Member elected or appointed to a Divisional Advisory Committee in accordance with this Constitution.

### **Divisional President**

means the President for the time being of a Divisional Advisory Committee of the Institute.

### **Entity**

means any partnership, trust, company, or association whether incorporated or not.

### **Entity Member**

means any entity through which:

- (a) a person who is a Member of the Institute; or
  - (b) a Member or number of Members of the Institute;
- provide professional practice services.

### **General Meeting**

means a General Meeting of the Members of the Institute or a Division thereof (as the case may be or the context may require) lawfully convened and held in accordance with this Constitution.

### **Institute**

means the company called the Institute of Public Accountants.

### **Journal**

means any journal adopted by the Board of Directors as the official journal of the Institute.

### **A Member**

means a person who has complied with the Constitution and By-laws in relation to membership and who has paid all fees and subscriptions due.

### **Corporations Act**

means the *Corporations Act 2001 (C'wth)* as amended from time to time.

### **Month**

means a calendar month.

### **Officer**

has the same meaning as defined in the Corporations Act and includes the Investigator and the Investigations Review Officer.

### **Post**

means any form of postage including but not limited to Prepaid Post, Parcel Post, Registered Mail, Courier, Business Post or Next Day Delivery.

### **Prescribed Examination**

means the examinations prescribed by the Board of Directors for candidates for admission as Members of the Institute or for a change in status in accordance with this Constitution.

### **President**

means the President of the Institute.

### **Pronouncements**

means the Pronouncements issued by the Institute.

**Public Practice**

means the provision of accounting services to the public, including services relating to:

- (a) taxation;
- (b) auditing;
- (c) financial or investment advice;
- (d) business or management consulting;
- (e) superannuation;
- (f) insurance;
- (g) information technology; and
- (h) other services as prescribed by the Institute from time to time

**Register**

means the Register of Members of the Institute to be kept pursuant to the Corporations Act.

**Regulations**

means the Regulations of the Institute created in accordance with this Constitution.

**Written and In Writing**

Includes:

All modes of representing or reproducing words in a visible form.

Words importing the singular number include the plural number and words importing the plural number include the singular number.

Headings and footnotes are for ease of reference and shall not affect in any way the interpretation or construction of the clause or clauses to which they refer.



## **Chapter 2      Name, Registered Office and Objects of the Institute**

### **Name**

2. The name of the Institute is “Institute of Public Accountants”.

### **Registered Office**

3. The Registered Office of the Institute shall be in Australia in such place as determined by the Board of Directors from time to time.

### **Objectives**

4. The objects for which the Institute is established are:
  1. to co-ordinate and co-operate with the accounting and related professions, commerce, industry and the public service to support, promote, protect and maintain a body of qualified accountants;
  2. to consider questions affecting the interests of and to protect and advance the status of Members of the Institute;
  3. to prescribe and adopt standards and classification of attainments and qualifications of Members and for such purposes to conduct examinations, assess those standards and classifications with recognition of prior learning and workplace assessment and conduct other tests in the theory and practice of general accounting subjects and to prescribe and receive fees for such examinations and tests and to confer qualifications to designate the standard and status of Members;
  4. to provide maintain extend and improve a library or libraries containing technical literature and such other literature as may be of interest to Members and to acquire preserve and disseminate information and statistics concerning or relating to the principles and practice of accounting subjects and other matters of interest to Members;
  5. to encourage the study of accounting subjects and for the purpose to donate and to encourage the donation on such terms and conditions as may from time to time be determined or prescribed of a prize or prizes or other rewards or distinctions;
  6. to promote the professional development of Members by appropriate means;
  7. to provide rooms and other facilities for the holding and conducting of discussions and meetings of Members and others and to let or hire such rooms to other associations companies and persons;
  8. to carry on business as proprietors and publishers of newspapers, journals, magazines, books, digital media and other literary works and undertakings of interest or advantage to Members and students;
  9. to find or to assist in finding employment and to act as an employment agency or bureau for Members to collect and give information as to the employment of Members and to charge fees for so doing or to act gratuitously in such matters;

10. to accept grants of money and of land, donations, gifts, subscriptions and other assistance in furtherance of the objects of the Institute and to conform to any proper conditions upon which such grants and other payments may be made;
  11. to communicate, affiliate or enter into other relations whether formal or informal with other Institutes, societies and associations having similar objects and purposes and to subscribe to become a Member of and co-operate with any such bodies and to procure from and communicate to any such bodies such information as may be likely to forward the objects of the Institute;
  12. to affiliate, amalgamate or enter into partnership or into any arrangement for union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any body whether corporate or un-incorporate having objects of a like nature to those of the Institute and whose Constitution prohibits the division of its income and property amongst its Members at least to the same extent as is provided in this Constitution in relation to the Institute;
  13. to undertake and execute any trusts which may be conducive to any of the objects of the Institute;
  14. to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property rights or privileges necessary or convenient for the purposes of the Institute and to construct maintain and alter any buildings necessary or convenient for the purposes of the Institute;
  15. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Institute;
  16. to borrow or raise any money that may be required by the Institute upon such terms and security as may be deemed advisable;
  17. for the purpose of carrying out the objects of the Institute, to draw, make, accept, endorse, executive and issue promissory notes, bills of exchange and other negotiable or transferable instruments;
  18. to invest the moneys of the Institute not immediately required for its purposes in or upon such investments, securities or property as may be thought fit, subject nevertheless to such condition (if any) as may for the time being be imposed or required by law and subject also as hereinafter provided;
  19. to establish and support or aid in the establishment and support of associations and institutions, funds and trusts calculated to benefit employees or ex-employees of the Institute or the dependants or connections of such persons and to grant pensions and allowances to and to make payment towards insurance of such persons;
  20. to produce the Institute to be registered or recognised; and
  21. to do all such other lawful things as may be incidental to or conducive to the attainment of the above objects.
5. The income and property of the Institute whensoever derived shall be applied solely towards the promotion of the objects of the Institute as set forth in this Constitution, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise

howsoever by way of profit to the persons who at any time are or have been Members of the Institute, or to any of them, or to any person claiming through any of them. Provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or servants of the Institute or to any Member thereof in return for any services actually rendered to the Institute.

#### **Liability to Members and winding up**

6. The liability of the Members is limited.
7. If the Institute acts in contravention of any conditions of this Constitution, the liability of every Director of the Institute shall be unlimited, and the liability of every Member of the Institute who has received any such dividend, bonus or other profit as aforesaid, shall likewise be unlimited.
8. Every Member of the Institute undertakes to contribute to the assets of the Institute in the event of the same being wound up during the time that the Member is a Member, or within one year afterwards for payment of its debts and liabilities of the Institute contracted before the time at which the Member ceases to be a Member, and of the costs charges and expenses of winding up the same, and for the adjustment of the rights of the contributory among themselves such amount as may be required not exceeding six dollars, or in the case of the Member's liability becoming unlimited such other amount as may be required in pursuance of clause 5 of this Constitution.
9. If upon the winding up or dissolution of the Institute there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the Members, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Institute; and which shall prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Institute under or by virtue of clause 5 hereof, such institution or institutions to be determined by the Members of the Institute at or before the time of dissolution and in default thereof by the Chief Justice of the Supreme Court of Victoria or such other Judge of the Court as may have or acquire jurisdiction in the matter and if and so far as effect cannot be given to the aforesaid provision then to some charitable object.

## Chapter 3 Members

### Members

10. In addition to existing Members such persons and entities as may be hereafter admitted to membership in accordance with this Constitution shall be entered in the Register and shall be Members of the Institute.

1. Classes of membership

The Board of Directors may, from time to time, determine:

- (a) the various classes of membership of the Institute;
- (b) any restriction in the number of Members or the number of Members within each class;
- (c) the qualifications for admission to each class;
- (d) the rights attached to being a Member in each class; and
- (e) to delegate any of its powers in relation to membership to the Chief Executive Officer.

2. Applications

- (a) Any person who agrees in writing to be bound by, and comply with, the Code of Conduct and other such professional and ethical standards as prescribed by the Board of Directors from time to time, is eligible to apply to become a Member.
- (b) Each applicant to become a Member must:
  - i. complete and deliver to the Institute an application form (including in electronic form); and
  - ii. pay any fees which the Directors determine from time to time.
- (c) Unless otherwise delegated, the Directors determine whether an applicant may become a Member.
- (d) The Directors are not required to give any reason for the rejection of any application to become a Member.
- (e) If an application to become a Member is accepted, the Institute must:
  - i. give written notice of the acceptance to the applicant including details of the class of membership and the rights that are then attached to that class;
  - ii. request any outstanding payment of any amount owing for the initial (nomination) fee and annual subscription fees (being a pro rata sum if so determined by the Directors); and
  - iii. upon payment of that amount, enter the applicant's name in the Register.
- (f) If an applicant to become a Member is rejected, the Institute must give written notice of the rejection to the applicant.

11. For admission as a Member of the Institute every applicant shall pass the prescribed examinations or successfully complete a course of study prescribed by the Board of Directors (unless exempted therefrom as hereinafter provided) comply with the requisites of this Constitution and By-laws for membership and also comply with such other requirements as the Board of Directors may prescribe either generally or in any particular case.

12. For advancement in membership designation pursuant to clause 24, a Member who is an applicant for advancement shall comply with the requisites of the By-laws for advancement and comply with such other requirements as the Board of Directors may prescribe, either generally or in a particular case.

13.

1. Every applicant shall apply in the form and manner and pay the fees to such person as the Board of Directors may from time to time prescribe.

2. All Members shall agree to be bound by the provisions of the Constitution of the Institute and of the By-laws, Regulations and Pronouncements of the Board of Directors then in force or which may thereafter from time to time be in force.
14. The Board of Directors may in its discretion and without being required to assign any reason therefore refuse to accept any application for admission to membership of the Institute and may in like manner refuse to admit any applicant to membership.

### **Special cases**

15. A Member of any body of accountants which the Board of Directors thinks fit to recognise may be admitted to Membership of the Institute on such terms and conditions as may from time to time be prescribed by the Board of Directors.
16. The Board of Directors may by resolution passed by not less than two-thirds of Directors present and voting admit all or any of the Members of any other body of accountants to membership in the Institute in the status which the Board of Directors deems appropriate.
17. The Board of Directors may by resolution passed by a majority of not less than two-thirds of Directors present and voting dispense with all or any of the requirements of this Constitution and the By-laws regarding admission and admit any person or entity to membership of the Institute in such status as it thinks fit or grant a change in status to any Member:
  - (a) if that person or Member has extensive experience in accountancy;
  - (b) if that person or Member has rendered valuable service in advancing the interest of the profession; or
  - (c) for any special reason the Board of Directors deems sufficient
  - (d) if the applicant is an entity pursuant to becoming an entity Member for the purposes of limiting occupational liability under the IPA Professional Standards Council scheme to the extent to which such liability may be limited under the Professional Standards Act and the partner, shareholder, director or trustee of the entity shall be a Member of the Institute.

### **Life Members**

18. Any Member who has rendered such services to the Institute as would in the opinion of the Board of Directors entitle the Member to the distinction or upon whom the Board of Directors desires to confer such distinction, may be elected a Life Member by the Board of Directors.
19. A Life Member shall be entitled to all the privileges of membership without payment of the annual subscription.

### **Honorary Members**

20. Any person who is not a Member of the Institute may be elected an Honorary Member by the passing of a Resolution by the Board of Directors.
21. The Board of Directors may revoke Honorary Membership at any time without ascribing any reason for so doing.

### **Resignation of Members**

22.
  1. A Member or entity wishing to resign membership shall forward a written resignation to the Institute. The Member or entity shall return the Certificate or Certificates of Membership and / or Public Practice Certificates of the Institute and shall pay all monies owing to the

Institute whereupon the Member's resignation may be accepted by the Institute PROVIDED THAT no resignation shall be accepted from a Member against whom a complaint has been lodged in terms of the Investigation and Disciplinary Chapter in this Constitution until any investigation or disciplinary procedure has been completed in accordance with that Chapter.

2. Notwithstanding non-compliance with sub-clause 22.1 the Institute may accept the resignation of a Member.

### **Re-instatement of Members**

23.

1. Subject to sub-clause 23.2, a person whose name has been removed from the Register under this Constitution may apply in writing to the Institute at any time for reinstatement.
2. A person whose name has been removed from the Register due to disciplinary action by the Institute or by any other professional body must apply in writing to the Chief Executive Officer for reinstatement.
3. An applicant may be reinstated upon such terms and conditions and upon giving such information and explanation as the Board of Directors may deem fit.
4. If the Institute rejects an application for reinstatement it shall give notice in writing of its decision. Such notice shall be personally served upon the applicant or posted to the application by certified mail addressed to the last known address of the applicant. The said notice, if posted, shall be deemed to have been received by the applicant three days after the date of such posting.
5. The applicant may within thirty days after the said notice of such decision is deemed to have been received give notice of appeal in writing stating the grounds of appeal to the Chief Executive Officer. Every appeal shall be determined by the Board of Directors.

### **Designations**

24. There shall be the following classes of Members namely: Associates, Members and Fellows. The class to which a Member belongs is herein referred to as the Member's status.
25. The Member shall only use such designation, as set out in the By-laws of the Institution, as deemed appropriate by the Institute for that class of Member.

## Chapter 4      General Meetings of the Institute

### Annual General Meeting (AGM)

26. The Institute shall, in addition to any other meetings held by the Institute, hold a General Meeting, to be called the “Annual General Meeting”, subsequent to the Annual Divisional Advisory Committee Meetings at such time not being later than the last day of the fifth month following the close of the preceding financial year and at such place which the Board of Directors shall determine.
27. The Board of Directors may whenever it thinks fit, convene a General Meeting, and subject to the Corporations Act shall on the requisition of not less than two hundred Members having at the date of the requisition a right to vote at general meetings, forthwith convene a General Meeting of the Institute as provided by the Corporations Act. This General Meeting shall be held at such place as the Board of Directors shall determine.

### Business of AGM

28. Subject to the Corporations Act<sup>1</sup> a Member wishing to bring before an Annual General Meeting any motion or business not being the ordinary annual business of the Institute shall give notice thereof in writing to the Board of Directors not later than one month after the close of the financial year immediately preceding that Annual General Meeting. No motion or business (other than business brought forward by the Board of Directors) shall come before the meeting unless notice thereof has been given in accordance with this Clause.

### Notice

29.
  1. Not less than twenty-one days notice of every General Meeting specifying the place day and hour of the meeting and the general nature of the business to be dealt with shall be given to the Members in the manner hereinafter provided.
  2. Not less than twenty-one days notice of every General Meeting at which it is proposed by the Institute to pass a special resolution as defined by the Corporations Act specifying the place day and hour of the meeting and the intention to propose the resolution as a special resolution shall be given to the Members in the manner hereinafter provided or in such manner (if any) as may be prescribed by the Institute in General Meeting.
30. All notices may be served upon any Member either personally or by sending the same through the post addressed to such Member at the Member’s address as entered in the Register, or may be given electronically if a Member nominates an electronic address or in exceptional circumstances may be served by advertisement in at least one daily national newspaper if such notice be intended for all Members of the Institute. Notices of meeting served by advertisement in newspapers shall contain details of the nature and purpose of the meeting.

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<sup>1</sup> Section 249N(1) of the Corporations Act states: “The following members may give a company notice if a resolution that they propose to move at a general meeting: (a) members with at least 5% of the votes that may be cast on the resolution; or (b) at least 100 members who are entitled to vote at a general meeting.”

The accidental omission to give notice of a meeting to, or the non-receipt of such notice by any Member, shall not invalidate the proceedings of a meeting held in pursuance of such notice.

31. Notice of meetings of the Institute shall be deemed to be sufficiently given if notice thereof be published in the Annual Report of the Institute.
32. Notwithstanding anything contained in clause 30 and 31 notice of a General Meeting of the Institute specifying an intention to propose a resolution as a special resolution shall be served by sending the same through the post. Notice in the Journal of the Institute forwarded to each Member shall constitute sufficient notice within the meaning of this Clause.
33. Any notice sent by post shall be deemed to have been served on the fourth working day following posting. Any notice sent electronically shall be deemed to have been received on the day of electronic transmission. Any notice given by advertisement shall be deemed to have been served on the day of issue of the newspaper in which the advertisement appears.

### **Proceedings at General Meetings**

#### **Quorum**

34. Ten Members personally present and entitled to vote, pursuant to clause 50, shall be a quorum for a General Meeting of the Institute and no business shall be transacted at any General Meeting unless the requisite quorum shall be present for the commencement of the business.
35. For the purpose of determining whether a quorum of Members is present, a person attending as a proxy, or as representing a Member, shall be deemed to be a Member.

#### **Place of General Meeting**

36. For the purposes of this Constitution, a General Meeting may be held at two or more venues using any technology that gives Members as a whole a reasonable opportunity to participate.

#### **Chair of General Meeting**

37.
  1. Subject to sub-clause 37.2, the President or, in the President's absence, a Deputy President of the Institute or, in the absence of the above office bearers, a Director to be chosen by the Members present shall be entitled to take the Chair at every General Meeting of the Institute and, if at any meeting no person entitled to take the Chair shall be present within fifteen minutes after the time appointed for holding such meeting or if such persons present decline to take the chair then the Members present shall choose one of their number to be Chairman.
  2. The Chairman of the Annual General Meeting shall be the President of the Institute for the period to which the Annual Report refers. In the absence of the President for that period, the Chairman shall be the most senior office bearer for that period present. The office bearers for the same period shall also be present at the Annual General Meeting for purposes of presenting at the Annual General Meeting.
38. Notwithstanding clauses 42 and 43 if under clause 37, an election of a Chairman is required and a poll is demanded, the poll shall be taken forthwith.

#### **Quorum not present**

39. If a quorum is not present within fifteen minutes of the time appointed for the meeting:



- (a) where the meeting was convened upon the requisition of Members – the meeting shall be dissolved; or
- (b) in any other case:
  - i. the meeting stands adjourned to the same day in the next week at the same time and place or to such other day (not being more than fourteen days after such meeting) at such time and place as the Chairman of the meeting may appoint; and
  - ii. if at the adjourned meeting a quorum is not present within fifteen minutes from the time appointed for the meeting the meeting shall be dissolved.

### **Voting at General Meetings**

#### **Votes of Members**

- 40. Subject to the provisions of clauses 49 and 50 on a show of hands every Member present in person and entitled to vote shall have one vote and upon a poll every Member present in person or by proxy or by attorney and entitled to vote shall have one vote.
- 41. Votes may be given either personally or by proxy or by attorney as hereinafter provided.
- 42.
  - 1. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
    - (a) by the Chairman; or
    - (b) by at least five Members present in person or by proxy.
  - 2. Unless a poll is so demanded, a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Institute shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
  - 3. The demand for a poll may be withdrawn.
- 43.
  - 1. Subject to sub-clause 43.2, if a poll is demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.
  - 2. A poll demanded on a question of adjournment shall be taken forthwith.

#### **Adjournment of General Meeting**

- 44.
  - 1. The Chairman of a meeting may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
  - 2. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

3. Except as provided by sub-clause 44.2 it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### Proxies

45.

1. An instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing. Such instrument of proxy may be for a specified meeting and any adjournment thereof.
2. An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
3. An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
4. An instrument appointing a proxy shall be in the form or to the effect of the form prescribed by the By-laws.

46. An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certificated copy of that power or authority, is deposited with the Institute or delivered to the office of the Chief Executive Officer or the Chief Executive Officer's nominee, by not later than 4.00pm on the last working day not less than 48 hours prior to the day of the meeting.

47. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the appointor, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, if no prior notification in writing of the death, unsoundness of mind or revocation has been received at the office of the Chief Executive Officer or the Chief Executive Officer's nominee.

48. Immediately after the conclusion of the meeting for which the proxy instruments have been lodged, the proxy instruments shall be placed in an envelope sealed and signed by the Chairman of the meeting and shall be held, unopened, by the Chief Executive Officer or the Chief Executive Officer's nominee for one month after the close of the meeting, after which they shall be destroyed.

#### Casting vote of Chairman

49. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to the vote to which the Chairman may be entitled as a Member, shall have a casting vote.

#### Members not entitled to vote

50. No Member shall be entitled to vote on any question either personally or by proxy or by attorney at any General Meeting of the Institute or at a poll or in any postal ballot held by the Board of Directors or be counted in a quorum:

- (a) who is an Honorary Member; or
- (b) whose subscription or any other monies owing to the Institute is overdue for three months.
- (c) an Entity Member.

## Postal vote

51. The Board of Directors may at any time resolve that in lieu of submitting a proposal to a General Meeting it shall submit a resolution or resolutions to Members by means of a postal ballot which ballot shall be conducted as nearly as practicable in the manner set forth herein and the result of such postal ballot shall have the same force and effect as a resolution passed at the General Meeting of Members. This procedure may not be employed to pass special resolutions.
  1. Prior to sending to Members the voting papers the Board of Directors shall appoint a panel of scrutineers, at least two of whom shall act as such.
  2. The Board of Directors shall cause voting papers to be posted to each Member who would have been entitled, if present, to vote at a General Meeting held on the day of posting of the said voting papers to the address shown for that Member in the Register. Such voting papers shall set out any resolutions proposed by the Board of Directors and shall contain full directions as to the method of voting.
  3. All Members wishing to vote on any resolution must do so by voting in the manner indicated in the directions and by posting the voting papers to the Institute addressed in the manner specified in the voting papers so as to be received by the Institute within twenty-eight days of the date of posting to the Member by the Institute.
  4. Within seven days after the last day upon which votes can be received under sub-clause 51.3 the scrutineers or at least two of them shall meet and examine the voting papers.
  5. Envelopes containing the voting papers may be opened either before or at such meeting of the scrutineers but may only be opened in the presence of at least two of the scrutineers. The scrutineers shall reject the vote of any Member who at the date of such meeting was in arrears for more than two months with any subscription or any other sum prescribed by the Board of Directors or who has failed to observe the directions mentioned in sub-clause 51.2 (unless in their opinion the Member clearly indicated the way in which the Member wished to vote) and they may reject any other vote which in their view ought properly to be rejected.
  6. The scrutineers shall as soon as practicable report the result of the voting to the President and shall include in such report a statement of the number of votes rejected by them and the reasons for such rejection. The President shall arrange for the result of the postal ballot to be given to Members within reasonable time after the receipt of such report in such manner as the Board of Directors may determine. The report of the scrutineers as to the result of the voting shall be conclusive.
  7. A resolution passed by such ballot shall have the same effect as if it were a resolution passed at a General Meeting of Members held on the date of the report of the scrutineers.
  8. Where for any reason the President is unable to exercise any powers granted to the position under this clause the power shall be exercised by a Director appointed by the Board of Directors for that purpose.

## Chapter 5 Board of Directors

### Powers and Duties of the Board of Directors

#### Management and control

#### 52. General powers

1. Subject to this Constitution, the Institute may exercise, in any manner permitted by the Corporations Act, any power which a public company limited by guarantee may exercise under the Corporations Act.
2. The business of the Institute is to be managed by, or under the direction of the Board of Directors.
3. The Board of Directors may exercise all powers of the Institute except any powers that the Corporations Act requires the Institute to exercise in general meeting.

#### Express powers of the Board of Directors

#### 53.

##### 1. Committees and delegates

- (a) The Board of Directors may delegate any of their powers to a committee of any one or more Directors, the Chief Executive Officer, an employee of the Institute or a Member.
  - (b) The Board of Directors may revoke or vary any power delegated in accordance with any directions of the Directors.
2. Without prejudice to the general powers conferred by clause 52 and the other powers conferred by this Constitution, it is hereby expressly declared that the Board of Directors shall have the following powers on behalf of the Institute:
- (a) it may from time to time make, vary, amend, enlarge, revoke and repeal By-laws, Regulations and Pronouncements ancillary to but not inconsistent with this Constitution on all subjects not expressly reserved for the Institute in General Meeting whether the same be expressed amongst its powers or not, including the control of Committees and the responsibilities exercisable by them;
  - (b) it may prescribe conditions or qualifications (in addition to the requisites of this Constitution) for applicants for admission as Members and for changes in the status of Members, either generally or in any particular case;
  - (c) it may found prizes, award scholarships or bursaries to students and set up special funds or make grants for the education advancement and training of students and accountants on such terms as it may think fit PROVIDED THAT the Board of Directors shall not award any prize, award or distinction of monetary value to a Member except as a successful competitor at any competition held or promoted by the Institute or in recognition of any outstanding achievement;
  - (d) it may at its discretion appoint such Officers and Agents for permanent, temporary or special services as it may from time to time think fit and may determine their duties and fix their salaries or emoluments and may require security in such instances and to such amount as it shall think fit and it may appoint from time to time the Bankers and Legal Advisers of the Institute. It may also in its discretion remove or suspend such Officers and Agents;

- (e) it may purchase, rent or otherwise acquire and furnish and equip suitable premises for the use of the Institute;
- (f) it may take cognisance of anything affecting the Institute or the professional conduct of Members and shall have power to bring before any meeting of the Institute any matters which it considers material to the Institute and may make any recommendations and take such action as it thinks fit in relation thereto;
- (g) it may communicate from time to time with similar bodies and with Members of the profession on other places for the purpose of obtaining and communicating information. It may also negotiate and arrange with other similar bodies for the reciprocal recognition of the status of Members;
- (h) it shall each year circulate amongst the Members a copy of the accounts and a report of the activities of the Institute during the previous year and it may in its discretion print a list of Members and such other information as it may deem of interest and circulate the same amongst the Members;
- (i) it may institute, conduct, defend, compound or abandon any legal proceedings by and against the Institute or its Officers or otherwise concerning the affairs of the Institute and also may compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Institute;
- (j) it may refer any claims or demands by or against the Institute to arbitration and observe and perform every award made as a result of such arbitration;
- (k) it may make and give receipts, releases and other discharges for moneys payable to the Institute and for the claims and demands of the Institute;
- (l) it may invest and deal with any moneys of the Institute upon such security and in such manner as it thinks fit and it may from time to time vary and call in such investments;
- (m) it may borrow or raise money by bank overdraft or otherwise by the issue of debentures or any other securities founded or based upon all or any of the property and rights of the Institute, or without any such security and upon such terms as to priority or otherwise as it shall think fit;
- (n) it may from time to time as it thinks fit establish committees and may revoke the establishment of any such committee;
- (o) it may from time to time as it thinks fit establish Divisional Advisory Committees in any place and may revoke the establishment of any such Divisional Advisory Committee;
- (p) it may from time to time in its absolute discretion delegate any of its powers, authorities and discretions to any, committee, the Chief Executive Officer, or Officer of the Institute on such conditions and for such period it may think fit and it may at any time revoke such delegation;
- (q) it may appoint committees from its own Members or from them and other persons including persons who are not Members of the Institute with such powers as it may prescribe provided such powers be not in excess of its own. At all meetings of any Committee which includes persons who are not Members of the Institute the Chairman shall be a Director;
- (r) notwithstanding sub-clause 72.9, it may from time to time in its absolute discretion make a payment to the employer of a Member who is or has been the President as an amount appropriate to compensate the employer for the loss of the services of the President or incidental expenses related thereto in connection with the period of office of the President. A Member who is or has been President and who is a partner or a principal of a business shall be deemed to be an employee of the business;
- (s) notwithstanding sub-clauses 53.2(r) and 72.9, it may from time to time in its absolute discretion make a payment to the employer of a Member who is or has

been a Director as an amount appropriate to compensate the employer for the loss of the services of the Director or incidental expenses related thereto in connection with the period of office of the Director. A Member who is a partner or a principal of a business shall be deemed to be an employee of the business;

- (t) it may exercise all such powers, privileges and discretions as are not by Statute or this Constitution expressly and exclusively required to be exercised by the Members in General Meeting; and
- (u) it may from time to time establish a Branch at any place, including within a Division, provided that any such Branch is governed by rules approved by the Board of Directors. It may at any time discontinue any such Branch.

## **Formation of Board of Directors**

### Entitlement to vote

54. Repealed

55. Previously Repealed

### Appointment of Directors

56.

1. There shall be a Nominations Committee comprising the President of the Institute, the Chairman of Council of Divisional Presidents and one independent member appointed by the Board of Directors. The Nominations Committee shall appoint up to ten Directors who shall be members of the Institute for terms of office of two years.
2. The Nominations Committee shall be chaired by the President and Chairman of the Board of Directors. In the event the President of the Institute is a candidate for appointment to the Board, a Deputy President of the Institute shall chair the Nominations Committee. If a Deputy President is unable to chair the Nominations Committee, the Board of Directors shall appoint a Director to chair the Nominations Committee.
3. The procedures of the Nominations Committee shall be regulated by the By Laws. The outcomes of the Nominations Committee considerations shall be reported to the Board and Council of Divisional Presidents for noting.

57. The Board of Directors shall appoint the first director from a newly established Division for a term of one year concluding at the end of the next Annual General Meeting.

58.

1. The Board of Directors may appoint up to two additional Directors, who need not be Members of the Institute, for a term of one year commencing at the conclusion of the next Annual General Meeting.
2. The Board of Directors may appoint the Chief Executive Officer of the Institute as a director of the Institute on such conditions and for such term as it thinks fit.

### Term of Directorship

59. Repealed

### Repealed

60. Previously Repealed

61. Previously Repealed

62. Previously Repealed

63. Previously Repealed

#### Establishment of new Divisional Councils

64. Repealed

#### Casual vacancy

65. Any casual vacancy occurring on the Board of Directors may be filled for the remainder of the relevant term by the entity that appointed the departing director.

#### Alternate Directors

66. A Director may appoint in writing, with approval from the Board of Directors, another Member as an Alternate Director to exercise all or such delegated powers for a specified period or meeting.

67. If the appointing Director so requests, the Institute must give the Alternate Director notice of Directors' meetings.

68. Where an Alternate Director exercises validly the Director's powers, the exercise of the power is just as effective as if the powers were exercised by the Director.

69. The appointment of the Alternate Director may be revoked at any time by the appointing Director or shall lapse when the specified time has lapsed.

70. An appointment of an Alternate Director or its termination must be in writing. A copy of such must be provided to the Institute. The appointment of the Alternate Director shall cease if the appointor ceases to be a Director.

1. An Alternate Director is an officer of the Institute and not an agent of his or her appointor.

#### Board of Directors appointed Directors

71. Repealed

#### Directors vacating their Directorship

72. A Director (including an Alternate Director) ceases to be a Director if the Corporations Act so provides or if:

1. the Director, so appointed by the Nominations Committee, ceases to be a Member of the Institute.

2. the Director resigns from the Board of Directors;

3. the Director is absent from two scheduled meetings of the Board of Directors without the consent of the Board;

4. the Director becomes an insolvent under administration;

5. the Director becomes prohibited from being a Director by reason of any Order made under the law;

6. the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
7. the subscription or any other monies owing to the Institute by the Director (who is a Member) are overdue for three months;
8. the Director is appointed to any salaried office, other than Director where Director remuneration has previously been authorised by the Board and except for the Chief Executive Officer who may also be a Director;
9. the Director's office is declared vacant by a resolution of a General Meeting of the Institute;
10. the Director ceases to have the confidence of not less than two-thirds of the Directors present and voting; or
11. The Chief Executive Officer shall cease to be a Director upon the termination of employment for whatever reason.

#### Quorum for meetings of the Board of Directors

73. A majority of Directors shall constitute a quorum with the power to act at any meeting of the Board of Directors duly convened.
74. Repealed.

#### Conflict of interest

75.
  1. if a Director is directly or indirectly interested in any contract or proposed contract with the Institute; and
  2. the interest could conflict with the proper performance of the Director's duties in relation to the contract or proposed contract:
    - (a) the Director, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest to the Institute; and
    - (b) the Director will be disqualified from office in respect of the contract or proposed contract only. The disqualified Director will be unable to exercise any of the rights and benefits conferred to that position by the Institute in relation to the contract or proposed contract;
  3. Clause 75.2(b) will not apply if the interest of the Director:
    - (a) may be properly regarded as not being material, and;
    - (b) does not exceed 5% of the issued shares (if a company) or 5% of the capital of the business proposing to enter into a contractual arrangement with the Institute; and
  4. any such contract, once entered into, shall be disclosed both as to the parties and as to the nature of the contract in the Annual Report covering the period when such contract is entered into, and in each subsequent Annual Report during the currency of such contract.
76.
  1. A Director must exercise their powers and discharge their duties:
    - (a) in good faith and for the best interest of the Institute; and
    - (b) for a proper purpose.



2. A Director must not improperly use their position to:
  - (a) gain an advantage for themselves or someone else; or
  - (b) cause detriment to the Institute.
  
3. A Director must not improperly use information obtained or received as a Director to:
  - (a) gain an advantage for themselves or someone else; or
  - (b) cause detriment to the Institute.

77. Repealed.

### **Proceedings of Board of Directors meetings**

#### Regulating meetings

78. The Board of Directors may meet, adjourn and otherwise regulate their respective meetings as they shall think fit provided that the Board of Directors shall meet at least once every year.

#### Quorum for a meeting

79. Repealed

#### Convening a meeting

80. A meeting of the Board of Directors shall be convened at any time upon the request of the President, or the Deputy Presidents, or of four Directors.

#### Voting on questions

81. Questions at any meeting of the Board of Directors shall be decided by a majority of votes recorded and, in case of an equality of votes (other than in respect of an election which shall in all cases be determined pursuant to the Constitution) the Chairman shall in addition have a casting vote.

#### Rotary resolutions

82.

1. The Directors may pass a resolution, without a meeting of the Directors being held, if a majority of Directors entitled to vote on the resolution, assent to a document containing a statement that they are in favour of the resolution set out in the document.
  
2. A Director may signify their assent or otherwise to a Rotary Resolution by signing the document or by notifying the Institute of that assent:
  - (a) by any technology including telephone; or
  - (b) by any manner prescribed by the Board of Directors from time to time.
  
3. Where a resolution is passed by the Board of Directors, the resolution will be tabled at the next meeting of the Board of Directors.
  
4. Directors shall have a period of up to five (5) business days for consideration of the Rotary Resolution or other such reasonable time to consider the resolution as determined from time to time.

#### Office bearers

83. On or before the last day of the fifth month following the end of the financial year and prior to the Annual General Meeting for that year, the Board of Directors shall elect from its numbers a President and two Deputy Presidents. Each person so elected shall hold office from the close of the next following Annual General Meeting. All such elections shall be conducted in such

manner as may be prescribed by the By Laws from time to time made by the Board of Directors.

#### The Executive Committee

##### 84. The Executive Committee

1. the President, Deputy Presidents, the Immediate Past President and the Chief Executive Officer shall comprise the Executive Committee. The Executive Committee shall be convened from time to time to provide guidance to the Chief Executive Officer between meetings of the Board of Directors. The Executive Committee shall not make decisions unless it is authorised to do so by the Board of Directors. Any business of the Executive Committee shall be reported to the Board of Directors in full.

2. Repealed.

3. Repealed

##### 85. Repealed.

#### Presiding over meetings

86. At all meetings of the Board of Directors the President shall preside or, in the President's absence, one of the Deputy Presidents of the Institute or, in the Deputy Presidents' absence, a Chairman shall be elected from amongst the Directors.

#### Minutes of meetings

87. In accordance with the Corporations Act, the Board of Directors shall cause to be regularly entered, signed minutes of the proceedings of their respective meetings, or any other proceedings of the Institute.

#### Validation of decisions

88. All acts done at any meeting of the Board of Directors or of a Committee appointed by the Board of Directors or by any person acting as a Director or Committee Member shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of or that they or any of them were disqualified, be as valid as if such the Board of Directors, Committee or person had been duly appointed and was qualified to act.

#### Miscellaneous

##### Committees

89. The meetings and proceedings of every such Committee shall be governed by such regulations and By Laws as may from time to time be made by the Board of Directors.

90. No decision of any Committee shall bind the Institute until adopted or confirmed by the Institute unless at the time of the appointment of such Committee power to do so was expressly given to such Committee.

#### By-laws, Regulations and Pronouncements

91. The Board of Directors may make By-laws, Regulations and Pronouncements for the maintenance of sound practice and the promotion of the interests of the Institute and of the profession and for the prevention of dishonourable practices and may prohibit such acts and regulate the conduct of Members in that regard as it thinks fit and it may provide penalties for

those Members who may commit a breach thereof or who may not observe the provisions of any such By-laws, Regulations or Pronouncements.

## **Chapter 6 Register of Members**

### **Register of Members**

92. A Register of Members is to be kept in accordance with the Corporations Act.
93. The Register shall set out the status of each Member or entity and shall contain such further particulars as may from time to time be prescribed by the Board of Directors.
94. Every Member or entity shall from time to time furnish the Board of Directors with all required information to enable it to compile a record of Member qualifications and experience in accordance with this Constitution.
95. The name of any person or entity who ceases to be a Member, shall be removed from the Register.

### **Transfers**

96. Subject to clause 112 if a Member or entity of the Institute changes their principal place of residence or business, to such place that is not a prescribed Division of the Institute, the Member shall ipso facto be transferred to the exclusive control of the Board of Directors.
97. Every Member or entity so changing their principal place of residence shall within one calendar month thereafter notify the Institute of the fact of such change and shall give such other information as may be prescribed by the Board of Directors.

## Chapter 7 Investigation and Disciplinary Procedures

### Misconduct and penalties

98.

1. If any Member has been convicted by a court of law of an offence which in the opinion of the Board of Directors or a Disciplinary Tribunal is inconsistent with being a Member of the Institute, and there exists reasonable information to evidence that conviction; the Board of Directors or the Disciplinary Tribunal (whichever is hearing the matter) shall impose one or more of the penalties and costs listed at (3) below.
2. If any Member:
  - (a) Has been found by the Board of Directors or a Disciplinary Tribunal to be guilty of any breach of the Constitution, By-laws, Regulations or Pronouncements of the Institute;
  - (b) Has in the opinion of the Board of Directors or a Disciplinary Tribunal failed to observe a proper standard of professional care, skill or competence;
  - (c) has in the opinion of the Board of Directors or a Disciplinary Tribunal obtained admission by improper means;
  - (d) Has ceased to hold the necessary qualifications for membership;
  - (e) Has become an insolvent under administration;
  - (f) Has in the opinion of the Board of Directors or a Disciplinary Tribunal engaged in conduct which is not in the best interests of the Institute;
  - (g) Ceases to have capacity at law; or
  - (h) Has failed to comply with any reasonable request made pursuant to a matter under this Chapter of the Constitution by the Board of Directors, a Committee of the Board of Directors, an Officer of the Institute or has failed to comply with an order of the Disciplinary Tribunal or Appeals Tribunal; the Board of Directors or a Disciplinary Tribunal will impose on that Member any one or more of the penalties and/ or costs listed at (3) below.
3. Penalties:
  - (a) Forfeiture of membership
  - (b) Suspension from membership for any period that the Board of Directors or a Disciplinary Tribunal shall prescribe and on such terms and conditions as to resumption of membership as the Board of Directors or a Disciplinary Tribunal may prescribe, and not limiting the generality of the foregoing may require the Member to pass prescribed examinations or successfully complete a course of study.
  - (c) A fine not exceeding \$10,000 and in default of payment within the period of 30 days or such other period within the period of 30 days or such other period as the Board of Directors or a Disciplinary Tribunal may from time to time determine, forfeiture of membership.
  - (d) Censure.
  - (e) Admonishment
  - (f) Any other penalty deemed appropriate
  - (g) Payment of all or any of the costs and expenses reasonably incurred by the Institute in the investigation and determination of any matter arising under this sub-clause concerning such person and in default of payment of such costs and expenses, automatic forfeiture of membership within a period of time to be determined by the

Board of Directors or a Disciplinary Tribunal shall be administered by the Chief Executive Officer.

- (h) Non-compliance with an order made by the Board of Directors or a Disciplinary Tribunal may result in the automatic forfeiture of membership administered by the Chief Executive Officer.

### **Suspension**

99. If any Member has been charged with an offence, which in the opinion of the Board of Directors warrants suspension, the Board of Directors shall suspend the Member for such time as the Board of Directors considers reasonable.
100. During any period of suspension a Member shall continue to pay all fees and subscriptions and shall be subject to this Constitution, By-laws, Regulations and Pronouncements relating to the conduct of Members but apart from clause 108 shall cease to enjoy any of the rights or benefits conferred on Members by this Constitution or by the By-laws, Regulations or Pronouncements and shall deliver up to the Institute their membership Certificate and, if applicable, their Public Practice Certificate.

### **Forfeiture**

101. A person or entity whose membership has been forfeited shall cease to be a Member. The Member's name shall be removed from the Register and the Member shall return the Certificate or Certificates of Membership of the Institute forthwith.
102. A Member who has been suspended or who has submitted a resignation may be declared to have forfeited membership if the Member fails to deliver up on demand the Certificate or Certificates of Membership of the Institute to the Institute.

### **Appointment of Investigator, Investigations Review Officer and Disciplinary Tribunals**

- 103.
1. The Board of Directors may appoint a person or persons to the position of "Investigator" in order to undertake investigations on behalf of the Institute in relation to alleged breaches of this Constitution, By-laws, Regulations and Pronouncements of the Institute or any matters referred to in clause 98, by Members of the Institute. The Investigator should not be a Member of the Institute. The Investigator shall be responsible to the Chief Executive Officer at all times.
  2. The Board of Directors shall appoint an "Investigations Review Officer" who shall review the work of the Investigator in relation to matters dealing with Members as prescribed in the By-laws. Such person shall be a Member of long standing, with experience in relation to matters relating to investigations and disciplinary procedures, and shall be accessible at all reasonable times. The Investigations Review Officer may be, but is not limited to, an Officer of the Institute.
- 104.
1. The Board of Directors shall appoint such Disciplinary Tribunals as required.
  2. Persons appointed to such Disciplinary Tribunals shall be prescribed by the By-laws and appointed for a term of two years.
  3. The Investigation Review Officer shall refer cases to the Chief Executive Officer for determination to proceed to a Disciplinary Tribunal to hear any case against a Member.

4. The Board of Directors may prescribe the qualification and requirements necessary for appointment to a Disciplinary Tribunal.

### **Proceedings of Investigator and the Disciplinary Tribunals**

105.

1.
  - (a) The powers conferred on the Board of Directors or Disciplinary Tribunal by Clause 98 shall not be exercised until a report on the matter in question has been made to the Board of Directors or to the appropriate Disciplinary Tribunal by an Investigator, and until a meeting of the Board of Directors or the appropriate Disciplinary Tribunal has considered such matter of which meeting the Member concerned has been given at least fourteen days notice in writing specifying the matter or matters to be considered and at which meeting such Member shall be given the opportunity of being heard with or without the Member's solicitor or counsel or may be represented by some other Member and of presenting such evidence as the Member may desire. The said notice shall be served personally or be sent by certified mail. A Member shall be deemed to have received the said notice upon delivery, or, if posted, three days after the day of posting in an envelope addressed to the address of the Member in the Register.
  - (b) Notwithstanding clause 105.1(a) within specific areas defined in the By-laws or Pronouncements of the Board of Directors, the Investigator may make a decision, with the approval of the Investigations Review Officer, as to an investigation matter and give the Member concerned by notice in writing of the decision.
2. The procedures at every such meeting shall be conducted in such manner as the Board of Directors may from time to time prescribe.
3. The Board of Directors or a Disciplinary Tribunal may engage a solicitor with or without counsel to assist it at such meeting.
4. Neither the Board of Directors, any Disciplinary Tribunal nor the Investigator shall be under any obligation to disclose to the Member concerned or any other Member the source of any information giving rise to such proceedings.

### **Arbitration / Mediation**

106. Subject to the By-laws, the Investigator may, with the approval of the Investigations Review Officer, recommend to the parties that they undertake Arbitration / Mediation as a preferred means of settlement.

### **Notice of findings**

107. Any Member against whom any finding has been made or upon whom any sanction has been imposed shall be given notice in writing of the finding or sanction by the Board of Directors, a Disciplinary Tribunal or by the Investigator by personal service or by certified mail. A Member shall be deemed to have received the said notice upon delivery, or, if posted, three days after the day of posting in an envelope addressed to the address of the Member in the Register. The Chief Executive Officer may inform other persons of the result of any Investigations undertaken by the Institute.

## **Appeals**

108.

1. There shall be an Appeals Tribunal to hear appeals by the Institute and Members of the Institute against findings of the Disciplinary Tribunal.
2. The Appeals Tribunal shall comprise a Chairman and at least two other persons appointed by the Board of Directors.
3. The Appeals Tribunal Members shall be appointed for an initial term of two years and may be re-appointed.
4. The Appeals Tribunal may engage counsel to assist it at the hearing of appeals.
5. The Members of the Appeals Tribunal may be paid such fees and reimbursements of expenditure as are determined by the Board of Directors from time to time.

### **Procedures for the lodgement of Appeals**

108A

1. Any Member of the Institute against whom any finding has been made by the Disciplinary Tribunal may, within 30 days of notice of such finding having been deemed to be served, lodge a Notice of Appeal with the Executive Officer of the Appeals Tribunal.
2. The Institute may, within 30 days of a finding being made by the Disciplinary Tribunal in respect of a Member of the Institute, lodge a Notice of Appeal in respect of that finding, with the Executive Officer of the Appeals Tribunal.
3. An appellant may make an application for an extension of time to lodge a Notice of Appeal with the Chairman of the Appeals Tribunal. The Chairman of the Appeals Tribunal may only grant such an extension in exceptional circumstances.

### **Content of Notice of Appeal**

108B The Notice of Appeal:

1. must be in writing and state the grounds of the appeal which may not be amended except with the leave of the Chairman of the Appeals Tribunal; and
2. must state whether the appellant:
  - (a) intends to appear before the Appeals Tribunal; and/or
  - (b) by a Member of the Institute, by a fellow Member of the Institute; and
3. may include submissions on such matters as the appellant wishes to be taken into account by the Appeals Tribunal.

### **Effect of Lodgement of a Notice of Appeal**

108C The lodgement of a Notice of Appeal against a finding of the Disciplinary Tribunal shall operate as a stay of the implementation of that finding pending the final determination of the appeal by the Appeals Tribunal.



### **Executive Officer**

108D The Institute shall appoint an Executive Officer to the Appeals Tribunal to manage the receipt and processing of appeals and perform such duties as set out in the By-laws.

### **Procedures**

108E The procedures of the Appeals Tribunal shall be prescribed in the By-laws.

109. Repealed

### **Public Notice of Findings**

110. Public notice of any penalty against a Member or any fine imposed upon or costs awarded against a Member shall be published in such manner as the Board of Directors shall deem fit and the Certificate or Certificates of Membership of the Institute of the Member so suspended or whose membership has been forfeited shall in either case be delivered to the Chief Executive Officer to be retained during the Member's suspension or to be cancelled.

## **Chapter 8      Divisional Advisory Committees**

### **Establishment of Divisions**

111. The Board of Directors may establish in any geographical place it determines a Division from which a Divisional Advisory Committee may be established.
112. Unless otherwise resolved by the Board of Directors, every Member or entity shall be attached to the Division in which they reside, or in the case of an entity, the Division in which the registered office is situated.

### **Responsibilities of Divisional Advisory Committee**

113. A Divisional Advisory Committee shall:
1. elect Divisional Presidents and Deputy Presidents in the manner prescribed in the By-laws;
  2. advise the Institute in regard to the policy objectives established by the Board of Directors. If a Divisional Advisory Committee considers the Institute is not moving towards the policy objectives of the Board of Directors, it may furnish a report to the Chief Executive Officer and the Board of Directors for the Chief Executive Officer and the Board of Directors to consider;
  3. it may take cognisance of anything affecting the Institute or the professional conduct of Members and shall forthwith make a report thereof to the Board of Directors; and
  4. furnish each year to the Board of Directors a report of the activities of its Committee during the previous year and such other information as the Board of Directors may require.

### **Annual Divisional Advisory Committee meetings**

114. The proceedings and conduct of any Annual Divisional Advisory Committee meeting shall be in accordance with the rules set out in the By-laws unless otherwise stated in the Constitution.

### **Formation and Operation of Divisional Advisory Committee**

#### **Formation**

115. A Divisional Advisory Committee shall comprise Members attached to the Divisions who shall be elected in such number and manner as determined by the Board of Directors from time to time. The operation and procedures of Divisional Advisory Committees shall be regulated by the By-laws.

#### **Term of Divisional Councillors**

116. Repealed.

#### **Divisional Councillor Elections**

117. Repealed.

#### **Proceedings of Divisional Council meetings**

118. Repealed.

## Quorum for Divisional Council meetings

119. Repealed.

120. Repealed.

## Councillors Vacating Office

121. Repealed.

## Conflict of interest

122.

1. If a Divisional Advisory Committee Member is directly or indirectly interested in any contract or proposed contract with the Institute; and
2. The interest could conflict with the proper performance of the Divisional Advisory Committee Member's duties in relation to the contract or proposed contract:
  - (a) the Committee Member, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest to the Institute; and
  - (b) the Committee Member will be disqualified from office in respect of the contract or proposed contract only. The disqualified Committee Member will be unable to exercise any of the rights and benefits conferred to that position by the Institute in relation to the contract or proposed contract;
3. Clause 122.2(b) will not apply if the interest of the Committee Member:
  - (a) may be properly regarded as not being material, and
  - (b) does not exceed 5% of the issued shares (if a company) or 5% of the capital of the business proposing to enter into a contractual arrangement with the Institute; and
4. Any such contract, once entered into, shall be disclosed both as to the parties and as to the nature of the contract in the Annual Report covering the period when such contract is entered into, and in each subsequent Annual Report during the currency of such contract.

123.

1. A Divisional Advisory Committee Member must exercise their powers and discharge their duties:
    - (a) in good faith and for the best interest of the Institute; and
    - (b) for a proper purpose
  2. A Divisional Advisory Committee Member must not improperly use their position to:
    - (a) gain an advantage for themselves or someone else; or
    - (b) cause detriment to the Institute
  3. A Divisional Advisory Committee Member must not improperly use information obtained or received as a Divisional Advisory Committee Member to:
    - (a) Gain an advantage for themselves or someone else; or
    - (b) Cause detriment to the Institute
124. The Board of Directors may remove a Divisional Advisory Committee Member found to have breached clauses 122 and/or 123 from their respective Divisional Advisory Committee and bar such person from being a Divisional Advisory Committee Member or Director of the Institute for a minimum of three years.

## Appointment of Directors by Divisional Councillors

125. Repealed

## Divisional Advisory Committee Office Bearers

126. Prior to the last day of the third month following the end of the financial year in each year a Divisional Advisory Committee shall elect from among its Members a Divisional President and a Divisional Deputy President for a two-year term. The terms of office shall be counter cyclical to the terms of office of Board Directors for that Division. The cycle of the terms of office of Divisional Office Bearers shall be prescribed by the Board of Directors. The terms of office commence at the conclusion of the Annual General Meeting of the Institute. All such elections shall be conducted in such manner as may be prescribed by the By-laws including transitional provisions to enable the effective establishment of the Council of Divisional Presidents and to determine the counter-cyclical terms of office. Divisional Presidents shall assume the ex-officio role on the Council of Divisional Presidents. The conduct of the Council of Divisional Presidents shall be regulated by the By-Laws.

## Chapter 9 Ancillary Clauses

### Professional Practice

#### Members in Public Practice

127. A Member shall not, without the consent of the Institute, provide or hold themselves out to provide Public Practice services unless the Member has been issued with a Public Practice Certificate or the Member is found by the Institute to be exempt from the obligation to hold such a certificate.
128. The Board of Directors shall prescribe By-laws and Regulations for the issue and renewal of Public Practice Certificates and for any exemption from the obligation to hold a Public Practice Certificate.
129. The Board of Directors, may at any time, prescribe any conditions and fees for the issue and/or renewal of a Public Practice Certificate, either generally or in a particular case.

### Examinations and courses of study

#### Prescribed course of study or examination

130. The Board of Directors may from time to time prescribe a course of study or prescribed examinations, the times and places at which they shall take place, the mode in which they shall be conducted, the subjects to be contained therein, the knowledge necessary for passing and the tests by which such knowledge shall be ascertained, the examination fees payable by candidates and generally all such matters in connection with such examinations as it may deem necessary.

#### Exemption from course of study / examination

131. The Institute may exempt any person from the whole or any part of a prescribed course of study or the prescribed examinations on the grounds that the person has passed examinations which in the opinion of the Board of Directors are of equivalent standard, or has been accredited through the process of recognition of prior learning or has been assessed against endorsed workplace assessment competency standards and may permit any person who fails in an examination to re-present for the whole or any part of a subsequent examination.

#### Board of Examiners

132. A Board of Examiners or Boards of Examiners may from time to time be appointed by and hold office at the will of the Board of Directors for the purpose of examining candidates for admission to membership of the Institute or for a change in status and may be comprised of such persons whether Members of the Institute or not as the Board of Directors shall deem proper.
133. The Board of Directors shall have power at any time:
  1. to remove any Member of a Board of Examiners and appoint another in that person's place;
  2. to fill any vacancy in a Board of Examiners howsoever occurring;
  3. to increase or reduce the number of Members of a board of examiners;
  4. to fix fees payable to Members of a Board of Examiners and to pay such fees; and

5. to contract with parties to provide these services and perform these functions.

## **Fees and Subscriptions**

### Annual subscriptions

134. The Board of Directors shall prescribe the annual subscription (if any) payable and when due by Members of the Institute and the method of payment and may in special circumstances waive the subscription or prescribe a different rate of subscription or a different method of payment.

### Late penalty

135. If any Member's subscription is overdue, a late fee may be imposed on that Member at a rate as determined by the Board of Directors from time to time. If the subscription and late fee are not paid in full within a period as defined by the Board of Directors, the Member's name, with the authority of the Board of Directors, may be removed from the register and from the date of such removal the Member shall forfeit their membership, but without prejudice to the right of the Board of Directors to recover all arrears including the subscription for the year current and the Certificate or Certification of the Institute.

### Fee on admission or advancement

136. The Board of Directors shall prescribe the fees (if any) payable by applicants and the method of payment for admission to Members or advancement in status.

## **Certificates**

### Certificates of Membership and Public Practice

137.

1. On admission to membership or on a change in status, or being accepted to provide Public Practice services and on payment of the prescribed fee (if any) a Certificate of Membership certifying the Member's or entity's status or where appropriate a Public Practice Certificate in the form prescribed by the Board of Directors from time to time shall be issued to such Member or entity.
2. The Certificate of Membership shall be under the Seal of the Institute and shall bear the signatures or facsimile signatures of any two Directors and the Chief Executive Officer, and its issue shall be recorded in a register kept for that purpose.
3. Every such Certificate shall remain the property of the Institute and the Board of Directors shall be at liberty at any time to call for and compel its production and delivery and may alter, amend, cancel or destroy any such Certificate or issue a new Certificate in lieu thereof.
4. Any person or entity ceasing to be a Member of the Institute shall return the Certificate of Membership, or, if applicable return the Public Practice Certificate for cancellation.
5. Any person or entity ceasing to be in Public practice or who no longer meets the requirements to be in public practice shall return the Public Practice Certificate for cancellation.
6. If any person or entity neglects or refuses to return the Certificate the Institute may institute legal or other proceedings for its recovery.
7. A Member or entity shall not, without the permission of the Institute, make or allow to be made any photographic or other imitation of an Institute Certificate or Membership or Public Practice Certificate.

8. If a Certificate is defaced lost or destroyed it may be replaced on payment of such fee (if any) and on such terms as the Board of Directors thinks fit.
9. The Board of Directors upon being satisfied that any Member or entity holds any special qualification may issue to such Member a further Certificate or Certificates showing the Member's special qualification or qualifications and the Board of Directors may similarly endorse a Certificate of Membership for a like purpose.

#### Chief Executive Officer

138. The Chief Executive Officer shall be appointed by the Board of Directors for such term and upon such conditions as the Board of Directors thinks fit, and any Chief Executive Officer so appointed may be removed by the Board of Directors. The Chief Executive Officer shall fill the position of Company Secretary.

#### The Seal

##### Common Seal of the Institute

139. The Common Seal of the Institute shall be in the custody of the Chief Executive Officer. The affixing of the seal is to be administered by the Chief Executive Officer.

##### Funds of the Institute

140. All moneys when received on account of the Institute shall be paid into the account of the Institute at its Bankers.
141. The funds of the Institute shall be applied in accordance with the budget approved by the Board of Directors subject to any directions that may be given from time to time by the Board of Directors.
142. All moneys withdrawn by the Institute shall be by cheques drawn upon its Bankers, signed by such persons as the Board of Directors may determine, by a Banker's Authority signed by such persons as the Board of Directors may determine, or by electronic means by such persons as the Board of Directors may determine.
143. Surplus funds of the Institute may be invested by the Board of Directors at its discretion. No Member of the Board of Directors shall be answerable for any loss which may arise from any such investment or from any cause except from wilful neglect or default.

##### Audit of accounts

144. A Registered Company Auditor shall be appointed and the Auditor's duties regulated in accordance with the Corporations Act and any other relevant Acts.

#### Indemnity

##### Indemnity for liability (other than for legal costs)

145. To the extent permitted by the Corporations Act, the Institute indemnifies every person who is or has been a Director, Divisional Advisory Committee Members, Chief Executive Officer, Committee Member and any other Officer of the Institute or of a wholly-owned subsidiary of the Institute against any liability incurred by the person as a Director, Nominations Committee Member, Chief Executive Officer, Committee Member and any other Officer of the Institute or of a wholly-owned subsidiary of the Institute, to another person except in circumstances where:
  1. the liability is owed to the Institute or a wholly-owned subsidiary of the Institute; or

2. the liability is owed to a person other than the Institute or a wholly owned subsidiary of the Institute and the liability arises out of conduct involving a lack of good faith; or
3. the liability arises from a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Corporations Act.

#### Indemnity for legal costs

146. To the extent permitted by the Corporations Act, the Institute indemnifies every person who is or has been a Director, Divisional Advisory Committee Member, Nominations Committee Member, Chief Executive Officer, Committee Member and any other Officer of the Institute or of a wholly-owned subsidiary of the Institute against any liability for costs and expenses by that person in defending any proceedings unless the costs and expenses are incurred:
1. in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 145; or
  2. in defending or resisting criminal proceedings in which the person is found to be guilty; or
  3. in defending or resisting proceedings brought by the Australian Securities and Investment Commission ("ASIC") or a liquidator for a Court order if the grounds for making the order are found by the Court to have been established; or
  4. in connection with proceedings for relief to the person under the Corporations Act and the Court denies the relief, save that sub-clause 146.3 shall not be constructed as excluding any indemnity being provided to a person for costs and expenses incurred in responding to actions by ASIC or a liquidator as part of an investigation before commencing proceedings for the Court order.

#### Insurance premiums for certain liabilities

147. The Institute may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been a Director, Divisional Advisory Committee Member, Nominations Committee Member, Chief Executive Officer, Committee Member and any other Officer of the Institute or of a subsidiary of the Institute against a liability:
1. incurred by the person in their capacity as a Director, Divisional Advisory Committee Member, Nominations Committee Member, Chief Executive Officer, Committee Member and any other Officer of the Institute or a subsidiary of the Institute or in the course of acting in connection with the affairs of the Institute or a subsidiary of the Institute or otherwise arising out of the Officer's holding such office PROVIDED THAT the liability does not arise out of conduct involving a wilful breach of duty in relation to the Institute or a subsidiary of the Institute or a contravention of sections 182 or 183 of the Corporations Act; or
  2. for costs and expenses incurred by that person in defending proceedings, whatever their outcome.

#### Payment of legal costs

148. To the extent permitted by the Corporations Act and notwithstanding sub-clause 72.9, the Institute may make (or agree to make) payment, whether by way of advance, loan or otherwise, to a Director, Divisional Advisory Committee Member, Nomination Committee Member, Chief Executive Officer, Committee Member and any other Officer of the Institute or a wholly-owned



subsidiary of the Institute in respect of costs and expenses incurred by that person in defending any proceedings provided that:

1.
  - (a) the person is or may be entitled to be indemnified by the Institute against liability for the cost and expenses pursuant to clause 146; and
  - (b) it would be reasonable in the circumstances of the Institute, disregarding any other financial benefit given or payable to the person by the Institute, to:
    - i. make the payment at the time the payment was or is given; or
    - ii. agree to make the payment at the time when the agreement is or was made.
2. If the costs and expenses become costs and expenses for which the person is not entitled to be indemnified by the Institute pursuant to clause 146, the person must repay the amount paid.

### **Exemptions**

149. Nothing in clauses 145 or 146 shall be construed as providing an exemption to a person from a liability to the Institute incurred as a Director, Divisional Advisory Committee Member, Nominations Committee Member, Chief Executive Officer, Committee Member and any other Officer of the Institute.

### **Definition of “Proceedings”**

150. For clauses 146 to 148 the term “proceedings” means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in that person’s capacity as an Officer or in the course of acting in connection with the affairs of the Institute or a wholly-owned subsidiary of the Institute (for the purposes of clauses 146 and 148 or a subsidiary (for the purposes of clause 147) or otherwise arising out of the Officer’s holding such office (including proceedings alleging that the person was guilty of negligence, default, breach of trust or breach of duty in relation to the Institute or a wholly-owned subsidiary of the Institute (for the purposes of clauses 146 and 148) or a subsidiary (for the purposes of clause 147).”

### **Interpretation of this Constitution**

151. Subject to the overriding powers of Members in General Meeting, contained in clause 52 hereof, and to the jurisdiction of the Courts, if any doubt shall arise as to the proper construction or meaning of any of this Constitution or of any By-laws, Pronouncements or Regulations made hereunder or any of them or of any expression therein the decision of the Board of Directors thereon shall be final and conclusive provided such decision be reduced to writing and recorded in the Minute Book of the proceedings of the Board of Directors.
152. This Constitution may be amended, repealed, rescinded and replaced in accordance with the Corporations Act. Nothing whether contained in this Constitution for the time being in force or otherwise howsoever shall be construed as implying or creating any privilege, priority or right in favour of any Member so as to limit the power of the Institute at any time to alter, rescind or repeal the same and adopt a new Constitution in its place.
153. If a Clause or part thereof is, or may become, unenforceable at law for any reason whatsoever, this Constitution is severable in respect of such Clause or part thereof and the remainder of this Constitution is to be read and construed for all intents and purposes as if the same did not form part of this Constitution.

## Contact Information

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### IPA Divisional Offices are located in the following cities:

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### The IPA also has permanent offices around the world including:

London | Kuala Lumpur | Beijing

For enquiries within Australia call 1800 625 625 for your nearest Divisional Office.

International enquiries can be directed in the first instance to IPA Head Office.