



**CORPORATIONS ACT 2001**

**A PUBLIC COMPANY LIMITED BY GUARANTEE**

**CONSTITUTION of  
AUSTRALIAN INSTITUTE OF  
SUPERANNUATION TRUSTEES**

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## 1 INTERPRETATION

### 1.1 This Constitution

- (a) This and the following clauses of this Constitution set out the manner in which the Members of the Company have agreed to conduct the internal administration of the Company.
- (b) This Constitution takes the place of the Replaceable Rules contained in the Act.

### 1.2 Definitions

In this Constitution, unless the context otherwise requires, -

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

**AGM** means an annual general meeting of the Company held in accordance with section 250N of the Act;

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

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

**Board-appointed Director** means a director appointed in accordance with clause 3.3(c);

**Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in the place of incorporation of the Company, and concludes at 5 pm on that day;

**Chair** means the person appointed to be the chair of meetings of Members or the chair of meetings of a Committee (as applicable);

**Committee** means any committee established by the Directors under clause 4.5(a);

**Company** means Australian Institute of Superannuation Trustees;

**Constitution** means the constitution and any supplementary, substituted or amended constitution in force from time to time;

**Deputy-President** means the Director appointed as Deputy-President under clause 5.4(a);

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**Director** means any person formally and lawfully appointed as a director of the Company, including an alternate director;

**Directors** mean all or any number of the Directors holding office at any time;

**Fund-related Membership** is a class of Membership established under clause 11.2(b)(ii);

**Guarantee** means the maximum amount each Member agrees to pay to the Company in accordance with clause 2.5;

**Individual Membership** is a class of Membership, established under clause 11.2(b)(i);

**Individual Participant Member** means a person admitted by the Directors as an Individual Participant Member under clause 8;

**Member** means a person admitted as a Member under clause 11.1 who has not ceased to be a Member;

**Officer** means an officer of the Company within the meaning of the Act;

**Participation Fee** means the amount payable under clause 10.1;

**President** means the Director appointed to chair the meetings of Directors under clause 5.4(a);

**Register of Members** means the register of Members to be kept pursuant to the Act;

**Registered Fund** means a Representative superannuation fund which is registered by the Directors under clause 7.2;

**Regulated Superannuation Fund** has the meaning given to that term in the Superannuation Industry (Supervision) Act 1993 (Cth);

**Representative superannuation** means superannuation arrangements under which funds are governed by Representative Trustees and are established and maintained solely for the benefit of their members, such as superannuation arrangements between the trustees of superannuation funds typically known as public sector funds, industry funds and corporate funds and their respective members;

**Representative superannuation fund** means a Regulated Superannuation Fund which is established and conducted pursuant to the principles of Representative superannuation, the trustee of which holds such licences and authorisations as are required in order for it to act as trustee of a Regulated Superannuation Fund;

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**Representative Trustee** means a group of trustees or a board of directors of a corporate trustee including equal numbers of representatives of employee members of the superannuation fund and of employers, or otherwise adequately (in the opinion of the Directors) representing the interests of both employees and employers;

**Secretary** means any person formally and lawfully appointed as a secretary of the Company including any assistant or acting secretary or any substitute for the time being for the secretary;

**Staff Elected Director** means a director elected in accordance with clause 3.3(b)(i)(B);

**Staff Member** means a Member who is an officer (other than a director), or an employee of a Registered Fund;

**Trustee Elected Director** means a director elected in accordance with clause 3.3(b)(i)(A); and

**Trustee Member** means a Member who is a trustee or a director of a corporate trustee of a Registered Fund.

### 1.3 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (b) a reference to a **body** or **authority** which ceases to exist is a reference to a body or authority having substantially the same objects as the named body or authority;
- (c) a reference to a **clause** or **annexure** is a reference to a clause of or an annexure to this Constitution;
- (d) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this Constitution;
- (e) the **annexures**, (if any) form part of this Constitution;
- (f) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;



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- (g) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Act;
  - (h) **including** and **includes** are not words of limitation;
  - (i) the words **at any time** mean at any time and from time to time;
  - (j) a word that is derived from a defined word has a corresponding meaning;
  - (k) **monetary amounts** are expressed in Australian dollars; and
  - (l) the singular includes the plural and vice-versa.

#### **1.4 Application of Legislation**

- (a) Division 8 of Part 1.2 (other than section 109X) of the Act applies in relation to this Constitution, so far as it is capable of application and with such changes as are necessary, as if the provisions of this Constitution were provisions of the Act.
- (b) Sections 4, 29 and 46(1), and Parts III, IV, V, VII, and VIII of the Acts Interpretation Act 1901 (Cth) apply in relation to this Constitution so far as they are capable of application and with such changes as are necessary, as if the provisions of this Constitution were provisions of the Acts Interpretation Act 1901 (Cth).
- (c) Unless the context otherwise requires, an expression used in this Constitution that has a particular meaning in the Act has the same meaning in this Constitution.
- (d) The Replaceable Rules contained in the Act do not apply to the Company.
- (e) The Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.

## **2 NATURE OF THE COMPANY**

### **2.1 Public Company limited by Guarantee**

The Company is a public company limited by guarantee.

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## 2.2 Purposes of the Company

- (a) The Company is established solely to pursue charitable purposes, namely to advance education in connection with superannuation.
- (b) The Company must apply its income in pursuing the purposes referred to in clause 2.2(a) and in doing so may, without limitation, do any one or more of the following:
  - (i) foster knowledge, debate and the development of ideas about superannuation in the Australian community;
  - (ii) participate in debate, and put forward the views of those involved in the Representative superannuation industry, about the development of superannuation and retirement income policies within Australia;
  - (iii) promote community awareness of the values of the Representative superannuation industry and the benefits of having Representative Trustees in providing a viable and equitable retirement system in Australia;
  - (iv) deliver high quality education, training, and information and resources to those who are involved in the superannuation industry;
  - (v) provide support and resources to those wishing to develop the skills and qualifications to take up involvement in the superannuation industry or to increase such involvement;
  - (vi) establish and maintain appropriate professional standards for the Representative superannuation industry;
  - (vii) administer professional accreditation programs and registers for those who are involved in the superannuation industry;
  - (viii) provide licensing and compliance advice, and compliance auditing services to superannuation funds;
  - (ix) hold meetings, seminars and conferences and provide, facilitate or participate in local, national or international networks which provide a forum for those involved or interested in the superannuation industry to come together to discuss and progress topical issues;
  - (x) undertake research concerning superannuation and retirement income policy issues;

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- (xi) support and encourage the participation within the superannuation industry of women and men from all community groups and backgrounds; and
  - (xii) undertake activities that are ancillary to the activities listed in the preceding paragraphs of clause 2.2(b), being activities that the Company considers will advance its ability to pursue its purposes, and activities that are incidental to the activities listed in the preceding paragraphs of clause 2.2(b).

### **2.3 Scope of capacity and powers of the Company**

The Company has the legal capacity and powers set out in section 124 of the Act.

### **2.4 Exercise of powers**

- (a) The Company must only exercise its powers directly or indirectly in the furtherance of its purposes.
- (b) The Company must not be carried on for the purpose of the profit or gain of any Member.
- (c) The Company does not have the power to:
  - (i) issue shares of any kind; or
  - (ii) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Company for the benefit of, or to, a Member, other than as provided in clause 3.8.

### **2.5 Guarantee of Members**

Each Member undertakes to contribute a maximum of \$10 to the Company for payment of:

- (a) the debts and liabilities of the Company;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves,

if the Company is wound up while the Member is a Member or within one year after the Member ceases to be a Member.

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### **3 DIRECTORS**

#### **3.1 Qualification of Directors**

Subject to clause 3.10(c), a Director other than a Board-appointed Director must be a Member.

#### **3.2 Number of Directors**

- (a) The Company must have not less than 9 Directors unless:
  - (i) the Company in general meeting otherwise determines; or
  - (ii) the number falls below 9 due to casual vacancies.
- (b) At least 2 of the Directors must ordinarily reside in Australia.

#### **3.3 Appointment of Directors**

- (a) Subject to clause 3.3(e), the Directors of the Company (other than any Board-appointed Director) will be elected by the Members.
- (b) Subject to the Act, elections will be held annually to fill vacancies in the position of Director, and the results of such elections will be announced at the AGM at which voting takes place or, if voting in such elections concludes prior to an AGM, at the AGM next following the holding of such elections. Such elections will be called and conducted and the results determined in accordance with rules prescribed by the Directors at any time which, without limitation, may allow or require votes to be made by postal ballot or by electronic or other means and may require that voting be concluded prior to the AGM at which the results of the election will be announced, and on the basis that:
  - (i) the elected Directors in office are to comprise:
    - (A) 6 Trustee Elected Directors, being Trustee Members elected by the Trustee Members; and
    - (B) 3 Staff Elected Directors, being Staff Members elected by the Staff Members; and
  - (ii) no more than one elected Director holding office at any one time shall be a Trustee Member or a Staff Member who was nominated for membership by any particular Registered Fund.

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- (c) The Directors may at any time appoint up to three persons to hold office as Board-appointed Directors, which persons need not but may be a Trustee Member or a Staff Member.
- (d) Subject to clause 3.3(e) each Director (other than a Board-appointed Director) will hold office for a term of 2 years commencing on the date of the AGM at which their election was announced, and will be entitled to stand for re-election at the expiry of each term. A Board-appointed Director will hold office for a term of two years from the date of appointment of the Board-appointed Director, and may be re-appointed by the Directors at the expiry of each term.
- (e) In the event of a casual vacancy in the office of a Director, the Directors may, subject to clause 3.3(f):
- (i) if the Director in whose respect the casual vacancy arose was a Trustee Elected Director, appoint another person who is a Trustee Member;
  - (ii) if the Director in whose respect the casual vacancy arose was a Staff Elected Director, appoint another person who is a Staff Member; and
  - (iii) if the Director in whose respect the vacancy arose was a Board-appointed Director, appoint another person,
- as a Director who will hold office for a term expiring at such time as the term of office of the Director in whose respect the casual vacancy arose would have expired. The Directors may act to make such an appointment even if the number of Directors voting on such appointment is not sufficient to constitute a quorum.
- (f) The Directors must not appoint a person to fill a casual vacancy pursuant to clause 3.3(e)(i) to 3.3(e)(ii) if that person is a trustee, director or other officer or employee of a Registered Fund of which a Director then holding office (other than an Board-appointed Director) is a trustee, director or other officer or employee.

### **3.4 Non-eligibility of Auditor**

The Auditor is ineligible to be elected or appointed as a Director or alternate Director.

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### **3.5 Period of appointment of Directors**

A Director holds office until:

- (a) the Director dies;
- (b) the Director resigns the office of Director by written notice of resignation to the Company at its registered office;
- (c) the Director is removed in accordance with clause 3.9;
- (d) the Director vacates the office in accordance with clause 3.10; or
- (e) the term for which the Director was appointed or elected expires.

### **3.6 Alternate Directors**

- (a) With the approval of the other Directors, and subject to clause 3.6(b), a Director other than a Board-appointed Director may appoint an alternate Director to exercise some or all of the Director's powers for a specified period.
- (b) A person appointed as an alternate Director must:
  - (i) if the appointing Director is a Trustee Elected Director, be a Trustee Member;
  - (ii) if the appointing Director is a Staff Elected Director, be a Staff Member.
- (c) If the appointing Director requests the Company to give the alternate Director notice of Directors' meetings, the Company must do so.
- (d) When an alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director.
- (e) The appointing Director may terminate the alternate Director's appointment at any time.
- (f) An alternate Director's appointment automatically terminates if the alternate Director ceases to meet the relevant criterion set out in clause 3.6(b).
- (g) An appointment or termination of an alternate Director must be in writing, and does not take effect until a copy of the appointment has been given to the Company.

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### **3.7 Other offices held by Directors**

A Director may hold any other office or position of profit in the Company other than the Directorship on such conditions including remuneration as may be agreed by the Directors.

### **3.8 Remuneration of Directors**

No payment shall be made to any Director (except any executive Directors in their capacity as an employee of the Company) other than the payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

### **3.9 Removal of Directors**

- (a) Subject to section 203D of the Act, the Company may, by resolution remove a Director from office.
- (b) A Director cannot be removed by, or required to vacate their office because of, any resolution, request or notice of the Directors or any of them.
- (c) A Director who is a Trustee Elected Director may be removed by the Trustee Members in such manner as is set out in rules prescribed by the Directors at any time.
- (d) A Director who is a Staff Elected Director may be removed by the Staff Members in such manner as is set out in rules prescribed by the Directors at any time.

### **3.10 Vacation of office of Director**

- (a) A Director automatically vacates office if the Director by virtue of any provision of the Act ceases to be a Director or becomes prohibited or disqualified from being a Director.

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- (b) A Director who ceases to be a Member under any of clauses 11.5(a) to 11.5(d) will cease to hold office as a Director immediately.
  - (c) A Trustee Elected Director or a Staff Elected Director who ceases to be a Member under clause 11.5(e) will cease to hold office at whichever is the earlier of:
    - (i) the expiration of 3 months from the date on which the Director ceased to be a Member (unless they have been again admitted as a Trustee Member (having been a Trustee Member immediately prior to ceasing to be a Member) or a Staff Member (having been a Staff Member immediately prior to ceasing to be a Member) on that date), and
    - (ii) the next following AGM.
  - (d) Where there are only 3 Directors, a Director must not vacate their office voluntarily unless there is appointed, prior to their vacation of office, another person to be a Director.

### **3.11 Material personal interest - Director's duty to disclose**

- (a) Unless an exception in section 191(2) of the Act applies, if a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest.
- (b) The notice required by clause 3.11(a) must:
  - (i) include details of:
    - (A) the nature and extent of the interest; and
    - (B) how the matter relates to the affairs of the Company; and
  - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of the Director's interest in the matter.

### **3.12 Director may give standing notice about an interest**

A Director with a material personal interest in a matter that relates to the affairs of the Company may give standing notice of this interest in accordance with clause 3.11(b) and section 192 of the Act.



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### **3.13 Voting and completion of transactions in which a Director has a material personal interest**

A Director who has a material personal interest in a matter that is being considered at a Director's meeting must not:

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

unless:

- (c) the interest does not need to be disclosed under section 191 of the Act; or
- (d) the Directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature of the interest of the Director in the matter and its relation to the affairs of the Company; and
  - (ii) states that the Directors are satisfied that the interest should not disqualify the Director from voting or being present.

## **4 MANAGEMENT OF BUSINESS BY DIRECTORS**

### **4.1 Financial benefits to related parties**

The Company must not give a financial benefit to a related party of the Company unless it is authorised in accordance with the Act. The Company must not make a payment to a Director without the approval of the Directors.

### **4.2 Powers of Directors**

- (a) Subject to the Act and to any provision of this Constitution, the business of the Company is to be managed by or under the direction of the Directors.
- (b) The Directors may exercise all of the powers of the Company except any powers that any provisions of the Act or this Constitution require the Company to exercise in general meeting.

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- (c) Where the Directors have power to prescribe rules under this Constitution, the Directors may add to, modify or replace such rules at any time as the Directors may determine.

#### **4.3 Negotiable instruments**

A negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed either by any 2 Directors or in any other way approved by the Directors.

#### **4.4 Chief executive officer and other appointments**

The Directors may appoint persons to carry out the roles of chief executive officer, treasurer or such other roles as they may determine for a period and on such terms as the Directors see fit.

#### **4.5 Delegation**

- (a) The Directors may delegate any of their powers to a committee of Directors, a Director, an employee of the Company or any other person or group of people.
- (b) The delegate must exercise the powers delegated to it in accordance with any directions of the Directors.
- (c) The effect of the delegate so exercising a power is the same as if the Directors exercised it.
- (d) The Directors may appoint any person to be chair of a Committee.
- (e) The members of a Committee will decide how meetings of the Committee will be called and the procedures to be followed at meetings of the Committee, subject to any directions given by the Directors.

#### **4.6 Appointment of attorney for Company**

The Directors may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney of the Company for:

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

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#### **4.7 Accounting for profit**

Where a Director's interest is approved by a resolution of Directors in accordance with clause 3.13(d), no Director will be liable to account to the Company for any profit arising from any office or place of profit or realised from any contract or arrangement by reason only of the Director holding that office or of the fiduciary relations so established.

### **5 DIRECTORS' MEETINGS**

#### **5.1 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution who are present within Australia, such Directors meeting the requirements for a quorum under clause 5.5, sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

#### **5.2 Calling Directors' meetings**

A Directors' meeting may be called by the Secretary or by a Director giving reasonable notice individually to every other Director.

#### **5.3 Use of technology**

- (a) The contemporaneous linking together by telephone or other electronic means of a sufficient number of Directors to constitute a quorum constitutes a meeting of the Board.
- (b) A meeting conducted by telephone or other electronic means will be deemed to be held at the place agreed on by the Directors attending that meeting, provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (c) All the provisions in this Constitution relating to Board meetings apply, so far as they can and with any necessary changes, to Board meetings conducted by telephone or other electronic means.

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## **5.4 Chairing Directors' meetings**

- (a) The Directors may elect a President, who must be a Director, to chair their meetings. The Directors may elect a Deputy-President, who must be a Director, to chair their meetings if the President is unavailable or declines to chair a meeting or any part of it.
- (b) The Directors may determine the period, not exceeding 2 years, for which the Director is to be the President or Deputy-President respectively.
- (c) The Directors must elect a Director present to chair a meeting, or part of it, if:
  - (i) a Director has not already been elected or appointed to chair the meeting; or
  - (ii) a previously elected or appointed President (and Deputy-President, if applicable) is not available or declines to chair the meeting or part of it.

## **5.5 Quorum at Directors' meetings**

Unless the Directors determine otherwise, the quorum for a Directors' meeting is 5 Directors, including at least 2 Trustee Elected Directors and at least 1 Staff Elected Director and the quorum must be present at all times during the meeting.

## **5.6 Passing of Directors' resolutions**

- (a) A Directors' resolution must be passed by a majority of the votes cast by Directors entitled to vote on the resolution including at least 1 Trustee Elected Director and at least 1 Staff Elected Director.
- (b) The Director acting as chair of a meeting has no casting vote in addition to any vote the Director may have in the Director's capacity as a Director.

## **6 SECRETARY**

### **6.1 Appointment**

The Directors must appoint a Secretary in accordance with the Act.

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## **6.2 Terms and conditions of office**

A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors think fit.

## **7 REGISTERED FUNDS**

### **7.1 Eligibility to become a Registered Fund**

Any superannuation fund determined by the Directors to be a Representative superannuation fund is eligible to become a Registered Fund.

### **7.2 Application to become registered**

The Directors may register any fund which meets the eligibility requirement set out in clause 7.1 as a Registered Fund upon receipt of:

- (a) an application from such fund in such form as the Directors may at any time prescribe or accept; and
- (b) the Participation Fee.

The Directors may decline to register any such fund if they so determine.

### **7.3 Rights and Privileges**

- (a) The rights and privileges attaching to registration as a Registered Fund are as set out in this Constitution and in rules prescribed by the Directors at any time.
- (b) A Registered Fund is not a member of the Company and does not have any rights associated with membership of the Company.

### **7.4 Members in relation to Registered Funds**

- (a) The Directors may at any time prescribe rules in relation to the nomination by Registered Funds of trustees, directors, officers and employees for admission as Trustee Members and as Staff Members. The Directors may decide the maximum number of Members that a Registered Fund may have. Unless and until the Directors decide otherwise, Registered Funds can have an unlimited number of Members.
- (b) A Registered Fund must have at least one trustee, director, officer or employee who is a Trustee Member or a Staff Member, and if for any

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reason it ceases to do so, it must as soon as practicable nominate another trustee, director, officer or employee for admission as a Trustee Member or a Staff Member pursuant to clause 7.4(c).

- (c) Subject to any rules made by the Directors under clause 7.4(a), the Directors will admit as a Trustee Member or a Staff Member in relation to a Registered Fund any person nominated by a Registered Fund for admission as a Trustee Member or a Staff Member at any time by notice in writing to the Company, if:
- (i) the person nominated is:
    - (A) a trustee or a director of the trustee of the Registered Fund, in which case that person will be admitted as a Trustee Member; or
    - (B) an officer or employee of the Registered Fund, in which case that person will be admitted as a Staff Member;
  - (ii) any applicable Participation Fee has been paid; and
  - (iii) the person has agreed to be a Member.
- (d) A Member has the rights and privileges as set out in rules prescribed by the Directors at any time or contained in this Constitution. In the event of an inconsistency, this Constitution prevails.
- (e) A Registered Fund:
- (i) must give notice to the Company as soon as practicable after a Member ceases to meet the criteria set out in clause 7.4(c)(i);
  - (ii) may at any time give notice to the Company that a Member is no longer to be treated as a Member in relation to that Registered Fund,
- in which case the relevant Member will from the date of receipt of such notice cease to be a Trustee Member or a Staff Member as the case may be.
- (f) A Trustee Member or a Staff Member will cease to be a Trustee Member or Staff Member (as the case may be) upon the Registered Fund which nominated them for admission as a Trustee Member or a Staff Member ceasing to be a Registered Fund.

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## **7.5 Ceasing to be a Registered Fund**

A fund will cease to be a Registered Fund:

- (a) if it ceases in the opinion of the Directors to meet the eligibility criteria set out in clause 7.1;
- (b) if it does not have at least one trustee, director, officer or employee who is a Trustee Member or a Staff Member and fails to nominate one within 30 days of receipt of written notice from the Company requiring it to do so;
- (c) if it fails to pay any Participation Fee for more than 180 days after the date on which such Participation Fee was required to be paid; or
- (d) if it gives written notice to the Company of its withdrawal as a Registered Fund.

## **8 INDIVIDUAL PARTICIPANT MEMBERS**

### **8.1 Eligibility to become an Individual Participant Member**

The following persons are eligible to be admitted as Individual Participant Members:

- (a) Any trustee or director of a corporate trustee of a Representative superannuation fund (whether or not such fund is a Registered Fund);
- (b) Any officer (other than a director) or employee of a Representative superannuation fund (whether or not such fund is a Registered Fund); and
- (c) Any former trustee or former director of a corporate trustee or former officer or employee of a trustee of a Representative superannuation fund (whether or not such fund is a Registered Fund).

### **8.2 Application to become an Individual Participant Member**

The Directors may admit any person who meets the eligibility requirements set out in clause 8.1 as an Individual Participant Member, upon receipt of:

- (a) an application from such person in such form as the Directors may at any time prescribe;
- (b) the Participation Fee.

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The Directors may decline to admit any such person if they so determine, and may decide the maximum number of persons who are trustees, directors of the corporate trustee, or officers or employees of any particular Representative superannuation fund who may be Individual Participant Members at any one time.

### **8.3 Rights and Privileges**

The rights and privileges attaching to Individual Participant Members are as set out in this Constitution and in rules prescribed by the Directors at any time.

### **8.4 Ceasing to be an Individual Participant Member**

A person ceases to be an Individual Participant Member:

- (a) upon ceasing to be a Member under clauses 11.5(a) to 11.5(d);
- (b) if they do not meet the eligibility criteria for Individual Participants set out in clause 8.1 on the day on which a Participation Fee in respect of the Individual Participant is required to be paid;
- (c) if they fail to pay a Participation Fee for more than 180 days after the date on which such Participation Fee was required to be paid; or
- (d) if they become a Trustee Member or Staff Member.

## **9 AIST ASSOCIATES**

### **9.1 Eligibility to become an AIST Associate**

The Directors may admit any organisation that is wholly owned by one or more Registered Funds and is involved in Representative superannuation to participate as an AIST Associate.

### **9.2 Rights and privileges**

- (a) The rights and privileges attaching to admission as an AIST Associate are as set out in rules prescribed by the Directors at any time.
- (b) An AIST Associate is not a member of the Company and does not have any rights associated with membership of the Company.



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### **9.3 Ceasing to be an AIST Associate**

An organisation will cease to be an AIST Associate:

- (a) if it ceases in the opinion of the Directors to meet the eligibility criteria set out in clause 9.1;
- (b) if it fails to pay any Participation Fee for more than 180 days after the date on which such Participation Fee was required to be paid; or
- (c) if it gives written notice to the Company of its withdrawal as an AIST Associate.

## **10 PARTICIPATION FEES**

### **10.1 Participation Fee**

- (a) The Directors may at any time determine the amount or method of calculation of Participation Fees in respect of:
  - (i) registration and continued registration as a Registered Fund;
  - (ii) admission of and continued status as an Individual Participant Member;
  - (iii) admission of and continued status as an AIST Associate.
- (b) The Directors may at any time determine:
  - (i) that Participation Fees payable in respect of registration and continued registration as a Registered Fund will be calculated in whole or in part by reference to the number of Members nominated by the Registered Fund;
  - (ii) the dates on which Participation Fees are to become due and payable and the periods which such Participation Fees are to cover;
  - (iii) the rules which are to apply in respect of the application of Participation Fees including without limitation matters such as:
    - (A) admission or cessation as a Registered Fund or Individual Participant Member or AIST Associate part way through a period covered by a Participation Fee;

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- (B) changes during the period covered by a Participation Fee in the number or identity of Members nominated by a Registered Fund.

## **10.2 Non-payment of Participation Fee**

- (a) If any Participation Fee remains unpaid by an Individual Participant Member for more than 90 days after the date on which such Participation Fee was required to be paid, the Individual Participant Member will be barred from all rights and privileges enjoyed by them under this Constitution or under rules prescribed by the Directors as attaching to admission as an Individual Participant Member. The Directors may, if they think fit, restore the rights and privileges of the Individual Participant Member on payment of all arrears.
- (b) If any Participation Fee remains unpaid by a Registered Fund for more than 90 days after the date on which such Participation Fee was required to be paid, the Members nominated by such Registered Fund will be barred from all rights and privileges enjoyed by them under this Constitution or under rules prescribed by the Directors as attaching to admission as Members. The Directors may, if they think fit, restore the rights and privileges of the relevant Members on payment of all arrears.
- (c) If any Participation Fee remains unpaid by an AIST Associate for more than 90 days after the date on which such Participation Fee was required to be paid, such AIST Associate will be barred from all rights and privileges enjoyed by it or under rules prescribed by the Directors as attaching to admission as an AIST Associate.

## **11 MEMBERS**

### **11.1 Admission to membership**

- (a) Each person who is admitted as a Trustee Member, a Staff Member or an Individual Participant Member shall be admitted to membership of the Company immediately upon such admission as a Trustee Member, a Staff Member or an Individual Participant Member taking effect.
- (b) Each Member is bound by this Constitution.

### **11.2 Classes of Members**

- (a) The Directors may at any time:

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- (i) establish different classes of Members;
  - (ii) decide eligibility for different classes of Membership; and
  - (iii) prescribe the qualifications, rights and privileges of Members of a class.
- (b) Until otherwise determined by the Directors, the two classes of Membership are:
- (i) Individual Membership, to which class any Individual Participant Member will belong; and
  - (ii) Fund-related Membership, to which class any Trustee Member or Staff Member will belong.

### **11.3 Additional benefits of Membership**

The Directors may at any time confer and withdraw additional benefits on Members, and may confer and withdraw benefits on a basis that may distinguish between classes of Members.

### **11.4 Address of Member**

- (a) Each Member must provide to the Secretary details of an address in Australia where the Company can send notices.
- (b) If a Member fails to provide an address in accordance with clause 11.4(a), the address of the Member is deemed to be the registered office of the Company.

### **11.5 Events leading to cessation**

A Member ceases to be a Member if the Member:

- (a) dies;
- (b) resigns in writing;
- (c) becomes of unsound mind or becomes liable to be dealt with in any way under the law relating to mental health;
- (d) is convicted of an indictable offence;
- (e) ceases to be a Trustee Member or a Staff Member; or

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- (f) being an Individual Participant Member, ceases to be an Individual Participant Member other than under clause 8.4(d).

## **11.6 Effect of cessation**

A Member who ceases to be a Member continues to be liable for:

- (a) in the case of an Individual Participant Member, any Participation Fee and all arrears due and unpaid at the date of cessation;
- (b) all moneys due by them to the Company; and
- (c) the Guarantee.

## **12 MEETINGS OF MEMBERS**

### **12.1 Calling of meetings of Members by a Director**

A Director may call a meeting of Members.

### **12.2 Calling of meetings by Members**

Members with at least 5% of the votes that may be cast at a general meeting of the Company may at their expense call and arrange to hold a general meeting in accordance with the Act.

### **12.3 Calling of general meetings by Directors when requested by Members**

If requested by Members entitled under section 249D of the Act to call a general meeting, the Directors must call and arrange to hold a general meeting.

### **12.4 Failure of Directors to call general meeting**

Members with more than 50% of the votes of all Members who make a request under section 249D of the Act may call and arrange to hold a general meeting in accordance with section 249E of the Act if the Directors do not do so within 21 days after the request is given to the Company.

### **12.5 Calling of meetings by the Court**

The Court may order a meeting of Members to be called in accordance with section 249G of the Act if it is impracticable to call the meeting in any other way.

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## **12.6 Amount of notice of meetings**

- (a) Subject to the Act, at least 21 days notice must be given of a meeting of Members.
- (b) Subject to clause 12.6(c), the Company may call on shorter notice any meeting including an AGM, if all of the Members entitled to attend and vote at the meeting agree beforehand.
- (c) The period of notice required by the Act must be given of a meeting of Members at which a resolution will be moved to:
  - (i) remove a Director under clause 3.9(a);
  - (ii) appoint a Director in place of a Director removed under clause 3.9(a); or
  - (iii) remove an Auditor.

## **12.7 Notice of meetings of Members**

- (a) Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director.
- (b) Every notice convening a general meeting shall specify:
  - (i) the place, the day and time of the meeting and the general nature of the business to be transacted at the meeting;
  - (ii) if the Directors decide in their absolute discretion to hold the meeting in two or more places, the technology to be used to facilitate the meeting;
  - (iii) if it is proposed to pass a special resolution, the intention to propose the special resolution and the resolution; and
  - (iv) if a Member is entitled to appoint a proxy, a statement providing:
    - (A) that the Member has a right to appoint a proxy;
    - (B) whether or not the proxy needs to be a Member of the Company.
- (c) The Company may give the notice of meeting to a Member:
  - (i) personally;

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- (ii) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by the Member;
  - (iii) by sending it to the fax number or electronic address (if any) nominated by the Member; or
  - (iv) by any other means authorised by the Act.
- (d) A notice of meeting sent by post is taken to be given three days after it is posted. A notice of meeting sent by fax or other electronic means is taken to be given on the business day after it is sent.

#### **12.8 Auditor entitled to notice and other communication**

The Company must give its Auditor:

- (a) notice of general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communication relating to the general meeting that a Member is entitled to receive.

#### **12.9 Contents of notice of meeting**

The notice of meeting must conform with the requirements of section 249L of the Act.

#### **12.10 Notice of adjourned meetings**

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

#### **12.11 Members' resolutions**

The Members may propose a resolution to be moved at a general meeting only in accordance with the provisions of Division 4 of Part 2G.2 of the Act.

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

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

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### **12.13 Technology**

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

### **12.14 Quorum**

- (a) The quorum for a meeting of Members is 10 Members, including 6 Trustee Members and 3 Staff Members and the quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, individuals attending as proxies are to be counted, but:
  - (i) if a Member has appointed more than one proxy only one of them is to be counted; and
  - (ii) if an individual is attending both as a Member and as a proxy they are to be counted only once.
- (c) A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Directors specify.
- (d) If the Directors do not specify one or more of those requirements, the meeting is adjourned to:
  - (i) if the date is not specified, the same day of the week in the following week;
  - (ii) if the time is not specified, the same time;
  - (iii) if the place is not specified, the same place.
- (e) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

### **12.15 Chairing meetings of Members**

- (a) The Directors must elect an individual to act as the Chair of meetings of the Members.
- (b) Subject to clause 12.15(c), the Directors at the meeting of Members must elect an individual present as the Chair of the meeting (or part of it) if an individual has not already been elected by the Directors to

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chair it or, having been elected, is not available or declines to act for the meeting (or part of it).

- (c) If there is only one Director or no Directors at a meeting of Members, the Members present at that meeting must elect a Member present to act as the Chair of the meeting (or part of it) if:
  - (i) a Chair has not previously been elected by the Directors to chair the meeting; or
  - (ii) a previously elected Chair is not available or declines to act as Chair for the meeting (or part of the meeting).
- (d) The Chair must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

#### **12.16 Auditor's right to be heard at meetings of Members**

- (a) The Auditor is entitled to attend meetings of Members.
- (b) The Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor as Auditor.
- (c) The Auditor is entitled to be heard even if:
  - (i) the Auditor retires at the meeting; or
  - (ii) the meeting passes a resolution to remove the Auditor from office.
- (d) The Auditor may authorise a person in writing as the Auditor's representative for the purpose of attending and speaking at any general meeting.

#### **12.17 Proxies**

- (a) A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting or at a number of meetings until the proxy expires or is revoked.
- (b) The appointment of a proxy in respect of a specified meeting will be deemed to include the appointment of that proxy for any adjournment of that meeting unless the proxy is revoked prior to the holding of the adjourned meeting.



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### **12.18 Rights of proxies**

- (a) A proxy appointed to attend and vote for a Member has the same rights as the Member:
  - (i) to speak at the meeting;
  - (ii) to vote (but only to the extent allowed by the appointment); and
  - (iii) to join in a demand for a poll.
- (b) A proxy may vote on a show of hands.
- (c) A proxy's authority to speak and vote for a Member at a meeting is suspended while the member is present at the meeting.

### **12.19 Standing proxy**

- (a) An appointment of a proxy may be expressed to be for a specific time or meeting or both, or to be a standing proxy until the occurrence of a specified event or until revoked by the appointer.
- (b) If an appointment of a proxy does not specify the meeting or period for which the appointment is to be in force, the appointment will remain in force for 12 months, except that subject to the conditions of the proxy, a proxy may be revoked by the appointer or the appointer's attorney at any time. This revocation will have effect from the time written notice of this revocation is given to the Company.

### **12.20 Instrument appointing proxy**

The instrument appointing a proxy must be in writing signed by the appointer or by the appointer's attorney duly authorised in writing.

### **12.21 Deposit of proxy with Company**

- (a) The instrument appointing a proxy and the original power of attorney (if any) under which it is signed or a certified copy of the power of attorney must, unless otherwise specified in the notice convening the meeting, be deposited at the Company's registered office not less than 48 hours before the time for holding the meeting.
- (b) Unless otherwise specified in the notice convening the meeting, a proxy and the authority or attorney under which the proxy is signed

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must be deposited at the Company's registered office by personal delivery or post, or by facsimile or other electronic means.

#### **12.22 Validity of vote given in accordance with proxy**

A vote given in accordance with the terms of an instrument of proxy or a power of attorney is valid notwithstanding:

- (a) the previous death of the Member;
- (b) mental incapacity of the Member;
- (c) revocation of the proxy's appointment by the Member;
- (d) revocation by the Member of the authority or attorney under which the proxy was appointed by the appointor,

unless the Company receives by personal delivery, post, facsimile or any other manner approved by the Company written notice of that matter at the Company's registered office or any place specified for the deposit of proxies before the start or resumption of the meeting at which a proxy votes.

#### **12.23 Form of proxy**

- (a) Every instrument of proxy must be signed by the Member and be in the form set out in Annexure A or in a form that is as similar to that form as the circumstances permit or in such other form as the Directors may from time to time prescribe or accept.
- (b) Any instrument of proxy deposited in accordance with this Constitution in which the name of the proxy is not filled in is deemed to be given in favour of the Chair of the meeting or meetings to which it relates.
- (c) The instrument of proxy may be worded so that a proxy may be directed to vote either for or against each of the resolutions to be proposed. Where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as directed in the instrument.
- (d) Where an instrument of proxy does not direct the proxy to vote either for or against each or any of the resolutions to be proposed, the proxy (including the Chair of the meeting where the Chair is deemed to be given the proxy under clause 12.23(b)), may vote in any way the proxy thinks fit.

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#### **12.24 How many votes a Member has**

- (a) Subject to any rights or restrictions attached to any class of Member and to clause 3.3(b), at a meeting of Members each Member has one vote on a show of hands and on a poll.
- (b) The Chair does not have a casting vote.

#### **12.25 Objections to right to vote**

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

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

#### **12.26 How voting is carried out**

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, a declaration by the Chair is conclusive evidence of the result.
- (c) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

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

A poll may be demanded on any resolution in accordance with section 250L of the Act.

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

- (a) A poll demanded on a matter other than the election of a Chair or the question of an adjournment must be taken when and in the manner the Chair directs.
- (b) A poll on the election of a Chair or on the question of an adjournment must be taken immediately.

#### **12.29 Holding of AGM**

Subject to clause 12.30:

- (a) the Company must hold an AGM at least once in each calendar year and within five months after the end of its financial year;

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- (b) an AGM must be held in addition to any other meetings held by the Company in a year.

However, if the Company only has one Member, it is not required to hold an AGM.

### **12.30 Extension of time for AGM**

The Company may lodge an application with ASIC to extend the period within which it is required to hold the AGM in accordance with section 250P of the Act.

### **12.31 Business of the AGM**

The business of the AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Director's report and Auditor's report;
- (b) the election of Directors;
- (c) the appointment of the Auditor; and
- (d) the fixing of the Auditor's remuneration.

### **12.32 Questions by Members of the Company**

The Chair of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

### **12.33 Questions by Members to Auditors**

If the Auditor or their representative is at the meeting, the Chair of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report, the accounting policies adopted by the company in relation to the preparation of the financial statements; and the independence of the auditor in relation to the conduct of the audit.

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## **13 DIRECTORS' AND MEMBERS' MINUTES**

### **13.1 Minutes**

- (a) The Company must keep minute books in which it records:
  - (i) proceedings and resolutions of Members' meetings;
  - (ii) proceedings and resolutions of Directors' meetings, including Committee meetings;
  - (iii) resolutions passed by Members without a meeting; and
  - (iv) resolutions passed by Directors without a meeting.
- (b) The Company must ensure that the minutes of a meeting are signed by the person chairing the meeting or the person chairing the next meeting within a reasonable time after the meeting.
- (c) The Company must ensure that the minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

### **13.2 Members' access to minutes**

Members are entitled to gain access to the minute book of meetings of Members in accordance with the Act.

## **14 ACCOUNTS AND AUDIT**

### **14.1 Accounting records**

- (a) The Directors must ensure that accounting and other records are kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Act or this Constitution.
- (b) The records must be kept:
  - (i) in a manner that enables them to be conveniently and properly audited;
  - (ii) for seven years after the completion of the transactions or operations to which they relate; and

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(iii) at the Company's registered office or at such other place as the Directors think fit.

(c) The records must at all times be open to inspection by the Directors.

## **14.2 Accounts**

Each financial year, the Company must prepare a financial report and a Directors' report in accordance with the Act.

## **14.3 Auditor**

The Company shall appoint an auditor to audit the Company's financial statements in accordance with the Act.

## **15 WINDING UP**

### **15.1 Rights of Members on winding up**

If the Company is wound up, the Members have no right to participate in any distribution or payment of the assets or property of the Company.

### **15.2 Distribution of assets**

(a) If the Company is wound up, the assets and property available for distribution after satisfaction of all debts and liabilities must be given or transferred to some other institution or institutions:

- (i) the objects of which are similar to the objects of the Company;
- (ii) the constitution of which prohibits the distribution of its income and property to an extent at least as great as that imposed by clause 2.4(c); and
- (iii) which is approved by the Commissioner of Taxation as an institution exempt from income tax.

(b) The Directors must determine the identity of the institution or institutions for the purpose of clause 15.2(a).

(c) If the Directors fail to determine the identity of the institution or institutions under clause 15.2(b), the Supreme Court of Victoria may make that determination.

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## 16 INDEMNITY

### 16.1 Indemnity

- (a) Subject to the Act, the Company will indemnify each Officer against, and will pay the Officer on demand, the amount of any liability to another person (other than the Company or a related body corporate of the Company) incurred by the Officer in or in relation to the Officer's capacity as an Officer unless the liability arises out of conduct involving a lack of good faith.
- (b) The Company will indemnify any other employee of the Company at the Directors' discretion.
- (c) The Company will indemnify an Officer against a liability for costs and expenses (including legal expenses on a full indemnity basis) incurred by the Officer in defending proceedings, whether civil or criminal, except if those proceedings are:
  - (i) civil proceedings in which the Officer is found to have a liability for which they could not be indemnified under clause 16.1(a);
  - (ii) criminal proceedings in which the Officer is found guilty;
  - (iii) proceedings brought by ASIC or a liquidator for a court order, and a court finds that the grounds for making the order are established; or
  - (iv) proceedings for relief to the Officer under the Act under which the court denies relief.
- (d) The Officer must repay to the Company any amounts advanced by the Company under any indemnity in this clause 16.1 if:
  - (i) any of the exceptions set out in clause 16.1(c) apply;
  - (ii) a court subsequently determines that the indemnification is not permitted; or
  - (iii) the indemnification is not permitted by the Act.
- (e) For the purposes of this clause, the Company has the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.

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- (f) If the Company determines that an Officer is not entitled to be indemnified, the Officer will be entitled to direct that the Company obtain and follow, at the Company's expense, an opinion as to such entitlement from a Senior Counsel with relevant expertise.
  - (g) The indemnification rights in this clause constitute a contract between the relevant parties seeking indemnification and the Company and will continue to have effect following the rescission or restrictive modification of the clause with respect to events occurring prior to the rescission or modification of the clause.

## **16.2 Payment Of Costs**

Subject to this Constitution and the Act, the Directors may, out of the funds of the Company, pay all costs, losses and expenses which any Officer may incur or become liable to pay by reason of any contract entered into or act or thing done by them in their capacity as an Officer or in any way in discharge of their duties.

## **16.3 Limit of indemnity**

- (a) Subject to the provisions of the Act, an Officer of the Company will not be liable for:
  - (i) the acts, receipts, neglect or defaults of any other Officer;
  - (ii) joining in any receipt or other act of conformity or for any loss happening to the Company through:
    - (A) an insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of the Company; or
    - (B) an insufficiency or deficiency of any security in or upon which any of the moneys of the Company are invested at any time;
  - (iii) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects are deposited at any time;
  - (iv) any loss occasioned by any error of judgment or oversight on the Officer's part; or
  - (v) any other loss, damage or misfortune which occurs in the execution of the duties of the Officer's office,



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unless the liability was incurred against the Company or through the Officer's own dishonesty.

## **17 CONTRACT OF INSURANCE**

Except to the extent precluded by the Act, the Company may pay a premium for a contract insuring a person who is or has been an Officer, against:

- (a) any liability incurred by the Officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever their outcome.

## **18 TIME FOR DOING ACTS**

- (a) If:
  - (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this Constitution,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.



**ANNEXURE A**

**AUSTRALIAN INSTITUTE OF SUPERANNUATION TRUSTEES**

**PROXY**

I ..... of .....  
being a member of the above Company, hereby appoint the Chair of the meeting,  
or if a person is specified below then that person:

**Name of proxy**

**Address for correspondence**

.....  
.....

as proxy to vote on my behalf at the following meeting(s) of the Company and at  
any adjournment of the meeting(s):

- (1) Meeting of the Company to be held on  
.....;
- (2) All meetings of members of the Company  
held within ..... months from the date of  
this appointment;
- (3) All meetings of members of the Company  
held prior to the revocation of this  
appointment.

This holder of this Proxy may vote as they think fit unless otherwise specified below:

**Resolution(s)**

**For / Against**  
**(please select one)**

.....  
For / Against

.....  
For / Against

Date .....

Signature of Member: .....

Name of Member: .....