

THE INSTITUTE OF INTERNAL

AUDITORS - AUSTRALIA

A Company Limited by Guarantee and without Share Capital

ACN 001 797 557

ABN 80 001 797 557

CONSTITUTION

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THE INSTITUTE OF INTERNAL AUDITORS - AUSTRALIA

A COMPANY LIMITED BY GUARANTEE

CONSTITUTION

**1. INTERPRETATION**

1.1 Definitions:

"**ABN**" means Australian Business Number.

"**ACN**" means Australian Company Number.

"**Act**" means the *Corporations Act 2001* as amended or re-enacted from time to time and includes any statutory instruments issued under the *Corporations Act 2001*.

"**ASIC**" means the Australian Securities & Investments Commission or any successor body.

"**Board**" means the Board of Directors of IIA-Australia.

"**By-Laws**" mean the By-Laws of IIA-Australia as amended from time to time and which are annexed to this Constitution.

"**Code of Ethics**" means the Code of Ethics of the IIA Inc. as set out in the IIA Inc *International Professional Practices Framework*.

"**Company Secretary**" means the person appointed by the Board to perform the duties of Secretary of IIA-Australia.

"**Constitution**" means this document and includes any variation or replacement of it.

"**Director**" means a person appointed as director to the Board.

"**Disciplinary Appeals Committee**" means a committee convened by the Board to hear disciplinary appeals under clause 6.7.

"**General Meeting**" means a general meeting of members of IIA-Australia lawfully convened and held in accordance with this Constitution.

"**IIA Inc.**" means the Institute of Internal Auditors Inc., the parent body of that name incorporated in the State of New York, USA and with whom IIA-Australia is affiliated via a Master Relationship Agreement.

"**includes**" means includes without limitation.

"**IIA-Australia**" means The Institute of Internal Auditors - Australia ACN 001 797 557.

"**Master Relationship Agreement**" means the document specifying the terms and conditions for agreement between the IIA Inc and IIA-Australia.

"**Member**" means a member of IIA-Australia appointed in accordance with this Constitution.

"**month**" means a calendar month.

**"President"** means the person selected by the Directors to be President pursuant to clause 13 of this Constitution.

**"Vice President"** means the person(s) appointed to the position of Vice President in accordance with this Constitution.

**"Nominations Committee"** means the committee established in accordance with the Nominations Committee Charter.

**"Nominations Committee Charter"** means the charter approved from time to time by the Board for the objectives, composition, term and duties of the Nominations Committee.

**"Office"** means the registered office of IIA-Australia.

**"Professional Responsibility & Ethics Committee"** means the committee established in accordance with the Professional Responsibility & Ethics Committee Charter.

**"Professional Responsibility & Ethics Committee Charter"** means the charter approved from time to time by the Board for the objectives, composition, term and duties of the Professional Responsibility & Ethics Committee.

**"Region"** means Australia and other Indo Pacific nations.

**"Register"** means the register of members of IIA-Australia to be kept pursuant to the Act.

**"regulations"** means the *Corporations Regulations 2001*.

**"replaceable rules"** means the replaceable rules under, or as referred to in, the Act as amended or re-enacted from time to time.

**"special resolution"** has the same meaning as in the Act.

**"State"** means the State of New South Wales unless otherwise specified.

**"writing"** or **"written"** include any mode of representing or reproducing words, figures, drawings or symbols in a visible or communicable form.

## 1.2 **Replaceable rules**

The replaceable rules do not apply in respect of IIA-Australia except when they are expressly stated to apply.

## 1.3 **Written notice**

Written notice includes notice given by way of:

1.3.1 electronic transmission.

## 1.4 **Previous constitution superseded**

This Constitution replaces any Constitution which was taken to be IIA-Australia's constitution in force before the adoption of this Constitution.

## 1.5 **General interpretive provisions**

1.5.1 Words importing:

(a) the singular number include the plural number and vice versa;

- (b) any gender include every other gender;
  - (c) or referring to a person include corporations.
- 1.5.2 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- 1.5.3 "Book" means any account, deed, writing or document and any other record of information however compiled or stored, whether in written form or by electronic process or otherwise.
- 1.5.4 In this Constitution, any reference to a clause is a reference to a clause of this Constitution.
- 1.5.5 Headings to clauses in this Constitution are added for convenience only and do not affect interpretation.
- 1.5.6 Annotations to this Constitution by reference to sections of the Act or to replaceable rules do not form part of the Constitution.
- 1.5.7 Where an expression used in this Constitution is defined in the Act it has the same meaning in this Constitution unless the context otherwise requires.
- 1.5.8 Where the By-Laws are inconsistent with the terms of this Constitution, the Constitution prevails to the extent of the inconsistency.
- 1.5.9 Where any doubt arises about the proper construction or meaning of any part of this Constitution, its meaning will be determined by the Board. The Board's decision is to be recorded in the minutes and will be final.

## **2. COMPANY LIMITED BY GUARANTEE**

IIA-Australia is a company limited by guarantee and does not have share capital.

## **3. OBJECT OF IIA-AUSTRALIA**

The object of the Institute of Internal Auditors – Australia is to advance the profession and practice of internal auditing and assurance for the benefit of all organisations. In fulfilling this object, the IIA-Australia will:

- 3.1 educate its members and stakeholders;
- 3.2 facilitate the exchange of ideas and information;
- 3.3 encourage the development of knowledge and competency;
- 3.4 provide and maintain high professional standards for its members;
- 3.5 affiliate with and subscribe to The Institute of Internal Auditors Inc, and promote the objects of that corporation throughout the Region;
- 3.6 inform decision-makers;
- 3.7 foster and maintain relationships with professional societies and organisations in related fields such as governance, risk management, compliance or technology; and
- 3.8 do other lawful things as are incidental or conducive to the attainment of the object.

#### **4. POWERS OF IIA-AUSTRALIA**

##### **4.1 Legal capacity and powers of the IIA-Australia**

IIA-Australia has the legal capacity and powers of an individual anywhere in the world. IIA-Australia also has all the powers of a body corporate, including the power to:

- 4.1.1 grant a floating charge over IIA-Australia's property;
- 4.1.2 arrange for IIA-Australia to be registered or recognised as a body corporate in any place outside New South Wales; and
- 4.1.3 do anything that it is authorised to do under any law (including a law of a foreign country).

*(This reflects section 124 of the Act.)*

##### **4.2 Agent exercising the IIA-Australia's power to make contracts**

Subject to the operation of a law that requires a particular procedure to be complied with in relation to the contract, IIA-Australia's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with IIA-Australia's express or implied authority and on behalf of IIA-Australia. The power may be exercised without using a common seal.

*(This reflects section 126 of the Act.)*

##### **4.3 Execution of documents by IIA-Australia**

4.3.1 IIA-Australia may execute a document if the document is signed by:

- (a) 2 directors; or
- (b) a director and the Company Secretary.

*(This reflects section 127 of the Act.)*

#### **5. INCOME AND PROPERTY OF IIA-AUSTRALIA**

##### **5.1 Income and property to be applied towards objects**

All income and property of IIA-Australia must be solely applied towards the promotion of the objects of IIA-Australia.

##### **5.2 No payments to members**

Subject to clause 5.3, no part of the income or property of IIA-Australia may be paid by way of dividend, bonus or otherwise to the members of IIA-Australia.

##### **5.3 Payments in good faith**

Nothing in this Constitution prevents IIA-Australia from making payment in good faith:

- 5.3.1 of reasonable and proper remuneration to any employees of IIA-Australia;
- 5.3.2 to any member of IIA-Australia in relation to any contract, right or claim in which that member is interested or which arises other than by virtue of the member's membership of the IIA-Australia;

5.3.3 of reasonable interest on any money lent to IIA-Australia by any member of IIA-Australia; or

5.3.4 of reasonable or proper rent for premises let by any member to IIA-Australia.

## **6. MEMBERSHIP**

### **6.1 Entry as a Member**

6.1.1 Every applicant for membership of IIA-Australia will apply in accordance with the By-Laws.

6.1.2 Every applicant for membership of IIA-Australia must sign an undertaking to be bound by the provisions of this Constitution, the Code of Ethics, the By-Laws and any pronouncement by the Board then or thereafter in force.

6.1.3 The Board may in its discretion and without being required to assign any reason refuse to accept an application for membership or for a change in the status of membership.

6.1.4 Membership will only become effective upon the passing of a resolution of the Board that the applicant's name be entered into the Register.

6.1.5 The Board will determine which class of membership each applicant will be granted.

6.1.6 The Board by resolution may accept as a member of IIA-Australia a member in good standing of the IIA Inc. or of another affiliated Institute or Chapter on application to the Company Secretary if the applicant:

(a) provides proof of membership in a recognised Institute or Chapter of IIA Inc.; and

(b) provides proof of fully paid annual fees and subscriptions to such body.

6.1.7 All members of IIA-Australia by virtue of the Master Relationship Agreement for an Institute are members of IIA Inc., within their specific class of membership.

### **6.2 Classes of Membership**

6.2.1 The Board will determine and set out in the By-Laws the specific classes and sub-classes of membership;

6.2.2 The Board may, at its discretion and as it may deem appropriate, at any time confer a class of membership defined in the By-Laws on any member who resides in the Region and who has met the qualification requirements determined by the Board and set out in the By-Laws.

### **6.3 Fees and Subscriptions**

The Board will determine and set out in the By-Laws:

6.3.1 an application fee for admission to membership of IIA-Australia;

6.3.2 the annual subscriptions for each class of membership;

6.3.3 the time at which annual subscriptions will become due and payable; and

6.3.4 any other fees, levies or subscriptions to be paid by some or all classes of members.



**6.4 Non-payment of fees**

6.4.1 If the annual subscription of a member remains unpaid for a period of three months after the fees become due, and the member received written notice of the default, then the member's membership is terminated unless the Board resolves otherwise.

**6.5 Cessation of membership - General**

6.5.1 A member will cease to be a member if the member:

- (a) dies;
- (b) becomes of unsound mind or whose person or estate becomes liable to be dealt with in any way under the laws relating to mental health;
- (c) is convicted of an indictable offence;
- (d) has their membership terminated under clause 6.4 or
- (e) is expelled pursuant to clause 6.7.

**6.6 Cessation of membership - Resignation**

6.6.1 A member will cease to be a member if the member gives written notice of its resignation to the Company Secretary and the resignation is accepted by the Board.

6.6.2 The Board may refuse to accept a member's resignation if the following conditions have not been satisfied:

- (a) the member has returned their certificate of membership of IIA-Australia; and
- (b) the member has paid all money's owing to IIA-Australia; and
- (c) the Board is satisfied that no complaint has been lodged under clause 6.7, or the prescribed procedure has been completed in accordance with that clause.

6.6.3 If the Board accepts the resignation of a member before that member complies with the requirements in clause 6.6.2, such acceptance does not relieve the member from compliance with the requirements in clause 6.6.2.

6.6.4 A member who has resigned remains liable to contribute any sum owing under the clause 6.3.

**6.7 Expulsion of Members**

6.7.1 The Board will have power by resolution to censure, suspend or expel a member in accordance with this clause if that member:

- (a) wilfully refuses or neglects to comply with the provisions of this Constitution; or
- (b) is guilty of any conduct which in the opinion of the Board is unbecoming of a member or prejudicial to the interests of IIA-Australia.

6.7.2 The Board, through the Professional Responsibility & Ethics Committee, must provide the member with at least seven days' notice of the meeting at which such an intended resolution is to be debated.

- 6.7.3 The Board, through the Professional Responsibility & Ethics Committee, must provide the member with details of the intended resolution and what is alleged against the member and give the member an opportunity to give orally or in writing any explanation or defence the member may think fit.
- 6.7.4 A member may appeal the decision by lodging a request to the Company Secretary for the Disciplinary Appeals Committee to consider.
- 6.7.5 The Board will have power to prescribe from time to time periods of suspension commensurate with violations and also terms and conditions for resumption of membership.
- 6.7.6 A member who has been suspended or expelled from membership will:
  - (a) return their certificate of membership of IIA-Australia; and
  - (b) pay all money's owing to IIA-Australia.

## **7. CALLING MEETINGS OF MEMBERS**

### **7.1 Calling of meetings of members by a director**

A director may call a meeting of IIA-Australia's members.

### **7.2 Calling of General Meeting by directors when requested by members**

7.2.1 The directors of IIA-Australia must call and arrange to hold a general meeting on the request of:

- (a) members with at least 5% of the votes that may be cast at the general meeting; or
- (b) at least 100 members (or such different number as may be prescribed by the regulations) who are entitled to vote at the general meeting.

7.2.2 The request must:

- (a) be in writing;
- (b) state any resolution to be proposed at the meeting;
- (c) be signed by the members making the request; and
- (d) be given to IIA-Australia.

7.2.3 Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

7.2.4 The directors must call the meeting within 21 days after the request is given to IIA-Australia. The meeting is to be held not later than 2 months after the request is given to IIA-Australia.

### **7.3 Failure of directors to call a General Meeting**

7.3.1 Members with more than 50% of the votes of all of the members who make a request under clause 7.2 may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to IIA-Australia.

- 7.3.2 The meeting must be called in the same way, so far as is possible, in which general meetings of IIA-Australia may be called. The meeting must be held not later than 3 months after the request is given to IIA-Australia.
- 7.3.3 To call the meeting the members requesting the meeting may ask IIA-Australia for a copy of the Register. IIA-Australia must give the members the copy of the Register within 7 days after request without charge.
- 7.3.4 IIA-Australia must pay the reasonable expenses the members incurred because the directors failed to call and arrange the meeting.
- 7.3.5 IIA-Australia may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with clause 7.2. The directors who are liable are jointly and individually liable for the amount.

*(This reflects section 249E of the Act.)*

#### **7.4 Calling of General Meeting by members**

- 7.4.1 Members with at least 5% of the votes that may be cast at a general meeting of IIA-Australia may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.
- 7.4.2 The meeting must be called in the same way, so far as is possible, in which general meetings of IIA-Australia may be called.

*(This reflects section 249F of the Act.)*

#### **7.5 Amount of notice of meetings**

- 7.5.1 Subject to clause 7.5.2 at least 21 days notice must be given of a meeting of IIA-Australia's members.
- 7.5.2 IIA-Australia may call on shorter notice:
  - (a) an annual general meeting, if all the members entitled to attend and vote at the annual general meeting agree beforehand; and
  - (b) any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 7.5.3 IIA-Australia cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting of the kind referred to in clause 7.5.4.
- 7.5.4 At least 21 days notice must be given of a meeting of IIA-Australia at which a resolution will be moved to:
  - (a) remove an auditor under section 329 of the Act; or
  - (b) remove a director under clause 13.8 or appoint a director in place of a director removed under that clause.

*(This reflects section 249H of the Act.)*

#### **7.6 Notice of meetings of members to members and directors**

- 7.6.1 Written notice of a meeting of IIA-Australia's members must be given individually to each member entitled to vote at the meeting and to each director.

*(This reflects section 249J(1) of the Act.)*

7.6.2 IIA-Australia may give the notice of a meeting to a member:

- (a) personally;
- (b) by sending it by post to the address for the member in the Register or the alternative address (if any) nominated by the member; or
- (c) by sending it to the electronic address (if any) nominated by the member.

*(This reflects section 249J(3) of the Act.)*

7.6.3 A notice of meeting sent by post is taken to be given 2 days after it is posted. A notice of meeting sent by electronic means, is taken to be given on the day of sending.

*(This substitutes for section 249J(4) of the Act which is a Replaceable Rule.)*

#### **7.7 Auditor entitled to notice and other communications**

The directors must give IIA-Australia's auditor, if any:

- 7.7.1 notice of a general meeting in the same way that a member of IIA-Australia is entitled to receive notice; and
- 7.7.2 any other communications relating to the general meeting that a member of IIA-Australia is entitled to receive.

*(This reflects section 249K of the Act.)*

#### **7.8 Contents of notice of meetings of members**

A notice of a meeting of IIA-Australia's members must:

- 7.8.1 set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- 7.8.2 state the general nature of the meeting's business;
- 7.8.3 if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- 7.8.4 if a member is entitled to appoint a proxy, contain a statement setting out the following information:
  - (a) that the member has a right to appoint a proxy;
  - (b) whether or not the proxy needs to be a member of IIA-Australia; and
  - (c) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

*(This reflects section 249L of the Act.)*

#### **7.9 Notice of adjourned meetings**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

*(This reflects section 249M of the Act which is a Replaceable Rule.)*

- 7.10 The accidental omission to give notice of a meeting or the non-receipt of notice by any person does not invalidate the proceedings at that meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or the ASIC, declares proceedings at the meeting to be void.

*(This reflects section 1322(3) of the Act.)*

**7.11 Changing the venue, cancelling or postponement of a general meeting**

The Board may change the venue for, cancel or postpone a general meeting by notice in writing to all persons who are entitled to receive notice of that meeting, except where the change, cancellation or postponement would be contrary to the Act.

**8. MEMBERS' RIGHTS TO PUT RESOLUTIONS AT GENERAL MEETINGS**

**8.1 Members' resolutions**

- 8.1.1 The following members may give IIA-Australia notice of 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 (or some different number as may be prescribed by the regulations) who are entitled to vote at a general meeting.

- 8.1.2 The notice must:

- (a) be in writing;
- (b) set out the wording of the proposed resolution; and
- (c) be signed by the members proposing to move the resolution.

- 8.1.3 Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.

*(This reflects section 249N of the Act.)*

**8.2 IIA-Australia giving notice of members' resolutions**

- 8.2.1 If IIA-Australia has been given notice of a resolution under clause 8.1, the resolution is to be considered at the next general meeting that occurs more than 30 days after the notice is given.

- 8.2.2 IIA-Australia must give all of its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

- 8.2.3 IIA-Australia is responsible for the cost of giving members notice of the resolution if IIA-Australia receives the notice in time to send it out to members with the notice of meeting.

- 8.2.4 The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by IIA-Australia in giving members notice of the resolution if the directors do not receive the members notice in time to send it out with the notice of meeting. At a general meeting, IIA-Australia may resolve to meet the expenses itself.

8.2.5 IIA-Australia need not give notice of the resolution if:

- (a) it is more than 1,000 words long or defamatory; or
- (b) the members making the request are to bear the expenses of sending the notice out, unless the members give IIA-Australia a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

*(This reflects section 2490 of the Act.)*

## **9. MEMBERS' STATEMENTS TO BE DISTRIBUTED**

### **9.1 Grounds for statement**

Members may request IIA-Australia to give to all of its members a statement provided by the members making the request about:

- 9.1.1 a resolution that is proposed to be moved at a general meeting; or
- 9.1.2 any other matter that may be properly considered at a general meeting.

### **9.2 Who may request**

The request must be made by:

- 9.2.1 members with at least 5% of the vote that may be cast on the resolution; or
- 9.2.2 at least 100 members (or such different number as may be prescribed by the regulations) who are entitled to vote at the meeting.

### **9.3 How request to be made**

The request must be:

- 9.3.1 in writing;
- 9.3.2 signed by the members making the request; and
- 9.3.3 given to IIA-Australia.

### **9.4 Copies for signing**

Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

### **9.5 Distribution of statement**

After receiving the request, IIA-Australia must distribute to all of IIA-Australia's members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

### **9.6 When IIA-Australia bears cost**

IIA-Australia is responsible for the cost of making the distribution if IIA-Australia receives the statement in time to send it out to members with the notice of meeting.

### **9.7 When members bear cost**

The members making the request are jointly and individually liable for the expenses reasonably incurred by IIA-Australia in making the distribution if IIA-Australia does

not receive the statement in time to send it out with the notice of meeting. At a general meeting, IIA-Australia may resolve to meet the expenses itself.

**9.8 When IIA-Australia need not comply with request**

IIA-Australia need not comply with the request if:

9.8.1 the statement is more than 1,000 words long or defamatory; or

9.8.2 the members making the request are responsible for the expenses of the distribution, unless the members give IIA-Australia a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

*(This reflects section 249P of the Act.)*

**10. HOLDING MEETINGS OF MEMBERS**

**10.1 Purpose**

A meeting of members must be held for a proper purpose.

*(This reflects section 249Q of the Act.)*

**10.2 Time and place for meetings of members**

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

*(This reflects section 249R of the Act.)*

**10.3 Technology**

IIA-Australia may hold a meeting of its members at 2 or more venues using any technology that gives the members a reasonable opportunity to participate.

*(This reflects section 249S of the Act.)*

**10.4 Quorum**

10.4.1 No business may be transacted at any general meeting unless a quorum of members entitled to vote is present at the time when the meeting proceeds to business.

10.4.2 15 members will constitute a quorum unless otherwise provided in this Constitution.

10.4.3 If a person has appointed more than 1 proxy or representative, only 1 of those proxies or representations is to be counted in determining whether a quorum is constituted.

10.4.4 For the purposes of this clause 10 "member" includes a person attending as a proxy.

10.4.5 If a quorum is not present within 30 minutes after the time appointed for a general meeting:

(a) if convened by or on requisition of Members, the meeting is dissolved; and

(b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as

the directors may determine. If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

*(This substitutes for section 249T of the Act which is a Replaceable Rule.)*

#### 10.5 **Chairing meetings of members**

- 10.5.1 The President is to be the chair at every general meeting of IIA-Australia.
- 10.5.2 If the President cannot or will not chair a general meeting or is not present within 15 minutes after the time appointed for the holding of the meeting the Vice President shall chair the meeting.
- 10.5.3 In the absence of the Vice President, the directors present may elect one of their number to be the chair of the meeting but if they do not do so the members present must elect the chair of the meeting.
- 10.5.4 The chair must adjourn a meeting of IIA-Australia's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

*(This substitutes for section 249U of the Act which is a Replaceable Rule.)*

#### 10.6 **Auditor's right to be heard at General Meetings**

- 10.6.1 IIA-Australia's auditor (if any) is entitled to attend any general meeting of IIA-Australia.
- 10.6.2 The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- 10.6.3 The auditor is entitled to be heard even if:
  - (a) the auditor retires at the meeting; or
  - (b) the meeting passes a resolution to remove the auditor from office.
- 10.6.4 The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

*(This reflects section 249V of the Act.)*

#### 10.7 **Adjourned meetings**

- 10.7.1 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

*(This reflects section 249W(1) of the Act.)*

- 10.7.2 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

*(This substitutes for section 249W(2) of the Act which is a Replaceable Rule.)*

#### 10.8 **Annual General Meetings**

##### 10.8.1 **Holding of annual general meetings**

IIA-Australia must, if required by the Act, hold an annual general meeting.



*(See the requirements of section 250N of the Act.)*

#### **10.8.2 Business of Annual General Meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting;

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

*(This reflects section 250R of the Act.)*

#### **10.8.3 Questions at Annual General Meetings**

- (a) The chair of an annual general meeting must allow a reasonable opportunity for members as a whole at the meeting to ask questions about or make comments on the management of IIA-Australia.
- (b) If IIA-Australia's auditor or their representative is at the meeting, the chair of the annual general meeting 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 the audit and the preparation and content of the auditor's report.

*(This reflects sections 250S and 250T of the Act.)*

### **11. VOTING AT A MEMBERS' MEETINGS**

#### **11.1 Members entitled to vote**

All members will be entitled to vote on any question either personally or by proxy at any general or other meeting of IIA-Australia, or in any ballot held by the Board, or be counted in a quorum except for the following:

- 11.1.1 a member who belongs to a non-voting class of member of IIA-Australia in accordance with the By-Laws; or
- 11.1.2 a member whose subscription, or any other sum prescribed by the Board is overdue and unpaid at the time of the meeting.

#### **11.2 How many votes a member has**

- 11.2.1 On a show of hands each member has 1 vote.
- 11.2.2 On a poll, each member has 1 vote.
- 11.2.3 The chair does not have a casting vote in addition to any vote they have as a member.

*(This substitutes for section 250E of the Act which is a Replaceable Rule.)*

#### **11.3 Objections to right to vote at a meeting of IIA-Australia's members**

A challenge to a right to vote at a members' meeting:

11.3.1 may only be made at the meeting; and

11.3.2 must be determined by the chair, whose decision is final.

*(This substitutes for section 250G of the Act which is a Replaceable Rule.)*

**11.4 Votes need not all be cast in the same way**

On a poll, a person voting who is entitled to 2 or more votes:

11.4.1 need not cast all their votes; and

11.4.2 may cast their votes in different ways.

*(This reflects section 250H of the Act .)*

**11.5 How voting is carried out**

11.5.1 A resolution put to the vote at a members' meeting must be decided on a show of hands unless a poll is demanded.

11.5.2 Before a vote is taken, the chair of the meeting may inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

11.5.3 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

11.5.4 Subject to this Constitution and the Act, resolutions of members are to be decided by simple majority of votes cast in respect of the relevant resolution.

*(This substitutes for section 250J of the Act which is a Replaceable Rule.)*

11.5.5 In the case of an equality of votes whether on a show of hands, or on a poll or on a ballot, the resolution will be declared in the negative.

**11.6 Matters on which a poll may be demanded**

11.6.1 A poll may be demanded on any resolution proposed at a member's meeting.

11.6.2 Without limiting clause 11.6.1, a poll can be demanded on any resolution concerning:

(a) the election of the chair of a meeting; or

(b) the adjournment of a meeting.

*(This reflects section 250K of the Act.)*

**11.7 When a poll is effectively demanded**

11.7.1 At a members' meeting a poll may be demanded by:

(a) at least 5 members entitled to vote on the resolution;

(b) members with at least 5% of the votes that may be cast on the resolution on a poll; or

(c) the chair.

11.7.2 The poll may be demanded:

- (a) before a vote is taken on the proposed resolution;
- (b) before the voting results on a show of hands on the proposed resolution are declared; or
- (c) immediately after the voting results on a show of hands on the proposed resolution are declared.

*(This reflects section 250L of the Act.)*

11.7.3 The demand for a poll may be withdrawn.

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

11.8.1 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.

11.8.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

*(This substitutes for section 250M of the Act which is a Replaceable Rule.)*

11.8.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

## 11.9 **Direct voting**

The Board may determine that at any general meeting, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to IIA-Australia by post or electronic means as determined and approved by the Board. The Board may prescribe regulations in relation to Direct Voting, including specifying the form, method and timing of giving a Direct Vote in order for the vote to be valid.

## 12. **PROXIES**

### 12.1 **Who can appoint a proxy**

Each member of IIA-Australia who is entitled to attend and vote at a meeting of IIA-Australia's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.

*(This reflects section 249X of the Act.)*

### 12.2 **Rights of proxies**

A proxy appointed to attend and vote for a member has the same rights as the member:

12.2.1 to speak at the meeting, except while the member is present;

12.2.2 to vote on a poll and on a show of hands (but only to the extent allowed by the appointment); and

12.2.3 to join in a demand for a poll.

*(This reflects section 249Y(1) of the Act.)*

**12.3 IIA-Australia sending appointment forms or lists of proxies must send to all members**

If IIA-Australia sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- 12.3.1 if the member requested the form or list, IIA-Australia must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- 12.3.2 otherwise, IIA-Australia must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

*(This reflects section 249Z of the Act.)*

**12.4 Appointing a proxy**

12.4.1 An appointment of a proxy is valid if it is signed by the member making the appointment and contains the following information:

- (a) the member's name and address;
- (b) IIA-Australia's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meetings at which the appointment may be used if it is not a standing one.

An appointment may be a standing one.

12.4.2 The chair of the Board may determine in its absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 12.4.1.

12.4.3 An undated appointment is taken to have been dated on the day it is given to IIA-Australia.

12.4.4 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
- (c) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
- (d) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

12.4.5 If a proxy is also a member, this clause does not affect the way that the person can cast any votes they hold as a member.

12.4.6 An appointment does not have to be witnessed.

12.4.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

*(This reflects section 250A of the Act.)*

## 12.5 Proxy documents

12.5.1 For an appointment of a proxy for a meeting of members to be effective, the following documents must be received by IIA-Australia at least 48 hours before the meeting:

- (a) the proxy's appointment; and
- (b) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.

12.5.2 If a meeting of members has been adjourned, an appointment and any authority received by IIA-Australia at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

12.5.3 IIA-Australia receives an appointment or an authority when it is received at any of the following:

- (a) IIA-Australia's registered office;
- (b) an electronic address at IIA-Australia's registered office; or
- (c) a place or electronic address specified for the purpose in the notice of meeting.

*(This reflects section 250B of the Act.)*

## 12.6 Validity of proxy vote

12.6.1 A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

*(This reflects section 250C(1) of the Act.)*

12.6.2 Unless IIA-Australia has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing member dies;
- (b) the member is mentally incapacitated;
- (c) the member revokes the proxy's appointment;
- (d) the member revokes the authority under which the proxy was appointed by a third party; or
- (e) the member transfers the share in respect of which the proxy was given.

*(This substitutes for section 250C(2) of the Act which is a Replaceable Rule.)*

### **13. BOARD OF DIRECTORS**

#### **13.1 Constitution of Board**

13.1.1 The Board must be elected or appointed in accordance with this Constitution and will be constituted by 9 directors nominated in accordance with clause 13.4.

13.1.2 The Chair of the Board will be the President, and in their absence the Vice President.

#### **13.2 Number of directors**

At all times IIA-Australia must have at least 3 directors of which at least 2 must be ordinarily resident in Australia.

*(This reflects section 201A of the Act).*

#### **13.3 Term of Office**

13.3.1 The term of office for a director on the Board will be three years commencing from the end of the relevant AGM at which they are elected to the end of the AGM in three years' time.

13.3.2 Each year, three director positions on the Board will be up for election.

13.3.3 The directors to retire at each AGM are those who were elected three years earlier and those appointed to fill a casual vacancy for a director subject to election three years earlier.

13.3.4 The maximum period for which a person may hold office as a director is 9 years whether or not consecutive (Maximum Period). The Maximum Period does not include any period from a person's appointment to fill a casual vacancy under clause 13.6.1. A person who has held office as a director for the Maximum Period is not eligible for re-election or reappointment as a director.

#### **13.3.5 Transitional provisions**

- (a) In this clause, *Adoption Date* means the date on which this Constitution was adopted by the Members.
- (b) In order to implement the three year terms of office and rotation of directors under clause 13.3.2, the directors in office at the time of the Adoption Date will agree among themselves which directors are to retire at either the first, second or third AGM following the Adoption Date.
- (c) If the Directors cannot agree among themselves then the following will apply:
  - (i) The directors who must retire from office at each of the first, second and third AGM following the Adoption Date are those directors who have been longest in office since their last election at the time of that AGM;
  - (ii) As between persons who were last elected as directors on the same day, then in default of agreement, those to retire will be determined by lot.
- (d) Retiring Directors may be nominated for re-election or reappointment if eligible under this Constitution.

- (e) Any time served as director prior to the Adoption Date will count when determining the Maximum Period under clause 13.3.4.

#### 13.4 **Election of Directors**

The election of directors shall be conducted in the following manner:

- 13.4.1 The Nominations Committee must, in accordance with the Nominations Committee Charter, conduct searches for new directors and recommend preferred candidates to the Board.
- 13.4.2 The search for new directors may include nominations provided by the membership at large to the Nominations Committee.
- 13.4.3 The Company Secretary shall cause a notice inviting nominations to be sent to all members entitled to vote.
- 13.4.4 Nominations, in writing, signed by the proposer, seconder and nominee shall be sent direct to the Nominations Committee.
- 13.4.5 The Nominations Committee must, in accordance with the Nominations Committee Charter, review any nominations received and assess whether they satisfy the criteria so as to be put forward to a general meeting of IIA-Australia for election as a director.
- 13.4.6 At the annual general meeting of IIA-Australia the approved nominees shall, by ordinary resolution of the members present in person, or by proxy, be elected to the Board in accordance with the Act.

#### 13.5 **Election of Other Office Holders**

- 13.5.1 The Board may appoint any of IIA-Australia's duly appointed directors to be the President or the Vice-President. The role of President or Vice-President is automatically vacated if the person ceases to be a director of IIA-Australia.
- 13.5.2 The President and Vice-President hold office for one year.
- 13.5.3 The President and Vice-President may stand for election to those positions for consecutive terms or until a successor is appointed and may be re-appointed.
- 13.5.4 The Board may appoint directors to other office bearer positions as and when the Board decides and may decide the period for which that director is to hold that position.

#### 13.6 **Appointment of Director by Directors**

- 13.6.1 If there is a casual vacancy on the Board the directors may appoint a member as a director to fill the casual vacancy. The member so appointed holds office for the remainder of the term of that vacancy.
- 13.6.2 The Board must seek the advice of the Nominations Committee to appoint a member as a director to fill that casual vacancy.

*(This substitutes for section 201H of the Act which is a Replaceable Rule.)*

#### 13.7 **Removal of members of Board**

- 13.7.1 The office of a member of the Board will become vacant if the member:
  - (a) ceases to be an officer under the Act;

- (b) ceases to be a member of IIA-Australia;
- (c) resigns from office by notice in writing to IIA-Australia;
- (d) becomes prohibited from being a director of IIA-Australia by reason of any order made under the Act;
- (e) holds any office of profit under IIA-Australia except as provided for in clause 13.10.1 below;
- (f) for more than two meetings is absent without prior permission of the Board;
- (g) is directly or indirectly interested in any contract or proposed contract with IIA-Australia which the member has failed to disclose to the Board;
- (h) becomes bankrupt or makes any arrangement or composition with the member's creditors generally; or
- (i) 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.

### 13.8 **IIA-Australia may remove and appoint directors**

13.8.1 IIA-Australia in general meeting may by resolution:

- (a) remove any director of the Board from office despite anything in this Constitution, any agreement between IIA-Australia and the director or any agreement between any or all members and the director;

*(This reflects section 203D(1) of the Act.)*

- (b) appoint a new director to the Board.

*(This substitutes for section 201G of the Act which is a Replaceable Rule.)*

*(As to further provisions regarding removal see sections 203D(2) to (7) and section 203E) of the Act.)*

### 13.9 **Resolution for appointment**

A motion for the appointment of 2 or more persons as directors by a single resolution must not be moved unless a resolution that it be moved has first been agreed to by the meeting without any vote being cast against it. However, this does not prevent the election of 2 or more directors by ballot or poll.

*(This reflects sections 225(1) and 225(6) of the Act.)*

### 13.10 **Interested directors**

#### 13.10.1 **Director may not hold certain offices**

Except as otherwise permitted in this Constitution, a director may not hold any office or position of profit under IIA-Australia or under any Institute promoted by IIA-Australia or in which IIA-Australia is a member or otherwise interested.

#### 13.10.2 **Company Secretary may hold certain offices**

The Company Secretary may be an employee of IIA-Australia.



### 13.10.3 **Director may enter into certain contracts**

Notwithstanding any rule of law or equity to the contrary, a director may contract, transact, or enter into an arrangement with IIA-Australia and no such contract, transaction or arrangement entered into by or on behalf of IIA-Australia or any other contract, transaction or arrangement in which a director is in any way interested is avoided or rendered voidable because of that person being a director.

### 13.10.4 **Disclosure of material interest**

A director who has a material personal interest in a matter that relates to the affairs of IIA-Australia must give the other directors notice of the interest unless section 191(2) of the Act says otherwise.

*(This reflects section 191(1) of the Act.)*

### 13.10.5 **Voting by interested directors**

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

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

unless;

- (c) subclauses 13.10.6 or 13.10.7 allow the director to be present or;
- (d) the interest does not need to be disclosed under section 192 of the Act.

13.10.6 The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:

- (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of IIA-Australia; and
- (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

13.10.7 The director may be present and vote if so entitled under a declaration or order made by ASIC under section 196 of the Act;

13.10.8 If there are not enough directors to form a quorum for a directors' meeting because of subclause 13.10.5(a) or 13.10.5(b), 1 or more of the directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

*(See the provisions of sections 195 and 196 of the Act.)*

## 13.11 **Remuneration of directors**

13.11.1 The directors are entitled to be reimbursed for all expenses properly incurred in attending or in connection with their attendance at any meeting of IIA-Australia or of the Board or any committee of directors.

13.11.2 Subject to the approval of the Board, a director may receive a special remuneration and expense reimbursement for performing extra services in and about IIA-Australia's business.

*(This substitutes for section 202A of the Act which is a Replaceable Rule.)*

#### 13.12 **Vacation of office**

The office of a director automatically becomes vacant if the director:

13.12.1 resigns by giving written notice to IIA-Australia at its registered office; or

13.12.2 is removed pursuant to the provisions of section 203D of the Act;

13.12.3 is removed from office in accordance with this Constitution or the Act; or

13.12.4 is disqualified from managing corporations under Part 2D.6 of the Act.

*(This reflects section 203B of the Act.)*

#### 13.13 **Financial benefits**

IIA-Australia must not provide financial benefits to a director except as permitted by, and in accordance with, the provisions of the Act.

*(See in particular, but not exclusively, Chapter 2E of the Act.)*

#### 13.14 **Defect in appointment**

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director, or a member of a committee, or to act as a director, or that a person so appointed was disqualified, all acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee.

*(See section 201M of the Act for restrictions on this authority)*

### **14. POWERS AND DISCRETIONS OF DIRECTORS**

#### 14.1 **Business of IIA-Australia**

The business of IIA-Australia must be managed by or under the direction of the directors who may exercise all the powers of IIA-Australia except any powers that the Act or this Constitution, require to be exercised by IIA-Australia in general meeting. No resolution made by IIA-Australia in general meeting invalidates any prior act of the directors which would have been valid if the resolution had not been made.

*(This substitutes for section 198A of the Act which is a Replaceable Rule.)*

#### 14.2 **Appointment of attorneys**

The directors may by power of attorney appoint any Institute, firm, person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of IIA-Australia for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors), for the period and subject to such conditions as the directors think fit.

#### 14.3 **Appointment of auditor**

The directors must appoint an auditor of IIA-Australia if an auditor has not been appointed by IIA-Australia in general meeting within 1 month after the day on which IIA-Australia was incorporated.

*(This reflects section 327(1) of the Act.)*

*(For other requirements see sections 327, 328 and 329 of the Act.)*

**14.4 Directors may execute security over the assets of IIA-Australia**

If the directors or any of them or any other person becomes personally liable for the payment of any sum primarily due from IIA-Australia, the directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of IIA-Australia by way of indemnity to secure the directors or persons so becoming liable from any loss in respect of such liability.

**14.5 Negotiable instruments**

All cheques, bills of exchange, promissory notes and other negotiable instruments will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of IIA-Australia in such manner as the directors may from time to time determine.

*(This substitutes for section 198B of the Act which is a Replaceable Rule.)*

**14.6 Other Powers**

Without limiting clause 14, the directors may:

- 14.6.1 from time to time make, amend, enlarge, revoke and repeal By-Laws, pronouncements and regulations ancillary to but not inconsistent with this Constitution, on all subjects expressly reserved for IIA-Australia in general meeting, whether the same be expressed among its powers or not;
- 14.6.2 recommend members of IIA-Australia for nomination or appointment to committees, boards or other entities established by IIA Inc.;
- 14.6.3 establish such objectives as are consistent with the purpose of IIA-Australia and undertake activities in pursuance of these objectives;
- 14.6.4 nominate members of IIA-Australia to positions on regional and international committees having relevance to internal auditing, assurance or associated disciplines;
- 14.6.5 at its discretion appoint, remove or suspend officers for permanent or temporary services as it may from time to time think fit and determine their duties and fix their remuneration and have power to appoint from time to time the bankers and legal advisors of IIA-Australia;
- 14.6.6 prescribe qualifications for admission to IIA-Australia or for a change of status within IIA-Australia;
- 14.6.7 establish prizes, award scholarships to students and set up special funds for the education, advancement and training of students of internal auditing, assurance and allied subjects on such terms as it thinks fit, provided that the Board shall not award any prize, award or distinction in money to a member except as successful competitor in any competition held or promoted by IIA-Australia or in recognition of any outstanding achievement;
- 14.6.8 circulate to members each year a copy of the Annual Accounts and a report of the activities of IIA-Australia during the previous year and it may, at its discretion, generate a list of members and such other information as it may deem of interest and circulate the same amongst members;
- 14.6.9 communicate from time to time with similar bodies and with members of the profession in other places for the purpose of obtaining and communicating information;

14.6.10 enter into such agreements or alliances with other bodies as the Board believe will be of benefit to the members or will further advance the objectives of IIA-Australia;

14.6.11 take cognisance of anything affecting IIA-Australia or the professional conduct of members and have power to bring before general meetings of IIA-Australia any matters which it considers material and may make any recommendations and take such action as it thinks fit in relation thereto;

14.6.12 institute, conduct, defend, compound or abandon any legal proceedings by or against IIA-Australia or its officers or otherwise concerning the affairs of IIA-Australia and may also compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against IIA-Australia.

#### 14.7 **Confidentiality**

Directors and committee members must keep information discussed in a board or committee meeting confidential.

#### 14.8 **Directors discretion**

Unless otherwise provided, if the directors are given a power or discretion under this Constitution, subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, see fit for the internal management, regulation and good government of IIA-Australia.

#### 14.9 **Delegation**

##### 14.9.1 **Power to delegate**

The directors may delegate any of their powers to:

- (a) a committee of directors; or
- (b) a director; or
- (c) an employee of IIA-Australia; or
- (d) any other person.

##### 14.9.2 **Delegate to act in accordance with directions**

The delegate must exercise the powers delegated in accordance with any directions of the directors.

##### 14.9.3 **Effectiveness of exercise of delegates power**

The exercise of the power by the delegate is as effective as if the directors had exercised it.

##### 14.9.4 **Meetings of committees**

The meetings and proceedings of a committee must be carried out in accordance with the provisions in this Constitution relating to the meetings and proceedings of directors, subject to any necessary changes and any directions made by the directors.

*(This reflects section 198D of the Act.)*

**14.9.5 Directors liable for delegate**

If the directors delegate a power under this clause 14.9, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves unless exonerated under section 190(2) of the Act.

*(This reflects section 190(1) of the Act.)*

**15. DIRECTOR'S RESOLUTIONS AND MEETINGS**

**15.1 Circulating resolutions**

15.1.1 The directors may pass a resolution without a directors' meeting being held if a majority of all directors present in Australia entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

15.1.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

15.1.3 The resolution is passed when the last director signs.

*(This substitutes for section 248A of the Act which is a Replaceable Rule.)*

**15.2 Calling directors' meetings**

A director may at any time, and the secretary on the request of a director, must convene a Board meeting.

*(This substitutes for section 248C of the Act which is a Replaceable Rule.)*

**15.3 Use of technology**

A directors' meeting may be called or held by telephone, electronic mail or by using any other technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.

*(This reflects section 248D of the Act.)*

**15.4 Chairing directors' meetings**

15.4.1 Directors' meetings will be chaired by the President or, if the President cannot or will not chair the meeting, the Vice President.

15.4.2 If the President and the Vice President cannot or will not chair the meeting, or are not present within 15 minutes after the time appointed for holding the meeting, the directors may elect one of their number present to chair the meeting.

*(This substitutes for section 248E of the Act which is a Replaceable Rule.)*

**15.5 Quorum at directors' meetings**

15.5.1 Subject to clause 13.10.5 a quorum for a meeting of the Board is constituted by a majority of Directors.

15.5.2 The quorum must be present at all times during the meeting.

*(This substitutes for section 248F of the Act which is a Replaceable Rule.)*

**15.6 Passing of directors' resolutions**

Questions arising at any Board meeting must be decided by a majority of votes. Each director present at a Board meeting has 1 vote. In the case of an equality of votes, the chair does not have a second or casting vote.

*(This substitutes for section 248G of the Act which is a Replaceable Rule.)*

**16. CHIEF EXECUTIVE OFFICER**

**16.1 Appointment**

16.1.1 The directors may appoint a chief executive officer of IIA-Australia for the period and on the terms (including as to remuneration) as the directors see fit.

16.1.2 The chief executive officer will not be a director.

*(This substitutes for section 201J of the Act which is a Replaceable Rule.)*

**16.2 Revocation or variation of appointment or powers**

The directors may revoke or vary:

16.2.1 an appointment; or

16.2.2 any of the powers conferred on the chief executive officer.

*(This substitutes for section 203F of the Act which is a Replaceable Rule.)*

**17. COMPANY SECRETARY**

**17.1 Requirement for secretary**

IIA-Australia must have at least one (1) secretary.

*(This reflects section 204A(2) of the Act.)*

**17.2 Appointment of Company Secretary**

A Company Secretary must be appointed by the directors.

*(This reflects section 204D of the Act.)*

**17.3 Natural person not a minor as Company Secretary**

A secretary must be a natural person who has attained the age of 18 years.

*(This reflects section 204B(1) of the Act.)*

**17.4 Australian resident as Company Secretary**

The secretary, or one (1) of the secretaries, must be a person who ordinarily resides in Australia.

*(This reflects section 204A(2) of the Act.)*

**17.5 Acting Company Secretary**

17.5.1 If there is no secretary, or no secretary is capable of acting, any act or thing required or authorised to be done by or in relation to the secretary may be done by or in relation to any assistant or deputy secretary.

17.5.2 If there is no assistant or deputy secretary, or no assistant or deputy secretary is capable of acting, by or in relation to any act or thing required or authorised to be done by, or in relation to, the secretary, an officer authorised by the directors to act as secretary, either generally or in relation to the doing of that act or thing.

**17.6 Terms and conditions of office of Company Secretary**

17.6.1 A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

*(This substitutes for section 204(F) of the Act which is a Replaceable Rule.)*

17.6.2 The Board may vary, terminate or suspend any appointment of a person as a secretary.

**18. AUDIT**

A properly qualified Auditor or Auditors will be appointed and his or their duties regulated in accordance with the Act.

**19. MINUTES**

**19.1 IIA-Australia must keep minute books**

IIA-Australia must keep minute books in which it records within 1 month:

19.1.1 proceedings and resolutions of meetings of the members;

19.1.2 proceedings and resolutions of directors' meetings (including meetings of a committee of directors);

19.1.3 resolutions passed by members without a meeting; and

19.1.4 resolutions passed by directors without a meeting.

**19.2 Minutes to be signed**

IIA-Australia must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:

19.2.1 the chair at the meeting; or

19.2.2 the chair of the next meeting.

**19.3 Resolution without meeting**

IIA-Australia must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.

**19.4 Location of minute books**

IIA-Australia must keep the minute books of IIA-Australia at:

19.4.1 IIA-Australia's registered office;

19.4.2 IIA-Australia's principal place of business in Australia; or

19.4.3 another place approved by the ASIC.

*(This reflects section 251A of the Act.)*

#### 19.5 **Inspection by members**

IIA-Australia must ensure that the minute books for the meetings of its members and for resolutions of members passed without meetings are open for inspection by members free of charge.

*(This reflects section 251B(1) of the Act.)*

#### 19.6 **Requests by members**

19.6.1 A member may ask IIA-Australia in writing for a copy of:

- (a) any minutes of a meeting of IIA-Australia's members or an extract of the minutes; or
- (b) any minutes of a resolution passed by members without a meeting.

19.6.2 If IIA-Australia does not require the member to pay for the copy, IIA-Australia must send it:

- (a) within 14 days after the member asks for it; or
- (b) any longer period that the ASIC approves.

19.6.3 If IIA-Australia requires payment for the copy, IIA-Australia must send it:

- (a) within 14 days after IIA-Australia receives the payment; or
- (b) within any longer period that the ASIC approves.

*(This reflects section 251B of the Act.)*

## 20. **INSPECTION OF ACCOUNTS**

#### 20.1 **Director access**

A director of IIA-Australia has a right of access to the financial records at all times.

*(This reflects section 290(1) of the Act)*

#### 20.2 **Member access**

The directors may determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounting and other records of IIA-Australia, or any of them, are to be opened to the inspection of members not being directors, and no member (not being a director) has any right of inspecting any account or book or paper of IIA-Australia, except as conferred by statute or authorised by the directors.

*(See sections 286-289 of the Act)*



## **21. NOTICES**

### **21.1 When notice is given**

Where a specified period (including a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken, neither the day on which the notice is given or the day on which the action is to be taken may be counted in calculating the period.

### **21.2 Notice by members of address for service**

Each member must notify IIA-Australia in writing of an address in the Region for service of notice. Subject to this Constitution and the Act, if the member fails to do so, the member is not entitled to any notice.

### **21.3 How notices are given**

Subject to the Act and this Constitution, IIA-Australia may give notice and a person may give notice to IIA-Australia:

21.3.1 personally;

21.3.2 by post, to the last known address of the recipient;

21.3.3 by electronic address (if any) nominated by the recipient;

21.3.4 by any other means consented to by the sender and the recipient.

### **21.4 When notices are taken to be given**

A notice sent by post is taken to be given 2 days after it is posted. A notice by electronic means is taken to be given on the day of sending.

### **21.5 Notice to members' attorney**

A member may, by written notice to IIA-Australia, request that all notices to be given by IIA-Australia or the directors to the member be served on the member's attorney at an address specified in the notice.

## **22. LIABILITY OF MEMBERS**

The liability of the members of IIA-Australia is limited.

## **23. WINDING UP**

23.1 If IIA-Australia is wound up during the time of a member's membership or within 1 year afterwards, each member undertakes to contribute to the assets of IIA-Australia for payment of:

23.1.1 debts and liabilities of IIA-Australia contracted before the member's membership ceases;

23.1.2 costs, charges and expenses of the winding up of IIA-Australia; and

23.1.3 adjustment of the rights of the contributories amongst themselves,

such amount as may be required but not exceeding the amounts of fees and subscriptions, determined in accordance with clause 6.3 unpaid.

- 23.2 If upon the winding up or dissolution of IIA-Australia, there remains after the satisfaction of all its debts and liabilities any property whatsoever, that property must not be paid or distributed among the members of IIA-Australia.
- 23.3 All remaining property of IIA-Australia under clause 23.2 must be paid and applied by IIA-Australia to an entity or organisation which has rules prohibiting the distribution of its assets and income to its members.
- 23.4 The directors must before or at the time of dissolution or winding up of IIA-Australia select the institution or institutions to which property will be transferred under clause 23.3.
- 23.5 If after the dissolution or winding up of IIA-Australia the members of IIA-Australia have not made a selection under clause 23.4, the selection will be determined by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other judge of that court as may handle or acquire jurisdiction in the matter.
- 23.6 If effect cannot be given to clauses 23.3 to 23.5 the property under clause 23.2 must be given to a charitable purpose.

## **24. INDEMNITY**

### **24.1 Indemnity against proceedings**

Subject to clause 24.5, every person who is or has been a director, secretary or chief executive officer of IIA-Australia or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of IIA-Australia against any liabilities for costs and expenses incurred by that person:

- 24.1.1 in defending any proceedings relating to that person's position with IIA-Australia, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or
- 24.1.2 in connection with any application in relation to any proceedings relating to that person's position with IIA-Australia, whether civil or criminal, in which relief is granted to that person under the Act by the court.

*(See section 199A(3) of the Act.)*

### **24.2 Indemnity against liabilities**

Subject to clause 24.5, every person who is or has been a director, secretary or chief executive officer of IIA-Australia or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of IIA-Australia against any liability incurred by the person as such a director, secretary or chief executive officer to another person (other than IIA-Australia or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

*(See sections 199A(1) and (2) of the Act.)*

### **24.3 Insuring officers of IIA-Australia**

To the extent permitted by law, IIA-Australia may pay a premium for a contract insuring a person who is or has been a director, secretary or chief executive officer of IIA-Australia or its related bodies corporate against:

- 24.3.1 any liability incurred by that person as such a director, secretary or chief executive officer which does not arise out of conduct involving a wilful breach of duty in relation to IIA-Australia or a contravention of section 182 or 183 of the Act; and

24.3.2 any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with IIA-Australia, whether civil or criminal and whatever the outcome.

*(See section 199B of the Act.)*

**24.4 IIA-Australia may make separate contracts and bring separate actions**

24.4.1 IIA-Australia may confirm the indemnities in clauses 24.1 and 24.2 by separate contract with, or on behalf of, 1 or more of the persons indemnified.

24.4.2 The indemnities given by IIA-Australia in clauses 24.1 and 24.2 do not affect the right of IIA-Australia to bring any demand or action against any director, secretary or chief executive officer of IIA-Australia or its related bodies corporate, including any demand or action arising out of the negligence of that person.

**24.5 Directors may resolve to not indemnify**

The directors may resolve that the indemnities in clauses 24.1 and 24.2 are not to apply to a specified person or class of persons and the indemnities will not apply unless IIA-Australia has confirmed the indemnity under clause 24.4.1 by a contract which is in force.

**24.6 Interpretation**

24.6.1 Nothing in clauses 24.1 to 24.4 is to be taken to limit the power of IIA-Australia, as permitted by the Act, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of IIA-Australia or its related bodies corporate.

24.6.2 Subject to the Act, the benefit of any indemnity given under this clause 24 continues even after the terms of this clause 24 are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

**24.7 Payments not remuneration**

Any payment made by IIA-Australia under clauses 24.1 to 24.3 does not constitute remuneration for the purposes of this Constitution.

**25. AMENDING THIS CONSTITUTION**

Subject to the Act:

**25.1 By special resolution**

IIA-Australia may modify or repeal this Constitution or a provision of this Constitution, by special resolution.

*(This reflects section 136(2) of the Act.)*

**25.2 Date effective**

A special resolution modifying or repealing this Constitution takes effect:

25.2.1 if no later date is specified in the resolution, the date on which the resolution is passed; or

25.2.2 on a later date specified in or determined in accordance with the resolution.  
*(This reflects section 137 of the Act.)*