

# **Constitution**

## **Australian Institute for the Certification of Inspection Personnel Limited (AICIP)**

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(a company limited by guarantee)

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## PRELIMINARY

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### 1. Defined Terms & Interpretation

1.1 In this Constitution unless the contrary intention appears:

**Auditor** means the Institute's auditor.

**Board** means the Board of Directors of the Institute.

**CEO** means the chief executive officer of the Institute, appointed pursuant to rule 49.1.

**Chair** means the person appointed as Chair.

**Committee** means any committee established under rule 47.1.

**Company** means the Australian Institute for the Certification of Inspection Personnel Limited which may also be referred to as the Institute or AICIP.

**Constitution** means the constitution of the Institute as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified or amended from time to time.

**Director** means any person occupying the position of Director of the Institute.

**Directors** means all or some of the Directors acting as a Board.

**Examination Centres** means those centres appointed by the Institute and which must operate according to the Regulations determined by the Institute and as specified in Schedule 3.

**Financial Year** means a 12 month period ending on 30 December.

**Insolvency Event**, in relation to any entity, means:

- (a) becoming insolvent or bankrupt, including the inability to pay its debts when they are due or inability to pay its debts within the meaning of the Corporations Act;
- (b) the suspension of payment of its debts generally;
- (c) being the subject of winding up proceedings;
- (d) the appointment of any receiver, receiver and manager, administrator, trustee or similar official over any of the assets or undertaking of the entity, or appointment of an investigator to investigate its affairs;
- (e) steps taken by a mortgagee to take possession or dispose of the whole or any part of the entity's assets, operations or business;
- (f) the entry into or resolution to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them; or
- (g) any application or order being made for liquidation of, or the appointment of a provisional liquidator to the entity or any resolution being passed or steps being taken to pass any resolution for the liquidation of the entity except for the purpose of any amalgamation or reconstruction.

**Institute** means the Institute which was formally an incorporated association (in NSW).

**ITAA** means the *Income Tax Assessment Act 1997* (Cth) as amended or modified from time to time.

**Member** means a member of the Institute under rule 8 and includes a Representative of a Member appointed in accordance with rule 12.

**National Panel of Examiners** means a group of examiners as appointed by the Institute, which must:

- (a) consist of at least three (3) people; and
- (b) control all examinations in accordance with the Regulations.

**Office** means the Institute's registered office.

**Poll** means vote which may be recorded in writing on a voting or ballot paper.

**Register** means the register of Members of the Institute.

**Registered Address** means the address of a Member as noted in the Register.

**Regulations** means all policies, procedures, rules and regulations as laid down by the Institute from time to time including those operating at the time of adoption of this Constitution.

**Representative** means a person appointed under rule 12.

**Secretary** means any person appointed by the Directors to perform the duty of a Secretary of the Institute in accordance with rule 50.

**Vice-Chair** means the person appointed as Vice-Chair.

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) a reference to a person includes a natural person, partnership, body corporate, the Institute, governmental or local authority or agency or other entity;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) words and expressions defined in the Corporations Act have the same meaning in this Constitution; and
- (e) headings are for ease of reference only and do not affect the construction of this Constitution.

1.3 Unless the contrary intention appears in this Constitution, an expression in a rule of this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the rule.

1.4 All the replaceable rules referred to in the Corporations Act do not apply to this Constitution.

## OBJECTS

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### 2. Objects

The objectives of the Institute include but are not limited to the following:

- (a) Provide a comprehensive competency based personnel certification service to Australia and overseas authorities and to industry, in accordance with international accreditation and standards assuring industry and regulatory authorities that the equipment and products inspected by those inspectors is safe, including:
  - i. Defining classes of personnel certification, and competency assessment requirements for each class of certification;
  - ii. Certifying candidates who meet the certification requirements; and
  - iii. Taking appropriate steps to ensure continuing competence of Institute Certified Inspectors, including (but not limited to) keeping them informed on important matters that may affect them, performance monitoring, educating, continued professional development and monitoring of professional conduct.
- (b) Minimise technical barriers to trade with overseas jurisdictions.
- (c) Maintain robust processes to ensure high quality services that are transparent, fair, ethical and cost effective.
- (d) Take a public position on matters of concern to the industry and its stakeholders, including making submissions and providing advice to Government and Government agencies as appropriate.
- (e) At all times to act on behalf of, and in the best interests of the Industry and its stakeholders.

### 3. Powers

- 3.1 The Institute has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 3.2 The powers of the Institute are ancillary to and exercisable only in pursuit of the Institute's Objects as set out in rule 2.

## APPLICATION OF INCOME AND PROPERTY

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### 4. Application of Income and Property

- 4.1 The income and property of the Institute, from wherever it is derived, will only be applied towards the promotion of the Objects of the Institute set out in rule 2.
- 4.2 No distribution to Members:
  - (a) The Institute must not distribute, pay or transfer to the Members, directly or indirectly by way of dividend, bonus or otherwise, any of the property or income of the Institute.

- (b) Nothing in rule 4.2(a) will prevent the payment in good faith of remuneration to any officers or Members of the Institute in return for any services actually rendered to the Institute or for goods supplied in the ordinary course of business.
- (c) Nothing in rule 4.2(a) will prevent the payment of interest at reasonable and proper commercial rates on money borrowed from any Members of the Institute or reasonable and proper rent for premises demised or let by any Member of the Institute.

## **5. Members liability limited**

- 5.1 The liability of Members is limited.
- 5.2 Every Member undertakes to contribute a maximum of \$100 to the Institute for payment of the debts and liabilities of the Institute, the costs, charges and expenses of any winding up and the adjustment of the rights of Members amongst themselves, if the Institute is wound up while the Member is a Member or within one year after the Member ceased to be a Member.

## **6. Winding Up**

If upon the winding up or dissolution of the Institute, any property remains, after satisfaction of all its debts and liabilities, any property whatsoever that remains will be transferred to such other entity or entities having objects similar to the Objects of the Institute as will be determined by the Members of the Institute at or before the time of winding up or dissolution and in default thereof by application to the Supreme Court of New South Wales for determination.

# **MEMBERSHIP**

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## **7. Number of Members**

The number of Members is unlimited.

## **8. Membership**

- 8.1 The Members of the Institute are:
  - (a) as at the date of adoption of this Constitution, the Members, set out in Schedule 1; and
  - (b) any relevant organisation or body, body corporate or natural person admitted to membership in accordance with rule 9.

## **9. Application & Admission for Membership**

- 9.1 An application for membership will be made in writing in a form approved by the Board from time to time and submitted to the Secretary.
- 9.2 The submission of any application for membership is conclusive evidence that the applicant has agreed to become a Member and agrees to be bound by the Constitution of the Institute and any other Regulations, rules or codes or by-laws of the Institute.



- 9.3 After the receipt of any application for membership, the Secretary will provide the application to the Board for its consideration. The Directors will decide whether or not to admit the applicant in their absolute discretion. In no case will the Directors be required to give any reason for the rejection of an applicant.
- 9.4 When an applicant has been accepted for membership, the Secretary will send the applicant written notice of the acceptance and request payment of the first annual subscription.
- 9.5 If the applicant does not pay the first annual subscription within 28 days after the date on which the applicant is notified that the subscription is payable, the Board may, in their absolute discretion, cancel acceptance of the applicant for membership in the Institute.
- 9.6 Upon payment of the first annual subscription, the applicant will be registered in the Institute's Register of Members and, on the name being so entered, will immediately become a Member of the Institute.

## **10. Membership Fees**

- 10.1 The Board may from time to time prescribe subscriptions for Members and the terms of payment of such subscriptions.
- 10.2 Unless a Member gives not less than 28 days' notice in writing to the Secretary on or before the due date for the payment in any year of its intention to resign as a Member, the Member is liable for the annual subscription for the following financial year.
- 10.3 If:
- (a) the annual subscription of a Member remains unpaid for 60 days after it becomes payable; and
  - (b) a notice of default is given to the Member by the Secretary,
- the Member ceases to be entitled to any of the rights or privileges of the membership but these may be reinstated on payment of all arrears if the Board think fit to do so.
- 10.4 If the annual subscription of a Member remains unpaid for a further 60 days after it becomes payable, the Directors may expel the Member from membership of the Institute.

## **11. Membership Classes and Rights**

- 11.1 As from the date of adoption of the Constitution, the Institute has the classes of Members as set out in Schedule 4.
- 11.2 Subject to this Constitution the membership of the Institute confers on a Member all rights, obligations and privileges of membership.
- 11.3 The Board may propose to establish different classes of membership and prescribe the qualifications required to become a Member in a particular class and the rights, obligations and privileges of Members from time to time.

## **12. Representatives**

- 12.1 Each Member shall submit to the Secretary for approval by the Board, notification of its proposed Representative in the form set out in Schedule 5.
- 12.2 The Representative shall act on the behalf of the Member in all matters connected with the Institute as permitted by the Corporations Act and in accordance with the terms of this Constitution.

- 12.3 A Representative is entitled to:
- (a) exercise at a general meeting all the powers which the Member can exercise if it were a natural person; and
  - (b) be counted towards a quorum on the basis that the Member is to be considered personally present at a general meeting by its Representative.
- 12.4 The Secretary will after receipt of notification of a Representative from a Member, provide the details to the Board for its consideration. The Board will decide whether or not to accept the proposed Representative in their absolute discretion. In no case will the Board be required to give any reason for the rejection of a proposed Representative.
- 12.5 On the approval of a proposed Representative, the Secretary will send the respective Member written notice of the acceptance and enter the Representatives name and date of appointment into the Register of Members and, on the name being so entered, the Representative will immediately become the Representative of that Member.
- 12.6 In the event that the Board does not approve a proposed Representative the Secretary will send the respective Member written notice of the Board's decision and request that the Member submit a new notification of Representative.
- 12.7 At any time the Board may decide (at their sole discretion and for any reason) to remove a Member's Representative. As soon as practicable after the making of such decision, the Secretary shall remove the Representatives name from the Register of Members and send the respective Member written notice of the decision and request that the Member submit a new notification of Representative.
- 12.8 If at any time the Member wishes to replace their Representative they can do so by submitting notification of such to the Secretary in accordance with this rule 12.

### **13. Register of Members**

- 13.1 A register of Members of the Institute must be kept in accordance with the Corporations Act.
- 13.2 The following must be entered in the Register in respect of each Member:
- (a) the full name of the Member;
  - (b) the address of the Member;
  - (c) the class of the Membership;
  - (d) the date of the admission to and cessation of Membership;
  - (e) the contact details of a Member's Representative; and
  - (f) the date of last payment of the Member's annual subscription.
- 13.3 The Secretary may also enter in the Register such other information as the Board determines from time to time.
- 13.4 Each Member will notify the Secretary in writing of any changes in that person's name, address, including email address or telephone number, if any, within 28 days after the change.

### **14. Ceasing to be a Member**

- 14.1 A Member's membership of the Institute will cease:

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
  - (b) if an Insolvency Event occurs in relation to the Member;
  - (c) on the death of the Member;
  - (d) if the Member is convicted of a felony;
  - (e) if the status of the Member or its Representative changes;
  - (f) if a conflict of interest arises in relation to the Member or its Representative which in the opinion of the Board is contrary to the best interests of the Institute;
  - (g) if the Member's membership has ceased under rule 10.4.
- 14.2 A Member must notify the Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership or a class of membership.

## **15. Conduct of Members**

- 15.1 Each Member (including a Member's Representative as appointed in accordance with rule 12) is bound by and must comply with this Constitution and any Regulations, policies or by-laws prescribed by the Board as amended from time to time.
- 15.2 Subject to this Constitution, if any Member:
- (a) refuses or neglects to comply with the provisions of this Constitution or any applicable Regulations, policies or by-laws made by the Board (as required under rule 15); or
  - (b) if the Board, after due investigation, considers that the Member is guilty of any conduct prior to or after admission to membership which, in the opinion of the Board, is unbecoming of a Member, unethical or prejudicial to the interest of the Institute,
- the Members may by simple majority resolve to expel the Member from the Institute.
- 15.3 At least 28 days before the meeting of the Board at which a resolution of the nature referred to in rule 15.2 is passed, the Board will give to the Member notice of:
- (a) the meeting;
  - (b) what is alleged against the Member;
  - (c) the intended resolution; and
  - (d) how a Member may show cause to the Board as specified in rule 15.4.
- 15.4 At the meeting and before the passing of the resolution referred to in rule 15.2, the Member will have an opportunity to show cause and give orally or in writing, any explanation or defence the Member thinks fit.
- 15.5 The Board in its absolute discretion may consider any proposal to reinstate a Member and to restore the name of that Member to the Register upon and subject to such terms and conditions as it thinks fit.
- 15.6 A Member expelled from the Institute does not have any claim on the Institute, its Board, funds or property.

## **16. Effect of Cessation of Membership**

- 16.1 If any Member ceases to be a Member for any reason, then the Secretary will:
- (a) note on the Register the date of the Member's cessation of membership;
  - (b) notify the Member in writing of the date of cessation of membership;
  - (c) notify the Member of the resignation or expulsion (and the reasons for expulsion); and
  - (d) provide notification to all Members of the cessation of membership together with the reasons for cessation of membership.
- 16.2 Any Member ceasing to be a Member will remain liable for and will pay to the Institute all annual subscription fees or any moneys which were due and unpaid to the Institute at the date of ceasing to be a Member.

## **MEETINGS**

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### **17. Convening of General Meetings**

- 17.1 Except as permitted by the Corporations Act, the annual general meeting will be held not later than the end of November each year.
- 17.2 The Directors may convene a general meeting whenever they think fit.
- 17.3 The Directors must call and arrange to hold an extraordinary general meeting on receipt by the Secretary of a request in writing from not less than 50% of Members. The Directors must give at least 21 days' notice of this meeting.

### **18. Notice of General Meetings**

- 18.1 Subject to the provisions of the Corporations Act, at least 21 days' written notice must be given to all Members and any other person entitled to receive notices from the Institute, of any general meeting.
- 18.2 Subject to the provisions of the Corporations Act, a notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
  - (b) must state the general nature of the business to be transacted at the meeting; and
  - (c) if a special resolution is to be proposed at the meeting, set out the intention to propose the special resolution and state the resolution; and
  - (d) if a Member is entitled to appoint a proxy, contain a statement setting out the whether the Member has a right to appoint a proxy and specify a place, and electronic address for the purposes of how a Member must provide a proxy appointment to the Institute for the meeting.

### **19. Accidental Omission to Give Notice**

The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this

Constitution does not invalidate the proceedings at or any resolution passed at the meeting.

## **20. Postponement of General Meetings**

- 20.1 The Board may postpone the holding of any general meeting whenever it sees fit (other than a meeting requisitioned by Members pursuant to the Corporations Act) for not more than 28 days after the date for which it was originally called.
- 20.2 Whenever any meeting is postponed (as distinct from being adjourned) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

## **21. Business of Annual General Meeting**

The business of the annual general meeting will be to:

- (a) Confirm the minutes of the previous Annual General Meeting and any general meetings held since the last annual general meeting;
- (b) Receive the audited accounts for the year from the Treasurer;
- (c) Receive the annual report of the Board from the Secretary and any other reports as required by law;
- (d) When necessary, to appoint auditors;
- (e) Elect the Directors of the Institute as and when required;
- (f) Review subscription rates and agree them for the forthcoming year; and
- (g) Transact such other business received in writing by the Secretary from Members at least 21 days prior to the meeting and included on the agenda.

## **22. Member's Resolution**

Member's resolutions may only be moved at a general meeting in accordance with the Corporations Act.

## **PROCEEDINGS AT GENERAL MEETINGS**

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### **23. Quorum**

- 23.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 23.2 A quorum of Members is 1 more than half of the Members and must include at least 2 of the following: Chair, Vice-Chair, Secretary or Treasurer.
- 23.3 If a quorum is not present within 15 minutes after the time appointed for a general meeting then:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or

- (b) in any other case:
  - (i) it will stand adjourned to the same time and place 7 days after the meeting, or to another day, time and place determined by the Directors; and
  - (ii) if at the adjourned general meeting a quorum is not present within 15 minutes after the time appointed for the general meeting, the Members present will constitute a quorum.

## **24. Chairperson and Meetings**

- 24.1 The Chair, or in the Chair's absence the Vice-Chair, will be the chair at every general meeting.
- 24.2 The Members present may elect a chair of a general meeting if:
  - (a) there is no Chair or Vice-Chair; or
  - (b) neither the Chair nor Vice-Chair is present within 15 minutes after the time appointed for holding the general meeting; or
  - (c) the Chair and Vice-Chair are unwilling to act as chair of the general meeting.

## **25. Adjournment of Meetings**

- 25.1 The chair of a general meeting at which a quorum is present:
  - (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the Members present resolve to do so.
- 25.2 An adjourned general meeting may take place at a different venue to that of the initial general meeting.
- 25.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 25.4 Notice of an adjourned general meeting must only be given in accordance with rule 20 if a general meeting has been adjourned for more than 21 days.

## **26. Decision on Questions**

- 26.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried at a general meeting if a majority of the votes (i.e. 75% or more) cast on the resolution are in favour of the resolution.
- 26.2 Resolutions as to "Special Majority Issues – Members" (as agreed and specified from time to time in Schedule 2) must be referred to the Members and, in order to be carried, require a 75% majority of votes cast by Members in favour of the resolution.
- 26.3 A resolution put to the vote of a meeting is decided by a show of hands or a poll.
- 26.4 If there is a dispute at a general meeting about a question of procedure, the Chair of the general meeting may determine the question.

## **27. Taking a Poll**

- 27.1 A poll will be taken when and in the manner that the chair of the general meeting directs.
- 27.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

- 27.3 The chair of a general meeting may determine any dispute about the admission or rejection of a vote on a poll.
- 27.4 The chair's determination, if made in good faith, will be final and conclusive.
- 27.5 A poll demanded on the election of the chair or the adjournment of a general meeting must be taken immediately.
- 27.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## **VOTES OF MEMBERS**

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### **28. Voting Rights**

- 28.1 Subject to any rights or restrictions attached to any class of membership, each Member has one vote, both on a show of hands and a poll.
- 28.2 A Member is not entitled to vote at a general meeting unless all sums presently payable by the Member in respect of membership in the Institute have been paid.
- 28.3 The Chair of a meeting has a casting vote.

### **29. Votes by Proxy or Attorney**

- 29.1 If a Member appoints a proxy or an attorney, the proxy or attorney may:
- (a) vote on a show of hands;
  - (b) demand or join in demanding a poll;
  - (c) may vote on a resolution; and
  - (d) may vote or abstain as he or she chooses except where the appointment of the proxy or attorney directs the way the proxy or attorney is to vote on a particular resolution.
- 29.2 A proxy or attorney need not be a Member.

### **30. Document Appointing Proxy or Attorney**

- 30.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act. The Directors will determine that the appointment of proxy is valid.
- 30.2 An appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code has been included with the appointment; or
  - (b) the appointment has been verified in another manner approved by the Directors.
- 30.3 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 30.4 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:

- (a) to vote on:
    - (i) any amendment moved to the proposed resolutions (other than special resolutions in accordance with the Corporations Act) and on any motion that the proposed resolution not be put or any similar motion; and
    - (ii) any procedural motion, including any motion to elect the Chair, to vacate the chair or to adjourn the general meeting,  
even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 30.5 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chair may cast as proxy.
- 30.6 An instrument appointing a proxy may be in the form as set out in Schedule 6 Lodgement of Proxy or Attorney
- 30.7 The written appointment of a proxy or attorney must be received by the Institute, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee is intended to vote; or
  - (b) the taking of a poll on which the appointee is intended to vote.
- 30.8 The Institute receives an appointment of a proxy or attorney and any power of attorney or other authority under which the appointment was executed when they are received at:
- (a) the Office; or
  - (b) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## **BOARD OF DIRECTORS AND OFFICE BEARERS**

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### **31. Number of Directors**

The number of Directors will be no less than 5 and up to 10, and may include at least one (1) independent Director who is not a Member.

### **32. Appointment of Directors**

- 32.1 The initial Directors of the Institute are the persons who have consented to act as Directors and are set out in the Institute's application for registration as a Institute.
- 32.2 All Directors hold office subject to this Constitution.
- 32.3 A retiring Director is eligible for re-election in accordance with rule 34.

### **33. Nomination and Election of Directors**

- 33.1 Directors will be elected by a majority vote of eligible voting Members.



### **Nomination of Directors**

- 33.2 Not less than 28 days before the annual general meeting at which the election of Directors will take place, a notice will be sent to all Members advising:
- (a) that positions on the Board are to become vacant and calling for nominations;
  - (b) how and when nominations for vacancies must be submitted; and
  - (c) the voting procedures for the election at the general meeting.
- 33.3 Each candidate for election as Director must be proposed and seconded by a Member.
- 33.4 A nomination of a candidate for election will be accompanied by information as specified or required by the Board from time to time and will:
- (a) be in writing;
  - (b) be signed by the candidate;
  - (c) be signed by the proposer and seconder;
  - (d) include any assisting information (as determined by Board);
  - (e) be received by the Secretary at the registered office of the Institute or at such other place stipulated by the Board; and
  - (f) be received no later than on the day which is 14 days prior to the annual general meeting.
- 33.5 If the number of candidates for election as Directors received is less than the number of nominations required to fill all vacancies, the additional number of candidates required to fill all vacancies may be nominated by being proposed, seconded and consented to by the Board.
- 33.6 A written notice referring to all Director vacancies and each candidate for election or for confirmation of appointment, must be sent to all Members at least seven (7) days before the annual general meeting at which an election of, or confirmation of appointment of, a Director will take place.

### **Election of Directors**

- 33.7 The election results must be declared by the Institute at the annual general meeting and the appointments will take effect at the end of the meeting.
- 33.8 Members may resolve to postpone an election of Directors until a later general meeting and the Institute may call for additional nominations before that later meeting.

### **34. Retirement of Directors**

- 34.1 Directors hold office for 3 years with at least one third of Directors being eligible for re-election annually by rotation. A retiring Director remains in office until the end of the relevant general meeting to fill the vacancy left by his or her retirement.
- 34.2 A person may not be elected as a Director for more than 3 consecutive terms.
- 34.3 A retiring or former Director is eligible for nomination and reappointment or election as a Director provided that the Director has not been removed from office by a resolution of the Institute in general meeting passed by a special majority.

### **35. Casual Vacancies**

- 35.1 The Directors may appoint a suitably qualified person to fill a casual vacancy, such appointment subject to confirmation by a majority of eligible voting Members at the next annual general meeting.
- 35.2 Directors appointed to fill a casual vacancy will be deemed, to have commenced his or her appointment on the date on which the Director replaced commenced his or her term.

### **36. Vacation of Office**

A person ceases to be a Director if the person:

- (a) is prohibited by the Corporations Act or other legislation from holding office or continuing as a Director;
- (b) resigns by notice in writing to the Institute;
- (c) is removed by a resolution of the Institute in general meeting passed by a simple majority of Members;
- (d) has, directly or indirectly, an interest in any contract or proposed contract with the Institute and fails to declare the nature of the interest;
- (e) has a conflict of interest or perceived conflict of interest;
- (f) fails to comply with the provisions of rule 46;
- (g) becomes an employee of a competing organisation; or
- (h) retires in accordance with this Constitution.

### **37. Officers**

- 37.1 The Officers of the Institute will be as follows:
- (i) Chair;
  - (j) Vice-Chair;
  - (k) Treasurer; and
  - (l) Secretary.
- 37.2 All Officers, are elected for a period of 3 years, but may be re-elected to the same office or another office for a following term of 3 years.
- 37.3 The Board will, as and when required, nominate, vote and appoint Directors to be the Officers of the Institute, with the exception of the Secretary who will be appointed in accordance with rule 50.

### **38. Chair**

- 38.1 The first Chair of the Institute will be the Chair of the Institute at the date of adoption of this Constitution whose appointment is for a term of 3 years, which commences at the end of the Institute's first annual general meeting.

## POWERS AND DUTIES OF DIRECTORS

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### 39. Powers

- 39.1 Subject to the Corporations Act, the Board will manage the business and affairs and control the funds and property of the Institute.
- 39.2 In addition to the powers and authorities expressly conferred upon the Board by this Constitution, the Board may exercise all such powers and do all such acts and things as may be exercised or done by the Institute and are not by this Constitution or by the Corporations Act expressly directed or required to be exercised or done by the Institute in general meeting.
- 39.3 Every Director and other agent or officer of the Institute must act at all times, in good faith, in a bona fide manner and in the interests of the Institute. Failure to do so may result in removal of the Director from the Board.
- 39.4 Every Director and other agent or officer of the Institute must:
- (a) keep confidential all aspects of all transactions of the Institute, except:
    - (i) to the extent necessary to enable the person to perform his or her duties to the Institute;
    - (ii) as required by law;
    - (iii) when requested by the Directors to disclose information to the Auditors or a general meeting of the Institute; and
  - (b) sign and make a declaration that he or she will not disclose or publish or use any aspect of any transaction or confidential information whatsoever of the Institute, except as permitted in rule 39.4(a).

### 40. Remuneration and Expenses of Directors

- 40.1 No Director may receive any remuneration for services.
- 40.2 Directors may be paid travelling and other expenses properly incurred in connection with the business of the Institute, in accordance with any policy adopted by the Board from time to time.

## PROCEEDINGS OF DIRECTORS

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### 41. Directors' Meetings

- 41.1 Directors' meetings must be held at least 2 times each calendar year.
- 41.2 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 41.3 A Directors' meeting must be called on at least 48 hours' notice of a meeting to each Director.
- 41.4 Notice of meetings of the Board must specify the place, date and time of the meeting and the business to be conducted at the meeting.

## **42. Quorum**

- 42.1 A quorum is 1 more than half of the Directors and must include the Chair, or if the Chair is unavailable, the Vice-Chair.
- 42.2 A quorum must be present at all times during the meeting. Where a quorum cannot be established for a meeting of the Board due to insufficient numbers of Directors or due to the absence of the Chair, the meeting must be rescheduled to take place within one month.
- 42.3 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chair of the meeting of Directors may call a general meeting to deal with the matter.
- 42.4 Notice of a meeting of Directors must be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

## **43. Decision on Questions**

- 43.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a simple majority of votes (i.e. 50% or more of votes cast by) of the Directors present.
- 43.2 Each Director has one vote.
- 43.3 If there is an equality of votes, the Chair will have a casting vote in addition to his or her vote.

## **44. Use of Technology**

- 44.1 Each Director consents to any Directors' meeting being held by the Directors communicating with each other by any technological means.
- 44.2 Subject to rule 46, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 44.3 The Directors may meet together, adjourn and regulate their meetings as they think fit.

## **45. Circulating Resolutions**

- 45.1 The Board may pass resolution without the Board meeting being held if 75% or more of the Directors 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.
- 45.2 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.
- 45.3 The resolution is passed when the last Director constituting 75% or more of the Directors entitled to vote on the resolution signs.

## **46. DIRECTORS' INTERESTS**

### **Existence of Interest**

- 46.1 A Director must not hold any other office or profit from any dealing either directly or indirectly from the Institute.
- 46.2 A Director or a related party of the Director must not:
  - (a) enter into contract or arrangements or have dealings with the Institute either as provider, vendor, purchaser or otherwise; or

- (b) have an interest or perceived interest in any contract, operation, undertaking or business entered into, or assisted by or with the Institute or in which the Institute is or may be interested;

unless approved unanimously by the Board.

46.3 A Director or a body or entity in which a Director has a direct or indirect interest may not:

- (a) enter into any agreement or arrangement with the Institute; and
- (b) act in any capacity for the Institute;

unless approved unanimously by the Board

### **Disclosure of Interest**

46.4 It is the duty of every Director who is in any way, whether directly or indirectly, interested in any matter under consideration by the Board, as soon as practicable after the relevant facts have come to their knowledge, declare the nature and extent of their interest at a meeting of the Board.

46.5 A Director will disclose on a register of Director's interest, any relationship with any other Director or any other person which may result in an actual or perceived conflict of interest and will abstain from voting on any matter in which the conflict is a matter for consideration. The register will be updated at each meeting of the Board.

46.6 The nature of the Director's interest will be disclosed by the Director before or at the meeting or Directors at which the question of entering in the contract or arrangement is first taken into consideration if the interest then exists or in any other case at the first meeting of the Directors after the Director becomes so interested.

46.7 It is the duty of a Director of the Institute who is in any way whether directly or indirectly interested in a contract or proposed contract with the Institute to declare the nature of his or her interest in accordance with the provisions of the Corporations Act.

46.8 It is the duty of a Director of the Institute who holds any office or possesses any property (whether directly or indirectly), duties or interests might be created in conflict with his or her duties or interests as Director to declare the fact and the nature, character and extent of the conflict in accordance with the provisions of the Corporations Act.

46.9 In accordance with section 191 of the Corporations Act, a Director who has, or expects to have, a direct or indirect material personal interest in, or an actual or potential conflict of interest with, a matter that relates to the affairs or business of the Institute, must notify the Institute by written notice to the Directors.

### **Prohibition on Being Present or Voting**

46.10 A Director who has a material personal interest or a perceived conflict of 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 permitted by the Corporations Act to do so, in which case the Director may:

- (a) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement;
- (b) sign or countersign any document relating to that contract or arrangement; and

- (c) vote in respect of, or in respect of any matter arising out of, the contract or arrangement.

#### **47. Committees**

- 47.1 The Directors may establish Committees in any manner and on any terms they think fit.
- 47.2 The Board may establish an Audit and Risk Committee which will be chaired by the Treasurer and comprise of:
  - (a) the Chair; and
  - (b) at least two other Directors.

#### **48. Delegation**

- 48.1 The Directors may, upon any terms and conditions or restrictions as they see fit, delegate any of their powers, other than those which by law must be dealt with by the Directors as a Board, to:
  - (a) a Committee;
  - (b) a Director;
  - (c) an employee of the Institute; or
  - (d) any other person.
- 48.2 A Committee to which, or person to whom, any powers have been delegated must exercise their powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 48.3 The Directors may at any time revoke any delegation of power.

### **CHIEF EXECUTIVE OFFICER**

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#### **49. Chief Executive Officer**

- 49.1 The Directors may appoint any person, to the position of CEO for the period and on the terms that the Directors see fit.
- 49.2 The CEO will be an observer on the Board, entitled to attend but not vote at meetings of the Board, for the period of appointment as CEO.

### **SECRETARY**

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#### **50. Secretary**

- 50.1 There will be a Secretary of the Institute, appointed by the Directors.
- 50.2 The Secretary is entitled to attend and be heard on any matter at all Directors' meetings, Committee meetings and general meetings.

- 50.3 The Directors may, subject to the terms of the Secretary's contract, suspend, remove or dismiss the Secretary.

## **MANAGEMENT AND ADMINISTRATION**

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### **51. Management**

- 51.1 The Directors may provide for the management and transactions of the affairs of the Institute in any places and in such manner as they think fit.
- 51.2 Without limiting rule 51.1 the Directors may delegate to any person appointed under rule 52 on any terms and subject to any conditions determined by the Directors.
- 51.3 The Directors may at any time revoke or vary any delegation under this rule 51.

### **52. Appointment of Attorneys and Agents**

- 52.1 The Directors may, from time to time, by resolution or power of attorney appoint any person to be the attorney or agent of the Institute:
- (a) for purposes;
  - (b) with powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (c) for a period; and
  - (d) subject to conditions,
- determined by the Directors.
- 52.2 An appointment by the Directors of an attorney or agent of the Institute may be made in favour of:
- (a) any body corporate or person;
  - (b) the Members, Directors, nominees or managers of any Institute or firm; or
  - (c) any body of persons whether nominated directly or indirectly by the Directors.
- 52.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 52.4 The Directors may appoint attorneys or agents by facsimile or electronic transmission, to act for and on behalf of the Institute.
- 52.5 An attorney or agent appointed under this rule 52 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## **AUDIT AND ACCOUNTS**

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### **53. Minutes and Registers**

- 53.1 The Directors must cause minutes to be made of:

- (a) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Committees;
- (b) all resolutions passed by Directors and Committees;
- (c) all appointments of officers (as that term is defined in the Corporations Act);
- (d) all orders made by the Directors and Committees; and
- (e) all disclosures of interests made under rule 46.

53.2 Minutes must be signed by the Chair of the meeting or by the Chair of the next meeting.

53.3 The Institute must keep all registers required by this Constitution and the Corporations Act.

#### **54. Financial Records**

The Institute must:

- (a) keep written financial records and allow access to such financial records; and
- (b) prepare, disclose, report and lodge financial reports (as required),

in accordance with the Corporations Act.

#### **55. Audit**

The Institute will appoint an auditor and provide assistance to the Auditor in accordance with the Corporations Act as and when required.

#### **56. Inspection of Records**

Except as otherwise required by the Corporations Act and this Constitution, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records, the Register of Members and other documents of the Institute or any of them will be open for inspection by Members other than Directors. No Member will have any rights in inspecting the financial records, the Register of Members and other documents of the Institute other than for bona fide purposes of the Institute.

## **NOTICES**

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#### **57. Notices**

57.1 Any notice required to be given by any rule of this Constitution will be served in writing upon any Member (or Representative) either personally or by post in a prepaid letter address entered in the Register or by sending it via electronic means as nominated by the Member (or Representative). The non-receipt of such notice will not invalidate the proceedings of any meeting referred to in the notice.

57.2 Any notice sent by:

- (a) Post will be deemed to have been served three business days after; and



- (b) Fax or electronic message or publication will be deemed to have been served on the same day if transmitted on a business day 5:00pm local time in the place of service and otherwise the next business day.

## **INDEMNITY AND INSURANCE**

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### **58. Indemnity**

To the extent permitted by the Corporations Act, the Institute indemnifies:

- (a) every person who is or has been an officer (and including the CEO) of the Institute; and
- (b) where the Board considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Institute;

against any liability incurred by that person in his or her capacity as an officer of the Institute or of the related body corporate (as the case may be):

- (a) to any other person (other than the Institute or a related body corporate) unless the liability arises out of conduct involving a lack of good faith; and
- (b) for costs and expenses:
  - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; and
  - (b) in connection with an application in relation to those proceedings, in which the Court grants relief to the person under the law.

### **59. Insurance**

To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Institute may, where the Board considers it appropriate to do so, pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Institute against any of the following liabilities incurred by the person as such an officer, namely:

- (a) any liability which does not arise out of conduct involving:
  - (i) a wilful breach of duty in relation to the Institute; or
  - (ii) without limiting rule 60.1(a), a contravention of section 199A of the Corporations Act; and
- (b) any liability for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, whatever the outcome, and without the qualifications set out in rule 58.

### **60. Director Voting on Contract of Insurance**

Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance merely because the contract insures or would insure the Director against a liability incurred by the Director as an officer of the Institute or of a related body corporate.

## **AMENDMENT TO CONSTITUTION**

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### **61. Amendment to Constitution**

This Constitution can only be amended in accordance with the Corporations Act.

# Signing page

We, the undersigned, being each person specified in the application for the Institute's registration as a person who consents to become a Member, agree to the terms of this Constitution:


Signed by )

) 

in the presence of: )

) 

Signed by )

)   
.....

in the presence of: )

# Schedule 1: Members of the Institute

The Members of the Institute at the date of adoption of the Constitution are as follows:

1. Materials Australia (ABN 40 004 249 183);
2. Australasian Institute Of Engineer Surveyors (ABN 52 887 542 957);
3. The Institution of Engineers Australia - National Office (ABN 63 020 415 510);
4. Compressed Air Association of Australia (ABN 33 068 107 586);
5. National Association of Testing Authorities (ABN 59 004 379 748);
6. Australian Institute For Non-Destructive Testing (ABN 21 005 040 835); and
7. Australasian Corrosion Association (ABN 66 214 557 257).

**Registered Address:** C/- Ai Group, Level 2, 441 St Kilda Road, Melbourne VIC 3004

**Chairman:** Peter Eckberg

**Company Secretary:** Neil Young

**Public Officer:** Neil Young

## Schedule 2: Special Majority Issues – Members

As from the date of the adoption of the Constitution, resolutions to be referred to the Members and requiring a 75% majority of votes cast by Members in favour of the resolution include the following:

Item	Rule	Rule Reference	Details
1	<b>Special Majority Issues – Members</b>  (requires a vote of 75% or more of the Members)	<b>Rule 26</b>	<b>Special Majority Issues – Members:</b> <ul style="list-style-type: none"><li>• Winding up of the Institute</li><li>• Alteration of Institute type</li><li>• Variation/amendment to the Constitution</li><li>• Entering partnerships or incorporated joint ventures</li></ul>

# Schedule 3: Regulations

At the date of adoption of this Constitution and subject to change or amendment from time to time as determined by the Board, the following Regulations apply:

Item	Rule	Rule Reference	Details
1	<b>Examination Centres</b>	N/A	<p><b>Examination Centres</b> means those centres appointed by the Institute and which must operate according to the Regulations determined by the Institute and as specified in Schedule 3, as such, which must:</p> <ul style="list-style-type: none"> <li>(a) have all necessary facilities and resources and be able to operate according to Regulations; and</li> <li>(b) conduct examinations supervised by an examiner approved by the Institute.</li> </ul>
2	<b>National Panel of Examiners</b>	N/A	<p><b>National Panel of Examiners</b> means a group of examiners as appointed by the Institute, which must:</p> <ul style="list-style-type: none"> <li>(a) consist of at least three (3) people; and</li> <li>(b) control all examinations in accordance with the Regulations.</li> </ul>

# Schedule 4: Classes of Membership

In accordance with rule 11, as from the date of adoption of the Constitution, the Institute has the classes of Members, with the corresponding rights, obligations and privileges as set out in this Schedule.

The Board may propose to establish different classes of membership and prescribe the qualifications required to become a Member in a particular class and the rights, obligations and privileges of Members from time to time.

<b>Classes of Membership</b>	<b>Qualifications of Class</b>	<b>Rights, Obligations &amp; Privileges of Membership Class</b>
Member	Members include associations, groups, organisations, corporate entities and government departments who may be effected by, directly or indirectly connected with or wish to support the Institute's activities.	(a) Required to appoint a Member Representative;  (b) Entitled to attend and vote at any general meeting of the Institute;  and  (c) Representative eligible for election or appointment to the Board or Committee.
Associate Member	An Associated Member is any individual who:  (a) is an AICIP certified inspector; (b) wishes to be associated with the Institute; or (c) is a recognised or eminent person in the industry.	(a) Entitled to attend and vote at any general meeting of the Institute;  and  (b) Eligible for election or appointment to the Board or Committee.
Students	An individual currently undertaking a course of study (full-time or part-time) at a recognised Australian Institute or University or College and who is not in full-time employment and who intends, after attainment of the qualifications to become an Institute Certified Inspector.	(a) Entitled to attend but ineligible to vote at any general meeting of the Institute;  and  (b) Ineligible for election or appointment to the Board or Committee.
Overseas Members	Overseas Members are any members who reside/operate outside of Australia.	(a) Required to appoint an Australian based Representative;  (b) Entitled to attend but ineligible to vote at any general meeting of the Institute;  and  (c) Ineligible for election or appointment to the Board or Committee.

# SCHEDULE 5 -

## Notification of Member Representative

According to rule 12, each Member shall submit to the Secretary its proposed Representative, for approval by the Board, notification in the form set out in this Schedule or as amended from time to time.

**NOMINATION FOR MEMBER REPRESENTATIVE**

1. **Name of Member** hereby nominate the following person to act as its Representative in all matters connected with Australian Institute for the Certification of Inspection Personnel Limited (ABN [x]), as permitted by the Corporations Act 2001:

.....

2. **Full name, address and occupation of proposed Representative**

.....

3. **Representative’s other associations or memberships / Board positions currently held**

.....

4. **List of potential conflicts of interest between the Representative and AICIP**

.....

**It is confirmed that the nominated representative is an employee or member of:**

.....

**Name of Member**

**Signature of Member**

**Signature of proposed Representative:** .....

**Date:**.....



