

**Proposed changes to constitution of Australian Institute of Company Directors**

**May 2021**

The table below summarises the changes between the proposed new constitution and the current constitution of the Australian Institute of Company Directors (ACN 008 484 197) (**Institute**). This table does not include every single minor change, and instead summarises the key changes.

New Rule	Topic	Description of change	Reason for change
<b>Purpose, activities and not-for profit</b>			
3	Purpose and activities	<p>The current constitution blends the Institute’s purpose and activities. The purpose of the Institute can be thought of as the ‘why’, i.e. the core fundamental reason for the Institute’s existence, whilst the activities can be thought of as the ‘what’, i.e. what the Institute will do to help further / advance / fulfil its purpose.</p> <p>The proposed constitution separates the purpose (described in rule 3.1) and the activities (described in rule 3.2). The listed activities are indicative only. That is, the list is not exhaustive and does not restrict what the Institute can or cannot do in furtherance of its purpose.</p>	<p>The articulation of the Institute’s purpose is an important aspect of the constitution and is relevant in determining (and maintaining) the Institute’s charity subtype and, consequently, its eligibility for tax concessions. These changes have therefore been made to help ensure the Institute’s charitable purpose of advancing education is clear which will in turn help ensure it maintains its charitable status and eligibility for related tax concessions.</p>
7	Not-for-profit	<p>We have removed the requirement found in article 1.4(b)(ii) of the current constitution which prohibited the Institute from subscribing to, supporting with its funds, or amalgamating with, any organisation that does not, to the same extent as the Institute, restrict the application of its income and property and prohibit the making of distributions to its members.</p>	<p>The requirement in article 1.4(b)(ii) of the current constitution has been removed as it is not legally required and fetters the Institute’s activities.</p> <p>We have broadened the list of permitted payments to members to provide greater flexibility in terms of when members can receive payment from the Institute, whilst</p>

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		<p>We have also broadened the list of permitted payments to members to include payments in good faith to members:</p> <ul style="list-style-type: none"> <li>• by way of a grant (or similar contribution) awarded in furtherance of the Institute’s charitable purpose; and</li> <li>• as a result of the member’s participation in a social bond or similar program of the Institute.</li> </ul>	<p>maintaining compliance’ with the Institute’s charity registration and related concessions.</p>
-	ASIC Licence	<p>The proposed constitution does not contain a stand-alone rule relating to the ASIC Licence permitting the Institute not to use the word ‘Limited’ in its name.</p>	<p>Since the requirements of the ASIC Licence are imposed elsewhere in the constitution (e.g. by rules relating to remaining as a registered charity and prohibiting fees to directors), including a standalone rule about the requirements of the ASIC Licence (as is found at article 1.6 of the current constitution) is not required and leads to unnecessary duplication.</p>
<b>Members and membership</b>			
4.2	Becoming a member	<p>We have worded the rules relating to membership on the basis of a single class membership (rather than multiple classes of membership).</p>	<p>Since all members have the same membership rights (including the right to attend and vote at general meetings and to elect directors), there is no need to have multiple membership classes. The current distinction between members relates to access to different membership benefits (such as the designation that may be used), which is better detailed in a separate document rather than within the constitution.</p>

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5.3	Automatic stopping of membership	<p>We have added that a member’s membership will automatically stop if the member no longer complies with the membership requirements described at rule 4.2(a)(iii) and 4.2(a)(iv) being the requirements to:</p> <ul style="list-style-type: none"> <li>• not be ineligible to be a director under the <i>Corporations Act 2001 (Cth) (Corporations Act)</i> or <i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i>; and</li> <li>• not have been convicted of an indictable offence (or comparable offence in an overseas jurisdiction) within the last 10 years.</li> </ul>	<p>These additions are beneficial as they help ensure membership ceases in appropriate circumstances.</p>
5.5	Appeal of member expulsion	<p>The timings and process for appealing a decision to expel a member have been clarified. The threshold required for the members to overturn an expulsion decision has also been updated, so a special resolution of 75% of members present in person or by proxy and entitled to vote on that resolution is required.</p>	<p>The greater clarification will provide more certainty for those involved in a disciplinary process resulting in expulsion.</p>
6.1	General meetings	<p>The proposed constitution clarifies that the Institute must hold meetings of members (including general meetings) in accordance with the constitution and the Corporations Act, despite the fact that the provisions of the Corporations Act dealing with members’ meetings may not be directly applicable to the Institute.</p>	<p>Given section 111L of the Corporations Act ‘switches off’ the provisions relating to general meetings for charities (meaning these provisions do not apply to charities), it is helpful to specify the intention of the company to follow the Corporations Act requirements despite the inapplicability of these provisions.</p>

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			Given the Institute's history of holding annual general meetings, this practice has been hardwired into the constitution despite no longer being strictly necessary under the ACNC Governance Standards.
6.7(e) and 6.11	Meetings conducted using technology	<p>We have added rules to:</p> <ul style="list-style-type: none"> <li>confirm the directors may make policies and procedures relating to the process for using technology to hold general meetings (see rule 6.10(e)); and</li> <li>outline what is to occur if technological problems exist at the meeting e.g. the meeting can continue despite a member being unable to participate due to technical difficulty (so long as the meeting is quorate) (see rule 6.10(c)).</li> </ul>	We have included these rules to add clarity.
<b>Directors, Secretary and Chief Executive Officer</b>			
-	Transitional provisions	We have removed the historical transition provisions (e.g. articles 5.2(a) and 6.2(a) in the current constitution).	These have been removed as they are no longer required.
8.4	Qualifications and requirements of directors	The current constitution does not contain clear director eligibility criteria. We have added rule 8.4 in the proposed constitution which sets out the eligibility requirements of all directors and the specific requirements for Division Directors, National Directors and the CEO Director.	This rule has been introduced to add clarity in relation to the eligibility requirements of directors.

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8.6(b)	Directors' term of office and term limits	We have included a mechanism to confirm what is to occur if the directors and the relevant Division Council cannot agree on the term of office for a Division Director i.e. the same process as is currently in place where there is not agreement on the person to be appointed, which requires the decision of an independent Life Fellow.	The current constitution is silent on what happens if there is no agreement.
8.6(f)	Directors' term of office and term limits	We have included scope for the directors to resolve by special resolution to allow a Division Director or National Director to serve a further term of up to three years.	This gives flexibility in the case of exceptional circumstances that may require a person to serve an additional term, with a special resolution threshold to ensure this is not used too frequently.
8.8	Payments to directors	The proposed constitution includes a rule stipulating that whilst directors cannot receive any payment for acting as a director they can be reimbursed in certain circumstances (such as for reasonable travelling expenses and goods or services rendered to the Institute). Under the current constitution the rules relating to payments to directors are split up requiring the reader to refer to article 1.5(b) to determine when payments to directors are permitted.	Setting out the rules about payments to directors in a single clause is helpful as it provides greater clarity around when directors can be paid by the Institute without having to refer to other sections of the constitution.
8.9	Interested directors	The proposed constitution includes rules about interested directors and the requirements of directors where conflicts of interest exist.	These rules have been included to help ensure conflicts are front of mind and to facilitate good governance.
8.10	Powers and duties of directors	The proposed constitution sets out the general directors' duties, including those arising under <a href="#">ACNC Governance Standard 5</a> .	We have included this rule, and in particular the list of directors' duties, as it is a legal requirement for directors to

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			uphold these duties and listing these in the constitution serves as a helpful reminder of these duties.
8.11	Directors' meetings	The current constitution does not require the directors to meet a minimum number of times per year. Under the proposed constitution, directors must hold meetings no less than four times per year.	Requiring a minimum number of directors' meetings each year helps ensure good governance practices.
8.12	Convening of meetings of directors.	Under the current constitution, a single director can convene a directors' meeting (see article 8.3). Under the proposed constitution, a meeting of directors may be convened by the Chair or any two directors.	Allowing a single director to convene a directors' meeting may become problematic, particularly if there happens to be an unruly director who attempts to call multiple unnecessary meetings. Therefore, we have increased the number of directors required to call a directors' meeting to help safeguard against unnecessary meetings being called.
8.14	Quorum for directors' meetings	Both the current and proposed constitution set quorum at a majority of all directors provided this includes a majority of all current Division Directors. However, under the current constitution the directors have the ability to make quorum a larger amount (i.e. greater than a majority). The option to set quorum as something higher has been removed in the proposed constitution.	We have removed the ability for the directors to increase quorum to provide certainty.
8.19 and 8.20	Committees and delegation to individuals	The proposed constitution includes rules allowing directors to establish committees and to delegate their powers to committees or individuals (including individuals who are members). Whilst the current constitution includes similar provisions, the proposed constitution confirms:	The provisions around delegation have been amended to provide greater clarity.

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		<ul style="list-style-type: none"> <li>directors may continue to exercise all of their powers despite any delegation; and</li> <li>a delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position.</li> </ul>	
9	Secretaries	The proposed constitution includes a section on Secretaries including the duties of the secretary.	It is common to include the duties of the secretary within a constitution.
<b>Divisions, notices and winding up</b>			
8.18	Divisions	The proposed constitution includes simplified rules relating to Divisions.	This change has been made as more detailed provisions relating to Divisions are better placed in the Division Council Charter.
10	Winding up	<p>The proposed constitution contains updated rules relating to winding up and the distribution of assets on winding up, including that winding up can occur other than through a liquidator.</p> <p>The proposed constitution also contains language around winding up any deductible gift recipient (<b>DGR</b>) funds.</p>	<p>These amendments have been made to ensure legal compliance and therefore to help ensure eligibility for charitable status.</p> <p>Whilst the Institute is not currently endorsed as a DGR and its current charity registration does not bring it eligibility for such endorsement, including rules relating to winding up a DGR fund helps futureproof the constitution should the Institute establish a scholarship fund or similar DGR fund in the future.</p>

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<b>Miscellaneous</b>			
-	Show of Preference	We have replaced the phrase 'show of hands' with 'Show of Preference'. Show of Preference (as defined in Rule 6.7(c)) means an indication of preference by a means appropriate to that member or director (as applicable) and is readily interpreted and understood by the Chair.	This change has been made as it reflects inclusive practices and also provides greater flexibility if we are required to hold meetings by electronic means.