

CONSTITUTION of Australian Institute of Physics

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A company limited by guarantee

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Preliminary

1. Name of the company

The name of the company is Australian Institute of Physics (the **Institute**).

2. Type of company

The **Institute** is a not-for-profit public company limited by guarantee which is established to fulfil the objects set out in clause 6 and to be, and to continue as, a charity.

3. Limited liability of members

The liability of **voting members** is limited to the amount of the guarantee in clause 4. All other types of members have no liability.

4. The guarantee

Each **voting member** must contribute an amount not more than \$20 (the guarantee) to the property of the **Institute** if the **Institute** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- a) debts and liabilities of the **Institute** incurred before the member stopped being a member, or
- b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 86 and 88. For the purpose of the **Corporations Act**, the members of the **Council** shall be regarded as the directors of the **Institute**.

Charitable purposes and powers

6. Object

The **Institute** object is to pursue the following charitable purposes:

- a. To promote and further the development of the science of physics and the application of that science; to facilitate the exchange of information and ideas amongst members of the **Institute** and others on the science of physics and subjects related thereto; to disseminate knowledge relating to the science of physics and its applications.
- b. To improve and extend the scientific knowledge of persons engaged in the science of physics and its applications.
- c. To speak and act on behalf of the physicists of Australia in matters relating to the science of physics and its applications and the profession of the physicist.
- d. To establish, join, affiliate with, support or co-operate with any other association or person (whether incorporated or not) whose objects are altogether or in part similar to those of the **Institute**.

7. Powers

Subject to clause 8, the **Institute** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- a) the powers of an individual, and

- b) all the powers of a company limited by guarantee under the Corporations Act.

8. Not-for-profit

- 8.1 The Institute must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8 and 85.
- 8.2 Clause 8.1 does not stop the **Institute** from doing the following things, provided they are done in good faith:
 - a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Institute, or
 - b) making a payment to a member in carrying out the Institute's charitable purpose(s).

9. Amending the constitution

- 9.1 Subject to clause 9.2 and the ACNC Act, the **voting members** may amend this constitution by passing a **special resolution**.
- 9.2 The **voting members** must not pass a special resolution that amends this constitution if passing it causes the **Institute** to no longer be a charity.

Members

10. Membership and register of members

- 10.1 Grades of membership
 - a) Membership of the **Institute** is divided into the following grades: Honorary Fellows, Fellows, Members, Associates and Corporate Associates.
 - b) Associates and Corporate Associates are not **voting members**.
- 10.2 The members of the **Institute** are:
 - (a) **Honorary Fellows, Fellows, Members**, Associates and Corporate Associates under the previous constitution of the **Institute**, which retain their respective membership grades at the time of the adoption of this constitution, and
 - (b) any other person that **the Council** allows to be a member, in accordance with this constitution.
- 10.3 Any member of the **Institute** may be declared **unfinancial** and shall cease to qualify for the rights and privileges of membership if any fee, subscription or levy owed by them to the **Institute** has been outstanding for three months or more. Such a declaration must be in writing to the member as defined in Clause 76 and include the provisions for termination of membership in Clause 16.1 (e). Payment of these dues before termination under Clause 16.1 (e) will reinstate the rights and privileges as a member.
- 10.4 The **Institute** must continue to maintain the register of members existing at the time of the adoption of this constitution. The register of members must contain:
 - (a) for each current member:
 - i. name
 - ii. address

- iii. any alternative address nominated by the member for the service of notices
 - iv. date the member was entered on to the register, and
 - v. the membership grade of the member
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices
 - iv. dates the membership started and ended, and
 - v. the membership grade of the member
- 10.5 The **Institute** must give current **voting members** access to the register of members.
- 10.6 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.
- 10.7 The qualifications, process of becoming a member, or changing membership grade, rights, privileges and obligations of members shall, except as prescribed in this Constitution, be defined in the By-laws.
- 10.8 Membership of the **Institute** is not transferrable.

11. Fees, Subscriptions, and Levies

- 11.1 The application, entrance, and annual fees for membership; the transfer fees between membership grades; and the conditions relating to their payment and collection shall be prescribed in the By-laws.
- 11.2 Conditions relating to the payment and collection of fees and levies shall be as prescribed by the By-laws.

12. Who can be a member

- 12.1 **Honorary Fellows** are distinguished individuals intimately connected with physics, or a related discipline as determined by the **Council**, whom the **Institute** elects to honour for outstanding services in connection with that discipline.
- 12.2 An individual or body which supports the purposes of the **Institute** and meets the criteria defined in this subclause for their desired membership grade may apply to be a member of the **Institute** at that grade.
- 12.3 **Fellows** normally have advanced qualifications in the study of physics (such as a PhD in a physics discipline) and substantial experience in the applications of physics.
- 12.4 **Members** normally have obtained a Bachelor's degree or an equivalent degree with physics as a major discipline. An individual with an equivalent standard of knowledge of physics may be admitted by **the Council** as a **Member**.
- 12.5 **Associates** will have obtained a degree in the physical sciences with major disciplines other than physics, or will have obtained a degree in a related discipline as determined by **the Council**, or be a student studying physics or a related discipline, normally at an Australian university, or have a longstanding interest in physics

- 12.6 **Corporate** Associates are companies, organisations, or similar bodies.
- 12.7 **The Council** may, in exceptional circumstances, admit candidates who do not meet the requirements of clauses 12.3 and 12.4 to the grades of **Fellow** or **Member** respectively.

13. How to apply to become a member

Subject to clause 12, an individual or incorporated body may apply to become a member of the **Institute** by the method or methods prescribed by **the Council** from time to time, which will include stating that they:

- (a) want to become a member
- (b) support the purposes of the **Institute**
- (c) agree to pay the application fees and annual membership fees as applicable to the grade of membership, and
- (d) agree to comply with the **Institute's** constitution and By-laws, including paying the guarantee under clause 4 if required.

14. Approval of membership

- 14.1 **The Council** must consider an application for membership within a reasonable time after receiving the application.
- 14.2 If **the Council** approves an application:
- (c) the new member must be entered on the register of members within a reasonable time, and
 - (d) the applicant must be informed **in writing** that their application was approved, and the grade of membership for which it was approved and of the date that their membership started (see clause 15).
- 14.3 If **the Council** reject an application, the applicant must be informed **in writing** as soon as possible that their application has been rejected, but does not have to be given reasons.
- 14.4 For the avoidance of doubt, **the Council** may approve an application even if the application does not state the matters listed in clauses 13(a), 13(b) or 13(d). In that case, by applying to be a member, the applicant agrees to those matters.

15. When an applicant becomes a member

An applicant will become a member when they are confirmed as such on the register of members.

16. Termination of membership

- 16.1 A member immediately stops being a member if they:
- (a) die
 - (b) are wound up or otherwise dissolved or deregistered (for an incorporated member)
 - (c) are expelled under clause 18
 - (d) have not responded within three months to a request **in writing** from the **Honorary Secretary** that they confirm **in writing** that they want to remain a member, or

- (e) do not pay all due membership fees and levies within three months of becoming **unfinancial** as defined in clause 10.

16.2 A member may resign by providing the **Institute** with one calendar month's notice **in writing**. Upon the expiration of such notice, the individual or incorporated body ceases to be a member.

17. Dispute resolution

17.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or member of the **Council** and:

- (a) one or more members
- (b) one or more members of the **Council**, or
- (c) the **Institute**.

17.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 18 until the disciplinary procedure is completed.

17.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

17.4 If those involved in the dispute do not resolve it under clause 17.3, they must within 10 days:

- (a) tell the **Council** about the dispute in writing
- (b) agree or request that a mediator be appointed, and
- (c) attempt in good faith to settle the dispute by mediation.

17.5 The mediator must:

- (a) be chosen by agreement of those involved, or
- (b) where those involved do not agree:
 - i. for disputes between members, be a person chosen by the **Council**, or
 - ii. for other disputes, be a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Institute has its registered office.

17.6 A mediator chosen by the **Council** under clause 17.5(b)(i):

- (a) may be a member or former member of the **Institute**
- (b) must not have a personal interest in the dispute, and
- (c) must not be biased towards or against anyone involved in the dispute.

17.7 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard
- (b) allow those involved a reasonable chance to review any written statements
- (c) ensure that those involved are given natural justice, and
- (d) not make a decision on the dispute.

18. Disciplining members

18.1 In accordance with this clause, the **Council** may resolve to warn, suspend, or expel a member from the **Institute** if the **Council** considers that:

- (a) the member has breached this constitution, or

- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **Institute**.
- 18.2 At least 14 days before the **Council** meeting at which a resolution under clause 18.1 will be considered, the **Institute** must notify the member in writing:
- (a) that the **Council** are considering a resolution to warn, suspend, or expel the member
 - (b) that this resolution will be considered at a **Council** meeting and the date of that meeting
 - (c) what the member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the member may provide an explanation to the **Council**, and details of how to do so.
- 18.3 Before the **Council** passes any resolution under clause 18.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the **Council** a written explanation before that **Council** meeting, and/or
 - (b) speaking at the meeting.
- 18.4 After considering any explanation under clause 18.3, the **Council** may:
- (a) take no further action
 - (b) warn the member
 - (c) suspend the member's rights as a member for a period of no more than 12 months
 - (d) expel the member, only if a **Council** vote on the matter had a minimum 75% majority with at least 12 votes cast
 - (e) refer the decision to an unbiased, independent person on conditions that the **Council** consider appropriate (however, the person can only make a decision that the **Council** could have made under this clause), or
 - (f) require the matter to be determined at a general meeting.
- 18.5 The **Council** cannot fine a member.
- 18.6 The **Institute** must give notice **in writing** to the member of the decision under clause 18.4 as soon as possible.
- 18.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 18.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.
- 18.9 Suspension or expulsion of a member under 18.4(c) or 18.4(d) or by resolution under 18.4(e) or 18.4(f) shall not absolve that member of liability for payment of any fee, subscription, or levy due from that member to the **Institute** at the time of such termination.

Branches

19. Branches and Geographical Territories

- 19.1 The Institute shall contain **Branches** organised on a geographical basis to further the purposes of the **Institute** set out in Clause 6.

- 19.2 The Council may create or dissolve a **Branch** or vary the geographical territory of a **Branch**, but no district shall be attached to two **Branches** at the same time.
- 19.3 Except as otherwise provided in the By-laws, the members of the **Institute** normally resident in the territory of a **Branch** shall be the members of that **Branch**.

20. Affairs of Branches

- 20.1 Each **Branch** shall be constituted and its affairs shall be carried out in accordance with this Constitution and with the provisions of the By-laws.
- 20.2 The By-laws may provide for any members who are not **voting members** to be attached to a **Branch** and to participate in its activities.
- 20.3 The By-laws shall provide for a committee of each **Branch** to manage the affairs of that **Branch**, and for the election of a chair and vice-chair from amongst the **voting members** of the **Institute** attached to that **Branch**.

Groups

21. Groups

- 21.1 The Institute may contain **Groups** to further the purposes of the **Institute**, for the advancement of a subject or issue important to the profession of physics.
- 21.2 Each **Group** shall be constituted, and its affairs shall be carried out in accordance with this Constitution and the By-laws.

Committees

22. Formation of Committees of the Council

- 22.1 **The Council** may appoint committees consisting of the **President**, the **Honorary Treasurer** and the **Honorary Secretary**, ex officio, and other persons as it thinks fit.
- 22.2 Any committee so formed shall be constituted in accordance with, and shall conform to, this Constitution, the By-laws, and any regulations that may be imposed on it by the **Council**.

23. Operation of Committees

- 23.1 Any committee shall:
- (a) be responsible to and report to the **Council**; and
 - (b) work within any terms of reference prescribed for it by the **Council**, and any decision taken by such committee shall be subject to confirmation by the **Council** unless the **Council** shall otherwise determine.
- 23.2 Subject to clause 54, **the Council** may delegate any of its powers to any committee but the resolution of any meeting acting under such delegation shall have no validity or effect unless:
- (a) a majority of the persons present at the meeting and entitled to vote are voting members of the Institute; or
 - (b) such resolution is confirmed by the **Council**.

General meetings of members

24. General meetings called by the Council

- 24.1 The **Council** may call a general meeting.
- 24.2 A written request for a **general meeting** to be held may be made by:
- (a) at least 5% of **voting members**; or
 - (b) a resolution passed by two or more Branch Committees
- 24.3 If the **Institute** receives a written request for a **general meeting** to be held as in clause 24.1, the **Council** must:
- (a) within 21 days of the request, give all members notice of a **general meeting**, and
 - (b) hold the **general meeting** within 3 months of the request.
- 24.4 The percentage of **voting members** (in clause 24.2) is to be calculated based on the membership of the **Institute** as at midnight before the request of the meeting.
- 24.5 The **voting members** in 24.2(a) who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the **Institute**.
- 24.6 The **Branch Committees** in 24.2(b) who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting, and
 - (b) give the request to the Institute.
- The request must be signed by the **Branch chairs** or by the chair of the **Branch meetings** at which the said resolutions were passed.
- 24.7 Separate copies of a document setting out the request may be signed by the relevant parties if the wording of the request is the same in each copy.

25. General meetings called by request

- 25.1 If the **Council** do not call the meeting within 21 days of being requested under clause 24.2, 50% or more of the members who made the request in 24.1(a), or at least one of the **Branches** who made the request in 24.1(b), may call and arrange to hold a **general meeting**.
- 25.2 To call and hold a meeting under clause 25.1 the members or **Branches** must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
 - (b) call the meeting using the list of members on the **Institute's** member register, which the **Institute** must provide to the members or **Branches** making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **Institute**.
- 25.3 The **Institute** must reimburse the members or the **Branches** who request the **general meeting** any reasonable expenses they incur because the **Council** did not call and hold the meeting.

26. Annual general meeting

- 26.1 A **general meeting**, called the annual **general meeting**, must be held:
- (a) at least once in every calendar year, and
 - (b) within 15 months of the previous annual general meeting.
- 26.2 Even if these items are not set out in the notice of the meeting, the business of an annual **general meeting** may include:
- (a) a review of the **Institute's** activities
 - (b) a review of the Institute's finances
 - (c) any auditor's report
 - (d) the declaration of election of members of the Executive as necessary, and
 - (e) the appointment and payment of auditors, if any.
- 26.3 Before or at the annual **general meeting**, the **Council** must give information to the members on the **Institute's** activities and finances during the period since the last annual **general meeting**.
- 26.4 The chairperson of the annual **general meeting** must give members, as a whole, a reasonable opportunity at the meeting to ask questions or make comments about the management of the **Institute**.

27. Notice of general meetings

- 27.1 Notice of a **general meeting** must be given to:
- (a) all members of the **Institute**, and
 - (b) the auditor.
- 27.2 Notice of a **general meeting** must be provided **in writing** at least 21 days before the meeting.
- 27.3 Notice of a **general meeting** must include:
- (a) the place, date, and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - (b) the general nature of the meeting's business
 - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution
 - (d) a statement that **voting members** have the right to appoint proxies and that, if a **voting member** appoints a proxy:
 - i. the proxy must be a **voting member** of the **Institute**
 - ii. the proxy form must be delivered to the **Institute** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **Institute** at least 48 hours before the meeting.
- 27.4 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.
- 27.5 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member entitled to receive such notices shall not invalidate the proceedings of that meeting.

28. Quorum at general meetings

- 28.1 For a **general meeting** to be held, at least 10 **voting members** (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 28.2 No business may be conducted at a **general meeting** while a quorum is not present.
- 28.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of the **general meeting**, the **general meeting** is,
- (a) in the case of a meeting requested according to clause 24.2, cancelled and any proposed resolutions lapse; or
 - (b) in all other cases, adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
 - i. if the date is not specified – the same day in the next week
 - ii. if the time is not specified – the same time, and
 - iii. if the place is not specified – the same place.
- 28.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.
- 28.5 If at any time after a meeting commences a quorum is no longer present, then subject to clause 28.2, the chairperson may wait up to 30 minutes for a quorum to be re-established before the meeting must be adjourned.

29. Auditor's right to attend meetings

- 29.1 The auditor is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 29.2 The **Institute** must give the auditor any communications relating to the **general meeting** that a member of the **Institute** is entitled to receive.

30. Representatives of Corporate Associates

- 30.1 A Corporate **Associate** may appoint one individual to represent the member at meetings and to speak on its behalf at the meeting noting that Corporate **Associate** members are not **voting members**.

31. Using technology to hold meetings

- 31.1 The **Institute** may hold a **general meeting** at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 31.2 Anyone using this technology is taken to be present in person at the meeting.

32. Chairperson for general meetings

- 32.1 The **President**, or in their absence the **Vice President**, shall preside as chair at every **general meeting** unless they do not wish to do so.

- 32.2 The members present and entitled to vote at a **general meeting** may choose a **voting member** to be the chairperson for that meeting if:
- (a) the **President** or **Vice President** is not present within 15 minutes after the starting time set for the meeting, or
 - (b) the **President** or **Vice President** is present but says they do not wish to act as chairperson of the meeting.

33. Role of the chairperson

- 33.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor).
- 33.2 The chair of the meeting shall be entitled to a second or casting vote in the case of an equality of votes.

34. Adjournment of meetings

- 34.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **voting members present** direct the chairperson to adjourn it.
- 34.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.
- 34.3 (a) No notice of an adjournment, or of the business to be transacted at a resumed meeting need be given; except
- (b) When a meeting is adjourned for thirty days or more, notice of a meeting resumed after an adjourned meeting shall be given as in the case of a new **general meeting**.

Members' resolutions and statements

35. Members' resolutions and statements

- 35.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice (as defined in clauses 75-77) to the **Institute** of a resolution they propose to move at a general meeting (members' resolution), and/or
 - (b) a written request to the Institute that the Institute give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 35.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 35.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 35.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 35.5 The percentage of votes that members have (as described in clause 35.1) is to be worked out as at midnight before the request or notice is given to the **Institute**.

- 35.6 If the **Institute** has been given notice of a members' resolution under clause 35.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 35.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

36. Institute must give notice of proposed resolution or distribute statement

- 36.1 If the **Institute** has been given a notice or request under clause 35:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **Institute's** cost, or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **Institute** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **Institute** will pay these expenses.
- 36.2 The **Institute** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1,000 words long
 - (b) the **Council** considers it may be defamatory
 - (c) clause 36.1(b) applies, and the members who proposed the resolution or made the request have not paid the **Institute** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
 - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

37. Circular resolutions of members

- 37.1 Subject to clause 37.3, the **Council** may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 37.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 37.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director
 - (b) for passing a special resolution, or
 - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 37.4 A circular resolution is passed if all the **voting members** sign or agree to the circular resolution, in the manner set out in clause 37.5 or clause 37.6.
- 37.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or

- (b) separate copies of that document, as long as the wording is the same in each copy.
- 37.6 The **Institute** may send a circular resolution by email to members and **voting members** may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

38. How many votes a member has

Each **voting member** has one vote, all other members having zero votes. The **chairperson** also may have a casting vote (see clause 33.2).

39. Challenge to member's right to vote

- 39.1 A member or the chairperson may only challenge a member's right to vote at a **general meeting** at that meeting.
- 39.2 If a challenge is made under clause 39.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

40. How voting is carried out

- 40.1 Voting must be conducted and decided by:
 - (a) a show of hands
 - (b) a vote in writing, or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 40.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 40.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 40.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

41. When and how a vote in writing must be held

- 41.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
 - (a) at least five **voting members** present, or
 - (b) the chairperson.
- 41.2 A vote in writing must be taken when and how the chairperson directs, unless clause 41.3 applies.
- 41.3 A vote in writing must be held immediately if it is demanded under clause 41.1:
 - (a) for the election of a chairperson under clause 32.2, or
 - (b) to decide whether to adjourn the meeting.
- 41.4 A demand for a vote in writing may be withdrawn.

42. Appointment of proxy

- 42.1 A **voting member** may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 42.2 A proxy must be a **voting member**.
- 42.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting,
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
 - (c) join in to demand a vote in writing under clause 41.1.
- 42.4 An appointment of proxy (proxy form) must be signed by the **voting member** appointing the proxy and must contain:
- (a) the member's name and address
 - (b) the **Institute's** name
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting(s) at which the appointment may be used.
- 42.5 A proxy appointment may be standing (ongoing).
- 42.6 Proxy forms must be received by the **Institute** at the address stated in the notice under clause 27.3(d) or at the **Institute's** registered address at least 48 hours before a meeting.
- 42.7 A proxy does not have the authority to speak and vote for a **voting member** at a meeting while the member is at the meeting and capable of doing so themselves.
- 42.8 Unless the **Institute** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
 - (b) is mentally incapacitated
 - (c) revokes the proxy's appointment, or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 42.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

43. Voting by proxy

- 43.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a **voting member** on a show of hands).
- 43.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) if the way they must vote is specified on the proxy form, must vote that way, and
 - (c) if the proxy holds more than one proxy, may cast the votes held in different ways.

Plebiscites

44. When a plebiscite must be held

- 44.1 At any time before the dissolution or adjournment of a **general meeting**, ten **voting members** or their proxies may demand that a plebiscite be taken on any motion (not being a motion for the election of a chair or of scrutineers or for the adjournment of the meeting) which has been put to the meeting. In that event the question shall not be decided by the meeting but by a plebiscite taken in accordance with this Constitution (see clause 45).
- 44.2 If a plebiscite is taken on a **special resolution**, the plebiscite is decided by 75% of the votes cast.

45. Calling a Plebiscite

- 45.1 The **Council** may if it thinks fit, and shall on requisition, seek a decision from the membership of the **Institute** by taking a plebiscite.
- 45.2 Each requisition shall be signed:
- (a) by at least one third of the **voting members** attached to a **Branch**; or
 - (b) by twenty **voting members**; or
 - (c) by ten **voting members** demanding a plebiscite at a general meeting under clause 44.1.
- 45.3 The names of the members requesting the plebiscite shall remain confidential to the **Council** except insofar as the members concerned wish it otherwise.

46. Rules for a plebiscite

- 46.1 A plebiscite shall be taken in accordance with the procedure prescribed by the By-laws.
- 46.2 A plebiscite on any question shall be decided by a simple majority of the votes cast, except in plebiscites called according to clause 44.2.
- 46.3 Each **voting member** shall have one vote in a plebiscite. In the case of an equality of votes the **President** shall be entitled to a second or casting vote.
- 46.4 The accidental omission to send a voting form to, or the non-receipt of a voting form by, any member entitled to vote in a plebiscite shall not in itself invalidate the plebiscite.
- 46.5 If a plebiscite is taken on a particular question no further plebiscite may be taken on the same or an essentially identical question within one year of the date of declaration of the result of that plebiscite.
- 46.6 The decision of the members on any question ascertained by a plebiscite shall be binding on the **Council** and, provided that such decision is not in conflict with the provisions of the Constitution, the **Council** shall give effect to that decision despite the fact that the decision may override or annul an earlier resolution of the **Council**. No

such decision shall invalidate any prior act of the **Council** which would have been valid if that decision had not been made.

The Council and the Executive

47. Composition of the Council

- 47.1 The **Council** shall consist of:
- a) The members of the **Executive**; and
 - b) The **Branch Chairs** of each **Branch**.

48. The Executive

- 48.1 Except as prohibited under clause 54.1 the **Executive** shall deal with:
- a) any matters referred to it by the **Council**, and
 - b) any matters which concern the **Council** in regard to which action should not, in the opinion of the **Executive**, be postponed until a meeting of the **Council**.
- 48.2 The **Executive** shall consist of:
- (a) **the President,**
 - (b) **the Vice-President,**
 - (c) **the Honorary Treasurer,**
 - (d) **the Honorary Secretary,**
 - (e) **the Honorary Registrar,**
 - (f) **the Immediate Past President,**
 - (g) **the Awards Officer,**
 - (h) and up to four additional **Special Project Officers**.

49. Nomination, election and appointment of the Council

- 49.1 The **Council** of the **Institute** will be the **Council** of the **Institute** at the time of adoption of this constitution, until the conclusion of their existing term.
- 49.2 Apart from the adopted Council in clause 49.1 and the members of the Council who are appointed to fill casual vacancies as in clause 49.5,
- a) the President, Vice President, Honorary Secretary, Honorary Registrar, Honorary Treasurer, and Prizes and Awards Coordinator of the Executive shall be elected to their respective offices by the votes of the **voting members** of the Institute in accordance with this Constitution and the By-laws. Note that under clause 51, other members of the Executive are appointed without election.
 - b) The Branch Chair of each Branch shall be elected in accordance with this Constitution and the By-laws by the votes of the **voting members** attached to that Branch.
- 49.3 When the term of office of the **Executive** is due to end at the next **annual general meeting**:
- (a) The **Council** shall send to each member notice of eligible persons whom it nominates as candidates for election to the offices referred to in clause 49.2(a).
 - (b) Within three weeks of this notice being issued any other eligible person may be nominated for election by three **voting members** of the **Institute** in

accordance with this Constitution and By-laws. Notice of this new nomination must be **in writing to the Institute**, together with the written consent of the nominee to accept office if elected.

- (c) No person shall accept nomination for more than one office on the **Executive** at any election and no member may nominate more than one candidate in any year for any one position.
 - (d) The **Council** shall appoint a returning officer and two scrutineers (who must all be **voting members** of the **Institute**) for the conduct of the election.
 - (e) The election shall be conducted in accordance with the By-laws.
- 49.4 A person is eligible for election or appointment if they:
- a) are a **voting member** of the **Institute**
 - b) give the **Institute** their signed consent to act as their nominated **Executive** role for the **Institute**, and
 - c) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 49.5 The Council may appoint a person to fill a casual vacancy in the Executive subject to clause 49.4.
- 49.6 If the number of members of the **Council** is reduced to less than quorum, the continuing members of **Council** may act for the purpose of increasing the number of members of **Council** to meet quorum (e.g. by filling casual vacancies in the **Executive** or calling an election for the **Executive**), or calling a **general meeting**, but for no other purpose.
- 49.7 A casual vacancy in the office of a Branch Chair shall be filled by:
- (a) the vice chair becoming the **Branch Chair** if available and willing; or
 - (b) where vice chair is unwilling or not available, the Branch Committee may appoint a **Branch Chair** from among the members of the Institute attached to that branch.
 - (c) A person appointed in accordance with the preceding sub-clause shall retain office for the unexpired portion of the term unless he/she ceases to hold office under the Constitution.

50. Chairperson of the Institute

The **President** of the **Institute** shall serve as the Chairperson of the Institute.

51. Terms of office

- 51.1 A **Branch Chair** shall take office as a member of the **Council** and as the Chair of their **Branch** on the 1st of January following the year of their election, and shall continue in office for the whole of that calendar year.
- 51.2 Elected members of the **Executive** shall hold office starting from the conclusion of the **annual general meeting** immediately following their election. Their term of office ends at the conclusion of the second annual **general meeting** following their appointment. The term of office of co-opted members of the **Executive** ends when

the term of office of the elected **Executive** ends or such earlier time as the **Executive** decides.

- 51.3 The retiring **President** shall serve on the **Executive** as **Immediate Past President** during the term of office of the **President** immediately succeeding them.
- 51.4 No person who has held the office of **President** or **Vice President** for a full elected term of office as defined in these articles shall be eligible for election to the same office for the next succeeding term.
- 51.5 A person appointed to fill a casual vacancy in accordance with clause 49.5 shall hold office only so long as the person in whose place they are appointed would have retained office.

52. When a member of the Council stops being a member of the Council

A member of the **Council** stops being a member of the **Council** and their office is vacated if they:

- (a) give written notice of resignation to the **Institute**
- (b) die
- (c) In the case of a member of the **Executive**, are removed from the **Council** by a resolution of the **voting members** present at a **general meeting**
- (d) In the case of a **Branch Chair**, are removed from the office of **Branch Chair** by a resolution of the **members** attached to the relevant **Branch**
- (e) stop being a member of the **Institute**
- (f) are a representative of a member, and that member stops being a member
- (g) are a representative of a member, and the member notifies the **Institute** that the representative is no longer a representative,
- (h) are no longer able to carry out the duties of their office through prolonged sickness or other causes and thus their office is declared vacant by a resolution of the Council on those grounds, or
- (i) become ineligible to be a director of the **Institute** under the **Corporations Act** or the **ACNC Act**.

Powers of the Council

53. Powers of the Council

- 53.1 The **Council** is responsible for managing and directing the activities of the **Institute** to achieve the purposes set out in clause 6.
- 53.2 The **Council** may use all the powers of the **Institute** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 53.3 The **Council** must decide on the responsible financial management of the **Institute** including:
 - (a) any suitable written delegations of power under clause 54, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 53.4 The **Council** cannot remove a member of **Council** or auditor. Members of **Council** and auditors may only be removed by a members' resolution at a **general meeting**.

54. Delegation of Council's powers

- 54.1 The Council shall not delegate any of the following powers:
- (a) The Appointment or transfer of persons to the membership grade of **Honorary Fellow**
 - (b) expulsion of persons from membership of the **Institute**
 - (c) the creation, dissolution or variation of the territory of a branch
 - (d) the making, alteration or repeal of By-laws
- 54.2 In addition to clause 48.1 and excluding the powers listed in clause 54.1, the **Council** may, by motion at a meeting of the **Council** (or **Executive** as appropriate), delegate any of their other powers and functions to a committee, an individual member of the **Council**, an employee of the **Institute**, or any other person, as they consider appropriate.

55. Payments to members of Council

- 55.1 The **Institute** must not pay fees to a member of **Council** for acting as a member of **Council**.
- 55.2 The **Institute** may:
- (a) pay a member of **Council** for work they do for the **Institute**, other than as a member of **Council**, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a member of **Council** for expenses properly incurred by the member of **Council** in connection with the affairs of the **Institute**.
- 55.3 Any payment made under clause 55.2 must be approved by the **Council**.
- 55.4 The **Institute** may pay premiums for insurance indemnifying members of the **Council** or other officers (for example, committees or **Branch** officers), as allowed for by law (including the **Corporations Act**) and this constitution.

56. Execution of documents

- The **Institute** may execute a document if the document is signed by:
- (a) any two of the **President, Vice President, the Honorary Secretary, the Honorary Treasurer, the Honorary Registrar**; or
 - (b) any one of the **President, Vice President, the Honorary Secretary, the Honorary Treasurer, the Honorary Registrar** and any other member of the **Council**.

Duties of the Council

57. Duties of the Council

The members of **the Council** must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **Institute**

- (b) to act in good faith in the best interests of the **Institute** and to further the charitable purpose(s) of the **Institute** set out in clause 6
- (c) not to misuse their position as a member of the **Council**
- (d) not to misuse information they gain in their role as a member of the **Council**
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 59
- (f) to ensure that the financial affairs of the **Institute** are managed responsibly, and
- (g) not to allow the **Institute** to operate while it is insolvent.

58. Duties of specific members of Council

- 58.1 The **Honorary Treasurer** shall be responsible to the **Council** for the administration of the financial affairs of the **Institute** and for ensuring that proper accounts are kept in accordance with this Constitution.
- 58.2 The **Honorary Registrar** shall be responsible to the **Council** for the administration of matters relating to membership, including maintaining a register of the **Institute's** members.
- 58.3 The **Honorary Secretary** shall be responsible to the **Council** for administration and co-ordination of the affairs of the **Institute** generally other than those of finance and membership. This includes maintaining the minutes and other records of **general meetings** (including notices of meetings), **Council** meetings, **Executive** meetings, and circular resolutions. For the purposes of the **Corporations Act**, the **Honorary Secretary** shall be deemed to have been appointed by the **Council** as the secretary to The Institute.
- 58.4 The **Awards Officer** shall be responsible to the **Council** for the administration of matters relating to the prizes and awards of the **Institute** described in the By-laws or in specific rules created by the **Council** for the administration of any scholarship or prizes fund created under clause 83.

59. Conflicts of interest

- 59.1 A member of the **Council** must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the **Council** or the **Executive** (or that is proposed in a circular resolution):
 - (a) to the other members of the **Council**, or
 - (b) if all of the members of the **Council** have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 59.2 The disclosure of a conflict of interest by a member of the **Council** must be recorded in the minutes of the meeting.
- 59.3 Each member of Council who has a material personal interest in a matter that is being considered at a meeting of the Council or the Executive (or that is proposed in a circular resolution) must not, except as provided under clauses 59.4:
 - (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 59.4 A member of the **Council** may still be present and vote if

- (a) their interest arises because they are a member of the **Institute**, and the other members of the **Institute** have the same interest
- (b) their interest relates to an insurance contract that insures, or would insure, the member of **Council** against liabilities that the member of **Council** incurs as a director of the **Institute** (see clause 80)
- (c) their interest relates to a payment by the **Institute** under clause 79 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the member of **Council** to vote on the matter, or
- (e) the members of **Council** who do not have a material personal interest in the matter pass a resolution that:
 - i. identifies the member of **Council**, the nature and extent of that member's interest in the matter and how it relates to the affairs of the **Institute**, and
 - ii. says that those members of **Council** are satisfied that the interest should not stop the director from voting or being present.

Council and Executive meetings

60. When the Council or Executive meet

The **Council** and the **Executive** shall meet as often as the business of the **Institute** may require and may adjourn and otherwise regulate their meetings as they think fit.

61. Convening meetings

- 61.1 Meetings of the **Council** shall ordinarily be convened by the **Honorary Secretary**, but meetings of the **Council** may be convened by either the **President** or by any three members of the **Council**.
- 61.2 Meetings of the **Executive** shall ordinarily be convened by the **Honorary Secretary**, but meetings of the **Executive** may be convened by the **President** or by the **Vice-President** or by any two members of the **Executive**.

62. Proxies for Council members

A member of the Council or the Executive may appoint a **voting member** of the Institute as their proxy to act on their behalf at any or all meetings of the Council or Executive respectively, subject to clause 42 but replacing the text "general meeting" with "meeting of the Council" or "meeting of the Executive" respectively as appropriate.

63. Chairperson for meetings of the Council and Executive

- 63.1 The **President**, or in their absence the **Vice President**, is entitled to chair meetings of the **Council** and the **Executive**. A proxy for the **President** or for the **Vice-President** shall not automatically be entitled to chair a meeting of the **Council** or the **Executive**.
- 63.2 The members of the **Council** or **Executive** present at a meeting of the **Council** or the **Executive** respectively or their proxies may choose from their number a person to be the chairperson for that meeting if the **President** and/or **Vice President** is:
 - (a) not present within 30 minutes after the starting time set for the meeting, or

- (b) present but does not want to act as chairperson of the meeting.

64. Quorum at meetings

- 64.1 The quorum necessary for the transaction of the business of the **Council** shall be five (including proxies) provided that at least three of the five are **Branch Chairs** or their proxies.
- 64.2 The quorum necessary for the transaction of the business of **the Executive** shall be four.
- 64.3 A quorum must be present for voting on all resolutions at the meeting.

65. Using technology to hold meetings of Council or the Executive

- 65.1 The Council or the Executive may hold their meetings by using any technology (such as video, teleconferencing, or circulation and discussion via email) that is agreed to by the majority of the members of the **Council** or the **Executive** respectively.
- 65.2 The agreement of the **Council** or the **Executive** may be a standing (ongoing) one.
- 65.3 A member of the **Council** or the **Executive** may only withdraw their consent within a reasonable period before the meeting.

66. Passing resolutions of the Council or Executive

- 66.1 Subject to this Constitution questions arising at any meeting of the Council or of the Executive shall be decided by a simple majority of the votes cast by the members and their proxies present.
- 66.2 **The Council and Executive voting:**
 - (a) Each member of **the Executive** (or their proxy) shall have one vote at meetings of **the Executive**.
 - (b) Each member of **the Council** (or their proxy) shall have at least one vote. Each **Branch Chair** or their proxy shall have one additional vote if their **Branch** includes not more than one sixth of the total membership of the **Institute**, or shall have two additional votes if their **Branch** includes more than one sixth but not more than one third of the total membership of the **Institute**, or shall have three additional votes if their **Branch** includes more than one third of the total membership of the **Institute**.
 - (c) In the case of an equality of votes the chair of the meeting shall be entitled to an additional or casting vote.

67. Circular resolutions of the Council or Executive

- 67.1 The **Council** or **Executive** may pass a circular resolution without a meeting being held.
- 67.2 A circular resolution is passed if all the members of the **Council** or **Executive** entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 67.3 or clause 67.4.
- 67.3 Each **Council** or **Executive** member may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

- 67.4 The **Institute** may send a circular resolution by email to the **Council** or **Executive** and the members of the **Council** or **Executive** may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 67.5 A circular resolution is passed when the last member of **Council** or **Executive** signs or otherwise agrees to the resolution in the manner set out in clause 67.3 or clause 67.4

68. Prior Acts of the Council, Executive, or Committees

- 68.1 If it is discovered afterward that:
- (a) there was some defect in the appointment of any member or person acting as a member of **the Council, the Executive**, or a committee; or
 - (b) any of these people were ineligible for their position, or otherwise disqualified as a member;
- Then all acts done by any meeting of **the Council, the Executive** or a committee during the time that the person was involved in **the Council, Executive** or committee shall be as valid as if the person had been duly appointed and qualified to be a member.

Minutes and records

69. Minutes and records

- 69.1 The **Institute** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
 - (b) minutes of circular resolutions of **voting members**
 - (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a members' statement distributed to members under clause 36.
- 69.2 The **Institute** must, within one month, make and keep the following records:
- (a) minutes of proceedings, resolutions, and names of attendees of meetings of the **Council** and the **Executive** (including meetings of any committees), and
 - (b) minutes of circular resolutions of **Council** or **Executive**.
- 69.3 To allow members to inspect the **Institute's** records:
- (a) the **Institute** must give a member access to the records set out in clause 69.1, and
 - (b) the **Council** may authorise a member to inspect other records of the **Institute**, including records referred to in clause 69.2 and clause 70.1.
- 69.4 The directors must ensure that minutes of a **general meeting** or a meeting of the **Council** or the **Executive** are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 69.5 The directors must ensure that minutes of the passing of a circular resolution (of **voting members** or **Council** or **Executive**) are signed by a member of the **Council** within a reasonable time after the resolution is passed.

70. Financial and related records

- 70.1 The **Institute** must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 70.2 The **Institute** must also keep written records that correctly record its operations.
- 70.3 The **Institute** must retain its records for at least 7 years.
- 70.4 The directors must take reasonable steps to ensure that the **Institute's** records are kept safe.

Cognate Societies

71. Cognate Societies

- 71.1 The Council may establish formal and reciprocal ties with **Cognate Societies** who support the objects of the **Institute**.
- 71.2 Rules relating to **Cognate Societies** and their members may be outlined in the By-laws.

Overseas Physical Societies

72. Overseas Physics Societies

- 72.1 The Council may establish formal and reciprocal ties with **Overseas Physics Societies** who support the objects of the **Institute**.
- 72.2 Rules relating to **Overseas Physics Societies** and their members may be outlined in the By-laws.

By-laws

73. By-laws

- 73.1 **The Council** may pass a resolution to make, alter, or repeal By-laws to give effect to this constitution.
- 73.2 No By-law made, altered, or repealed by the **Institute** in a **general meeting** or via plebiscite shall invalidate any prior act of the **Council** which would have been valid if that By-law had not been made, altered, or repealed.
- 73.3 Members and **the Council** must comply with By-laws as if they were part of this constitution.
- 73.4 Any alteration or addition made to the By-laws shall be communicated to every member at least seven days before the By-laws come into effect. In that period before the By-laws are in effect, no person shall be liable to discipline through any act or omission against the new By-laws if their behaviour otherwise upholds the pre-existing By-laws and the Constitution.
- 73.5 The accidental omission to communicate changes under clause 73.1 or the non-receipt thereof by any such person shall not invalidate such By-laws, alteration or addition.

Notice

74. What is notice

- 74.1 Anything written to or from the **Institute** under any clause in this constitution is written notice and is subject to clauses 75 to 77, unless specified otherwise.
- 74.2 Clauses 75 to 77 do not apply to a notice of proxy under clause 42.6.

75. Notice to the Institute

Written notice or any communication under this constitution may be given to the **Institute**, the **Council** or the **Honorary Secretary** by:

- (a) delivering it to the **Institute's** registered office
- (b) posting it to the **Institute's** registered office or to another address chosen by the **Institute** for notice to be provided
- (c) sending it to an email address or other electronic address notified by the **Institute** to the members as the **Institute's** email address or other electronic address, or

76. Notice to members

- 76.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
 - (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 76.2 If the **Institute** does not have an address (including an electronic address) for the member, the **Institute** is not required to give notice in person.

77. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the sixth working day after it is posted with the correct payment of postage costs
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 76.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

78. The Institute's financial year

The **Institute's** financial year is from 1 October to 30 September, unless the **Council** passes a resolution to change the financial year.

Indemnity, insurance and access

79. Indemnity

- 79.1 The **Institute** indemnifies each officer of the **Institute** out of the assets of the **Institute**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **Institute**.
- 79.2 In this clause, 'officer' means a member of the Council, person serving on a committee, anyone appointed casually to any of these roles, or employee of the **Institute**, and includes such people after they have ceased to hold that office.
- 79.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **Institute** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 79.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **Institute**.

80. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the **Council** considers it appropriate, the **Institute** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **Institute** against any liability incurred by the person as an officer of the **Institute**.

Access to documents

81. Access to documents by members of Council

- 81.1 A member of **the Council** has a right of access to the financial records of the **Institute** at all reasonable times.
- 81.2 If the **Council** agrees, the **Institute** must give a current member of **the Council** or former member of **the Council** access to:
- (a) certain documents, including documents provided for or available to the **Council** or **the Executive**, and
 - (b) any other documents referred to in those documents.

82. Members' access to documents

A member of the Institute has a right of access to the constitution and By-laws of the Institute at all reasonable times.

Scholarships, Prizes and Public Library funds

- 83.1 The **Institute** may establish a scholarship and prizes fund to encourage, support and facilitate education or research that supports the purposes of The Institute. Scholarship and prizes rules for this fund and for particular named scholarships or prizes to be offered by the fund may be made by the **Council** provided that in all cases they comply with the applicable laws relating to the creation and maintenance of tax deductible scholarship funds.
- 83.2 The **Institute** may establish a public library fund to operate, preserve and maintain, and create educational resources related to the purposes of The Institute and to make this material available for use by interested members of the public. Rules for this fund may be made by the **Council** provided that in in all cases they comply with the applicable laws relating to the creation and maintenance of tax deductible public library funds.

Winding Up

84. Surplus assets not to be distributed to members

If the **Institute** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **Institute**, unless that member or former member is a charity described in clause 85.1.

85. Distribution of surplus assets

- 85.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **Institute** is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6, and
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **Institute**.
- 85.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of **voting members** at or before the time of winding up. If the members do not make this decision, the **Institute** may apply to the Supreme Court to make this decision.
- 85.3 If The Institute has established a scholarship or prizes fund and/or a public library fund as described in clause 83, then on the **Institute** being wound up or the dissolution of the fund or the fund ceasing to be endorsed as a deductible gift recipient pursuant to the requirements of Division 30 of the *Income Tax Assessment Act 1997*, any surplus assets that remain after the fund is wound up must be distributed to one or more charities or funds operated by a charity:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) of the fund, and
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **Institute**, and

(c) which is eligible to receive tax deductible donations and endorsed as a deductible gift recipient pursuant to the requirements of Division 30 of the *Income Tax Assessment Act 1997*.

Definitions and interpretation

86. Definitions

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Commonwealth).

Associate means a person who has been admitted to the grade of **Associate** by the **Institute** as in clause 12.

Branch means a **Branch** created within the **Institute** in pursuance of clauses 19 and 20.

Branch Chair means the chair of a **Branch**.

Branch Committee means the committee of a **Branch**.

Branch Meeting means a meeting of members of a **Branch**.

Cognate Society means an organisation, institute, or society that has as a constitution with similar objects to the **Institute**, that is accepted as a **Cognate Society** by the **Council** as in clause 71.

Corporate Associate means a company, organisation, institute or other body accepted as a **Corporate Associate** by the **Institute** as in clause 12.7.

Corporations Act means the *Corporations Act 2001* (Commonwealth).

Council means the Council of the **Institute**, as introduced in clause 47.

Executive means the Executive of the **Institute** as constituted under clause 48

Fellow means a person who has been admitted to the grade of **Fellow** by the **Institute**, see clauses 10 and 12.

general meeting means a meeting of members and includes the annual **general meeting**, under clause 26.1.

Group means a **Group** created within the Institute in pursuance of clause 21.

Honorary Fellow means a person admitted to the grade of **Honorary Fellow** by the Institute, see clauses 10 and 12.

Member means a person admitted to the grade of **Member** by the Institute, see clauses 10 and 12

in writing means a written document delivered in person, via mail, or electronically.

Institute means The Institute referred to in clause 1.

Overseas Physics Society means an organisation, institute, or society that has as a constitution with similar objects to the **Institute**, that is accepted as an **Overseas Physics Society** by the **Council** as in clause 72.

registered charity means a charity that is registered under the **ACNC Act**.

sign and **signed** means either a written or electronic signature.

special resolution means a resolution:

- i. of which notice has been given under clause 27.3(c), and
- ii. that has been passed by at least 75% of the votes cast by **voting members** or their proxies entitled to vote on the resolution.

surplus assets means any assets of the **Institute** that remain after paying all debts and other liabilities of the **Institute**, including the costs of winding up.

the Immediate Past President means the immediate past president of the Institute as discussed in clause 48.2.

the Honorary Registrar means the **Honorary Registrar** of the **Institute** as in clause 48.2, and includes any person for the time being performing the duties of the **Honorary Registrar**.

the Honorary Secretary means the **Honorary Secretary** of the Institute as in clause 48.2, and includes any person for the time being performing the duties of the **Honorary Secretary**.

the Honorary Treasurer means the **Honorary Treasurer** of the Institute as in clause 48.2, and includes any person for the time being performing the duties of the **Honorary Treasurer**.

the President means the **President** for the time being of the Institute as in clause 48.2.

The Awards Officer means the **Awards Officer** of the Institute as in clause 48.2, and includes any person for the time being performing the duties of the **Awards Officer**.

the Vice-President means the Vice-President for the time being of the Institute as in clause 48.2.

an **unfinancial** member means a member of the **Institute** who has not paid the required fees, subscriptions, or levies as defined in clause 11.

voting member means a person who has been admitted to the grade of Honorary Fellow, Fellow or Member by the **Institute**, in accordance with clauses 10 and 12, and who has the right to vote at meetings of the **Institute** in matters affecting its governance.

voting member present means, in connection with a **general meeting**, a **voting member** present in person, by representative or by proxy at the venue or venues for the meeting.

87. Reading this constitution with the Corporations Act

87.1 The replaceable rules set out in the **Corporations Act** do not apply to the **Institute**.

87.2 While the **Institute** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.

87.3 If the **Institute** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.

87.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

88. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).