



# Constitution

*I certify this document to be the text of the Constitution of The Real Estate Institute of New South Wales Limited  
ACN 000 012 457 as amended at the Annual General Meeting of the Institute held on 23 November 2023.*

A handwritten signature in black ink, appearing to read 'Peter Matthews', with a horizontal line extending to the right.

*Peter Matthews, Chair  
23 November 2023*

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## **PART 1**

### **PRELIMINARY**

#### **Name**

1. The name of the company is The Real Estate Institute of New South Wales Limited (ACN 000 012 457; ABN 51 000 012 457).

#### **Registered Office**

2. The registered office of the Institute is 30-32 Wentworth Avenue, Surry Hills, Sydney, or such other place in the State as the Board may determine from time to time.

#### **Objects**

3. The Institute exists to:
  - (a) promote the interests of Members and consumers in the property sector on property related issues to government and the community;
  - (b) promote and facilitate professional standards in Real Estate Practice;
  - (c) assist Members in the conduct of Real Estate Practice;
  - (d) promote the benefits of Institute Membership;
  - (e) promote the benefits of home ownership, property and business investment;
  - (f) provide professional and industry education in connection with Real Estate Practice;
  - (g) provide information to Members in connection with Real Estate Practice; and
  - (h) do anything ancillary to the activities referred to in Clauses 3(a) to 3(g).
4. Subject to this Constitution, the Institute can only exercise the powers in section 124(1) of the Act for the purpose of carrying out the Objects and doing all things incidental or convenient in relation to the exercise of such powers, but not otherwise.

#### **Liability**

5. The Institute is a not-for-profit company limited by guarantee and the liability of Members is limited in accordance with Clause 6.

## **Guarantee**

6. Each Member undertakes to contribute to the assets of the Institute an amount, as required, not exceeding twenty dollars (\$20.00) if it is wound up:
  - (a) while the person is a Member; or
  - (b) within a year after the person ceases to be a Member,such amount in aggregate to be used towards:
  - (c) payment of the Institute's debts and liabilities contracted before the person ceases to be a Member;
  - (d) payment of the costs, charges and expenses of winding up; and
  - (e) any adjustment of the rights of contributories among themselves.

## **Property and Income**

7. The property and income of the Institute, however derived, must only be applied towards the promotion of the Objects stated in Clause 3.
8. Income or property of the Institute must not be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any present or past Member. However, nothing in this Constitution will prevent payment in good faith, at fair and reasonable rates or rates more favourable to the Institute, to a Member:
  - (a) 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) for carrying out the Institute's Objects,  
(including the payment of rent or interest).
9. If any surplus remains following the winding up of the Institute, the surplus must not be paid to or distributed amongst Members (or former Members). That surplus must be given or transferred to a body (or bodies) which has:
  - (a) objects which are similar to the Objects;
  - (b) a constitution which requires its income and property to be applied in promoting its objects; and
  - (c) a constitution which prohibits it from paying or distributing its income and property amongst its members, to an extent at least as great as imposed on the Institute by Clause 8.

10. The identity of the body or bodies referred to in Clause 9 is to be determined:
- (a) by a Special Resolution of Members; or
  - (b) if the Members do not, or cannot, decide, then by seventy five (75) per cent of Directors; or
  - (c) failing the above, then by application to the Supreme Court of New South Wales for determination.

## PART 2

### DEFINITIONS

11. In this Constitution, unless the context or subject matter otherwise requires:

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

**"Agency Services Chapter"** has the meaning specified in the Chapters By-Law;

**"Annual General Meeting"** means the general meeting of the Institute required by the Act to be held annually;

**"Applicable Licensing Authority"** means a Government body responsible for regulating, in whole or in part, the practice of real estate in New South Wales;

**"Application Fee"** means any fee determined by the Board as payable for processing an application for Membership of the Institute;

**"Auctioneers' Chapter"** has the meaning specified in the Chapters By-Law;

**"Auditor"** means the auditor of the Institute appointed from time to time at an Annual General Meeting;

**"Board"** means, collectively, the Directors;

**"By-Law"** means an enactment by the Board under Clause 284;

**"Business Agents' Chapter"** has the meaning specified in the Chapters By-Law;

**"Business Day"** means a day that is not a Saturday, Sunday or public holiday in the State;

**"Buyers' Agents Chapter"** has the meaning specified in the Chapters By-Law;

**"Certificate of Registration Holder"** means a person who holds a current certificate of registration or its equivalent issued under the law of the State or Commonwealth of Australia that regulates the conduct of persons engaged in the practice of real estate;

**"Chair"** means the person holding the position of chairperson of the Board;

**"Chapter"** means a group of Members established under Clause 144;

**"Chapters By-Law"** means the By-Law that prescribes, from time to time,



the Institute's Chapters, eligibility requirements for nominating and being nominated to sit on a Chapter committee and the process for the election of Chapter Chairperson and Deputy Chapter Chairperson;

**"Chapter Chairperson"** means the chairperson of a Chapter;

**"Chief Executive Officer"** is the person appointed under Clause 272;

**"Commercial Chapter"** has the meaning specified in the Chapters By-Law;

**"Complaint"** means any complaint, accusation, charge or allegation arising from the conduct of a Member against another Member and which relates to any aspect of Real Estate Practice;

**"Concerns"** means any genuine concern by a Member about the conduct of another Member in connection with Real Estate Practice;

**"Constitution"** means this document and its contents, as supplemented or amended from time to time;

**"Deputy Chapter Chairperson"** means the deputy chairperson of a Chapter;

**"Deputy President"** is the person or persons for the time being elected as Deputy President under Clause 200;

**"Director"** means a person holding the position of a director of the Institute and **Directors** means the directors for the time being of the Institute or, as the context permits, such number of them as have authority to act for the Institute;

**"Director's Term"** means, in respect of each Elected Director with the exception of the Office Bearers and the Immediate Past President, the period commencing immediately after the Annual General Meeting at which that Director is elected and ending immediately after two (2) further Annual General Meetings have taken place;

**"Dispute"** means a difference, disagreement or dissent between Members arising from the conduct of Real Estate Practice;

**"Disputes Committee"** means a committee established under Clause 141 and Part 8;

**"Elected Directors"** means the Directors elected pursuant to Clauses 74(a), 74(b), 74(c), 74(d) and 74(e);

**"Entity"** means a sole trader, partnership, association, corporation, incorporated or unincorporated bodies, societies, cooperatives, joint venture, association, authority or trust or any combination thereof but does not include a natural person;

**"Executive"** means the Office Bearers;

**"Executive Director"** means a Director who is also an employee of the Institute;

**"Financial Year"** means the period commencing on 1 July and ending on 30 June the next year;

**"General Meeting"** means a general meeting of Members of the Institute which is not an Annual General Meeting;

**"Guarantee Amount"** means the amount specified in Clause 6.

**"Honorary Member"** has the meaning specified in the Membership By-Law;

**"Immediate Past Chapter Chairperson"** is the person who served as Chapter Chairperson immediately before the commencement of the current Chapter Chairperson's term;

**"Immediate Past President"** is the person who served as President of the Institute immediately before the commencement of the current President's Term;

**"Immediate Past President's Term"** means the period commencing immediately after the Annual General Meeting at which the Immediate Past President's term as President expires and concluding immediately after the Annual General Meeting in the year following;

**"Institute"** means The Real Estate Institute of New South Wales Limited ACN 000 012 457, ABN 51 000 012 457;

**"Levy"** means the amount levied by the Board pursuant to Clause 60;

**"Licensed"** means a person who holds a current licence issued under the laws of New South Wales that regulates the conduct of persons engaged in the practice of real estate;

**"Life Fellow"** has the meaning specified in the Membership By-Law;

**"Member"** is a person admitted as a member of the Institute within a category specified in Clause 21 and whose Membership has not been terminated.

**"Membership"** means membership of the Institute held by a Member;

**"Membership By-Law"** means the By-Law that prescribes, from time to time, the categories of the Institute's Membership for which persons are admitted as Members;

**"Membership Subscription"** means the amount fixed by the Board pursuant to Clause 57;

**"Non-Sydney Metropolitan Area"** means the local government areas as determined by the Institute from time to time.

**"Objects"** means the objects for which the Institute is established and described in Clause 3;

**"Office"** means an appointment as a Director, Office Bearer, or in a capacity to any body established by or under this Constitution;

**"Office Bearers"** are, collectively, the President, the President-Elect (if applicable) and the Deputy President(s);

**"Officer"** has the same meaning as in section 9 of the Act;

**"Past President"** is a person who was previously a President of the Institute, and includes the Immediate Past President;

**"Positions for Election"** means the positions of Elected Directors which must become vacant:

- (a) on expiry of the Director's Term of any Elected Director (with the exception of the President, President-Elect and the Immediate Past President); and
- (b) on expiry of the President's Term with respect to the position within the meaning of Clauses 74(a), 74(b), 74(c), 74(d) or 74(e), which was held by that President during the President's Term;

**"President"** is the person for the time being elected as President of the Institute under Clauses 193, 197 or 198;

**"President-Elect"** is the person elected pursuant to Clause 193 to serve as the Institute's future President;

**"President-Elect's Term"** means the period commencing immediately after the Annual General Meeting at which the President-Elect is elected and concluding immediately after the next Annual General Meeting;

**"President's Term"** means the period commencing immediately after the expiration of the President-Elect's Term and concluding immediately after two (2) further Annual General Meetings have taken place;

**"Professional Indemnity Insurance"** means a contract of insurance that in whole, or in part, indemnifies a person against civil liability, including liability for costs, arising from any aspect of Real Estate Practice;

**"Professional Standards"** means any professional standards prescribed for the purposes of Clause 258;

**"Real Estate Practice"** means the activities carried out by a person, a real estate agency or business in connection with the purchase, sale, auction, exchange, lease, management, valuation or assignment of real estate, stock or businesses;

**"Region"** means a region of the Institute established under Clause 161;

**"Register"** means the register of Members within the meaning of Clause 39;

**"Registered Office"** means the registered office of the Institute set out in Clause 2;

**"Remuneration"** means a salary or fee but does not include any payment by way of compensation for loss of Office or in connection with a person's retirement from Office;

**"Replaceable Rules"** means the replaceable rules applicable to a public company limited by guarantee set out in the Act;

**"Residential Property Management Chapter"** has the meaning specified in the Chapters By-Law;

**"Residential Sales Chapter"** has the meaning specified in the Chapters By-Law;

**"Returning Officer"**, unless otherwise determined by the Board, is the Chief Executive Officer;

**"Seal"** means the Common Seal of the Institute;

**"Secretary"** is the person appointed for the purpose of the Act and, unless otherwise determined by the Board, is the Chief Executive Officer;

**"Special Resolution"** means a resolution passed by at least seventy five (75) per cent of Members present and entitled to vote on the resolution;

**"State"** means the State of New South Wales;

**"Strata Management Chapter"** has the meaning specified in the Chapters By-Law;

**"Sydney Metropolitan Area"** means the local government areas as determined by the Institute from time to time;

**"Valuers' Chapter"** has the meaning specified in the Chapters By-Law; and

**"Voting Rights By-Law"** means the By-Law that prescribes, from time to time, the voting rights (if any) of each category of Members and the powers (if any) to nominate or be nominated as a Director, and forms part of this Constitution.

## **Interpretation**

12. In this Constitution, unless the context or subject matter otherwise requires:
- (a) a reference to legislation includes an amendment or successive enactment thereof;
  - (b) the singular includes the plural and vice versa;
  - (c) a reference to a Clause is a reference to a clause of this Constitution;
  - (d) a reference to an agreement or document, including this Constitution, is to the agreement or document that exists from time to time;
  - (e) an expression defined in, or given a meaning for the purposes of the Act has the same meaning as in the Act;
  - (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
  - (g) a power, authority, duty or discretion means the power, authority, duty or discretion exercised from time to time;
  - (h) where an expression is defined in this Constitution it has the same meaning throughout;
  - (i) a reference to a person includes a natural person or an Entity and is also a reference to the legal personal representative of the person; and
  - (j) "including" and similar expressions are not words of limitation.
13. Headings of Clauses and marginal notes are included for reference only and do not affect the interpretation of this Constitution.
14. If a period of time is calculated from a particular day, act or event (such as the giving of a notice), it is to be calculated exclusive of that day, or the day of that act or event.
15. A power in this Constitution to do any act or thing includes a power to amend or revoke that act or thing.
16. If any doubt arises as to the proper meaning of this Constitution, the interpretation of the Board is, subject to the law, conclusive and must be recorded in the minutes of the meeting at which the interpretation is made.
17. This Constitution displaces the Replaceable Rules and the Replaceable Rules do not apply to the Institute.
18. This Constitution is to be interpreted subject to the Act and if the provisions of the Act conflict with the provisions of this Constitution, the provisions of the Act will prevail.

19. The By-Laws are to be interpreted subject to this Constitution and if the provisions of the Constitution conflict with the provisions of the By-Laws, the provisions of the Constitution will prevail.

## **PART 3**

### **MEMBERSHIP**

#### **Unlimited Members**

20. The Institute must have at least ten (10) Members and the number of Members is unlimited.

#### **Categories of Membership**

21. Membership of the Institute comprises persons admitted as Members in the categories for Membership as set out in the Membership By-Law. The Membership of the Institute will be determined by the Board and may be varied by the Board from time to time by way of a special resolution of the Board with approval from 75% of the Directors to vary the Membership By-Law.

#### **Life Fellow**

22. The Board may grant a person, who has given long, continuous and outstanding service to Real Estate Practice and the Institute, life Membership.
23. A Life Fellow is entitled to all the rights and privileges attaching to Membership.

#### **Members Rights and Privileges**

24. Subject to this Constitution, the Board may determine the rights and privileges attaching to a category of Membership.
25. The rights, privileges and obligations of a Member are personal and may not be assigned to another person. Such rights and privileges must terminate on cessation of a person's Membership.
26. Subject to this Constitution, the voting rights attaching to a category of Membership are set out in the Voting Rights By-Law. The Board may, from time to time, vary the Voting Rights By-Law by way of a special resolution of the Board with approval of 75% of the Directors to vary the Voting Rights By-Law, but such variation of the Voting Rights By-Law will only extend to adding new categories of Membership or amending existing categories of Membership provided that such amendment will not prejudice the rights of those existing categories of Membership.

#### **Eligibility Criteria for Membership**

27. To be eligible for Membership and to be a Member, a person must, if applicable:

- (a) agree to comply with the Constitution and the By-Laws and any other requirements that may be prescribed by the Board for a category of Membership;
- (b) agree to be bound and comply with any code, policy or standard that may be prescribed or otherwise determined by the Board for the conduct of Real Estate Practice;
- (c) pay any Membership Subscription and/or any applicable Levy;
- (d) if required to be Licensed to engage in Real Estate Practice, be Licensed;
- (e) hold any Professional Indemnity Insurance, as determined by the Board;
- (f) satisfy the Institute that no moneys are outstanding to the Institute from the applicant; and
- (g) agree to payment of the Member's Guarantee Amount as where required under Clause 6.

and must not:

- (h) within five (5) years prior to applying for Membership, have been an undischarged bankrupt, had suspended payment of debts or had compromised with the person's creditors;
- (i) within ten (10) years prior to applying for Membership, within Australia or elsewhere, have been convicted of an offence involving fraud or dishonesty and punishable by imprisonment;
- (j) be of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (k) be a person who is a controlling shareholder or a director of a company that is ineligible for Membership under Clause 28;
- (l) be a person who was concerned with the direction and control of a company that, within five years prior to applying for Membership, was liquidated (except for the purpose of reconstruction or amalgamation) or had a receiver appointed in respect of any of its assets or which had suspended payment of its debts or had compromised with its creditors;  
or
- (m) be in partnership with a person who is ineligible for Membership.

28. A company is ineligible for Membership if it:

- (a) is in liquidation (except for the purpose of reconstruction or amalgamation), has had a receiver appointed in respect of any of its assets, suspended payment of its debts or has compromised with its



creditors; or

- (b) has a shareholder or director who is ineligible for Membership in accordance with Clause 27.

### **Application for Membership**

- 29. An application for Membership must:
  - (a) be in writing in a form determined by the Board; and
  - (b) be lodged with the Secretary or as delegated by the Secretary from time to time.
- 30. The Board may require the applicant to provide such further information as it deems necessary.

### **Application Fees**

- 31. An application for Membership must be accompanied by the applicable Application Fee.

### **Application Determination**

- 32. As soon as practicable after receiving an application for Membership, the Secretary must submit the application to the Board which has the power to:
  - (a) determine whether to approve or reject the application; or
  - (b) delegate the determination of the application to such persons within the Institute as it may prescribe from time to time; and
  - (c) if a determination of the application has been made, ratify that determination.
- 33. The Board must, if practicable, determine an application for Membership no later than two (2) months after it is received.
- 34. The applicant must be given written notice of the determination of an application for Membership as soon as practicable.
- 35. The Board is not required to provide the applicant with any reason for its acceptance or rejection of the application.

### **Membership Appeals Process**

- 36. A person whose application for Membership has been rejected under Clause 32, may appeal the decision, by written notice that includes the grounds for the appeal, to the Chief Executive Officer no later than fourteen (14) days after notice is given of the decision.

37. An appeal must be considered in accordance with a procedure prescribed by the Board from time to time.

### **Approval of Application for Membership**

38. Where the Board approves an application for Membership, the Secretary must enter the applicant's details in the Register and, on the details being so entered, the applicant becomes a Member.

### **Register of Members**

39. A Register must be kept which complies with the Act and includes the following particulars:
- (a) the name and address (including any electronic mail address) of each Member;
  - (b) the date when the Member was admitted to Membership;
  - (c) the Member's category of Membership;
  - (d) the Chapter to which the Member nominates;
  - (e) any Office held by the Member;
  - (f) if the Member is a corporation, the name of its principal representative; and
  - (g) the date a person ceased to be a Member.
40. A Member must promptly notify the Institute of a change in the details of the Member recorded in the Register.

### **Resignation of Member**

41. A Member may, by written notice to the Institute, resign as a Member with effect immediately or from a specified date occurring after the date of the notice, being not more than thirty (30) days after notice is given.
42. Where a Member resigns, pursuant to Clause 41, that Member continues to be liable for:
- (a) any monies (including, without limitation, the Membership Subscription and Levy (if applicable)) due by the Member to the Institute; and
  - (b) any sum for which the Member is liable as a Member of the Institute under Clause 6.

### **Membership Entitlements not transferable**

43. A right, privilege or obligation which a person has by reason of being a Member:
- (a) is not capable of being transferred or transmitted to another person; and
  - (b) terminates on cessation of the person's Membership.

### **Discipline and Cessation of Membership**

44. If a Member:
- (a) dies (in the case of a natural person);
  - (b) no longer satisfies the criteria for its respective category of Membership (unless transferred to another category of Membership by the Board);
  - (c) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the person's joint or separate estate generally;
  - (d) is a body corporate and:
    - (i) dissolves or otherwise ceases to exist;
    - (ii) has:
      - (A) a receiver;
      - (B) a receiver and manager;
      - (C) a liquidator;
      - (D) an administrator;
      - (E) an administrator of a deed of company arrangement; or
      - (F) a trustee or other person administering a compromise or arrangement between the Member and someone else, appointed to it;
  - (e) ceases to be Licensed if it is required to be Licensed to engage in Real Estate Practice;
  - (f) cannot be located upon reasonable enquiry;
  - (g) has not responded within one (1) month to a written request from the Secretary that they confirm in writing that they want to remain as a Member; or

- (h) fails to pay the Membership Subscription or Levy (if applicable),  
the Board may, in its absolute discretion, either cancel or suspend the Member's Membership.
45. If a Member:
- (a) no longer meets, as appropriate, the requirements in Clause 27;
  - (b) engages in conduct resulting in a payment from a compensation scheme operated by the Applicable Licensing Authority;
  - (c) seriously or repeatedly fails to meet any Professional Standards in force;
  - (d) engages in conduct prejudicial to the interests of the Institute, its Members or the public; or
  - (e) refuses or fails to comply with a decision of the Disputes Committee,  
the Board, in its absolute discretion, or such other committee, department of the Institute or persons as the Board may prescribe from time to time, may do any of the following:
    - (f) cancel or suspend the Membership;
    - (g) caution or reprimand the Member; or
    - (h) take no action.
46. A Member who is knowingly associated with conduct described in Clause 45 may be dealt with under that Clause as if the Member was the Member who engaged in that conduct.
47. The Board may act under Clause 44 at any time.
48. The Board may only act under Clause 45 if the Member has fourteen (14) days' written notice of:
- (a) the grounds on which the Board is considering action; and
  - (b) the date, time and place when the Board will consider the matter.
49. A Member who receives a notice under Clause 48 may make written submissions to the Board.
50. As soon as practicable after the Board's decision under Clauses 44 and 45, the Member affected must be given written notice of, and the reasons for, the decision.
51. If an appeal is lodged against a decision of the Institute under Clauses 36 or

37, until the appeal is determined by the Board, a decision to cancel Membership operates as a suspension and any other decision is stayed.

52. Where a Member's Membership is suspended or cancelled, pursuant to Clauses 44 and 45, that Member continues to be liable for:
- (a) any monies (including, without limitation, the Membership Subscription and Levy (if applicable)) due by the Member to the Institute in accordance with the procedure and policy of the Institute;
  - (b) if applicable, the Member's Guarantee Amount; and
  - (c) any sum for which the Member is liable as a Member of the Institute under Clause 6.
53. In the event Membership ceases, the former Member must:
- (a) return to the Institute, as soon as practicable, any property owned by the Institute; and
  - (b) not display any material that may infer the person is a Member.

### **Suspension of Membership**

54. A period of suspension imposed under Clauses 44 and 45 must not exceed twelve (12) months.
55. A person suspended from Membership, during the period of suspension, has the obligations, but not the rights and privileges, of a Member.
56. If a Member that is a corporation is suspended, during the period of suspension, all of its employees who are Members have the obligations, but not the rights and privileges, of their Membership category.

### **Annual Membership Subscription**

57. The Board may fix the amount of an annual Membership subscription to be paid by each Member, other than a Life Fellow and Honorary Member.
58. The Membership Subscription fixed under Clause 57 may vary between Members according to any criteria determined by the Board.
59. The Membership Subscription may include an amount to be paid for Membership of a Chapter.

### **Levy**

60. The Board may, in addition to a Membership Subscription, impose a Levy on one (1) or more categories of Member, such Levy to be used for the purpose specified.

61. The Levy fixed under Clause 60 may vary between Members according to any criteria determined by the Board.

### **Payment**

62. Unless otherwise determined by the Board or the Institute, a Membership Subscription and Levy is payable:
- (a) if the whole amount is to be paid by lump sum, no later than 30 June in the year immediately before the commencement of the financial year to which the Membership relates; or
  - (b) if the Membership Subscription is to be paid by instalments, by equal monthly instalments commencing no later than thirty (30) days after the date of the relevant invoice.

### **Unpaid Membership Subscription or Levy**

63. If a Membership Subscription or Levy is due and unpaid, the Member, unless otherwise determined by the Board or the Institute, is not entitled to the rights and privileges of a Member, may have their access to any Membership benefits suspended or may have their Membership cancelled.

### **Waiver and Refund**

64. The Board or the Institute may waive payment of all or any part of the money due by a Member for a Membership Subscription or Levy.
65. Unless otherwise determined by the Board or the Institute, a person may not be entitled to a refund of the whole or any part of a Membership Subscription or Levy if the person ceases to be a Member.

### **Proof**

66. If, in an action to recover money for a Membership Subscription or Levy, it is shown:
- (a) the Board fixed the Membership Subscription or Levy;
  - (b) a person appears in the Register as a Member in respect of whom the Membership Subscription or Levy was fixed; and
  - (c) notice of the Membership Subscription or Levy was given to the person in accordance with this Constitution,

this is conclusive proof of the debt without it being necessary to prove any other matter.

## **PART 4**

### **ORGANISATION**

#### **General**

67. The activities of the Institute are conducted under this Constitution through the structure and functions of its Board, Executive, committees and Chapters.

#### **BOARD OF DIRECTORS**

##### **Function**

68. The direction and control of the Institute is vested in the Board, which may exercise the power, authority and discretion conferred on it by this Constitution, and that is not required by the Act to be exercised in General Meeting or in any other manner.
69. A resolution of a General Meeting does not invalidate a prior act of the Board that would otherwise have been valid.
70. The Board must, prior to the commencement of a Financial Year, approve a business plan and budget for that year.
71. The Board may delegate its power, authority and discretion, except its power of delegation, to the Executive and such other committees or persons as it may prescribe from time to time.

##### **Eligibility**

72. Subject to Clause 74, a person is eligible to be an Elected Director if the person is a Member who:
- (a) is Licensed;
  - (b) is principally engaged in the area of Real Estate Practice specific to the category of directorship in which they wish to be a Director;
  - (c) has been engaged in Real Estate Practice for at least twelve (12) months immediately prior to nomination;
  - (d) has given the Institute their signed consent to act as a Director of the Institute;
  - (e) is not ineligible to be a Director under the Act; and
  - (f) subject to Clause 83, has not served a maximum of four (4) Director's Terms whether consecutively or cumulatively. For the avoidance of

doubt, if a Director has served 3.5 Director's Terms at the time of election at the Annual General Meeting then they are eligible for election for another Director's Term.

73. Notwithstanding Clause 72, a person is eligible to be a Director appointed pursuant to Clause 74(g) if that person satisfies the eligibility criteria for this type of Director, as determined by the Board from time to time.

### **Composition**

74. The Directors may comprise:
- (a) up to four (4) persons principally engaged in Real Estate Practice in the Sydney Metropolitan Area;
  - (b) up to four (4) persons principally engaged in Real Estate Practice in the Non-Sydney-Metropolitan Area;
  - (c) a person principally engaged in strata management Real Estate Practice;
  - (d) a person principally engaged in commercial/industrial Real Estate Practice;
  - (e) a person principally engaged in residential property management Real Estate Practice;
  - (f) if there is an Immediate Past President, the Immediate Past President; and
  - (g) if so determined by the Board, persons appointed by the Board for a term of one (1) year, and on such other terms as determined by the Board in its absolute discretion, provided that the term commences immediately following the appointment or immediately following the first Board meeting after the Annual General Meeting held prior to the appointment, whichever occurs first, and ends at the conclusion of the first Board meeting following the next Annual General Meeting. For the avoidance of doubt, the rights and privileges of a Director appointed to the Board pursuant to this Clause are the same as those of an Elected Director except that Clause 82 does not apply to a Director appointed under this Clause and Clause 83(a).

75. The Chair of the Board is the President.

### **Vacancy**

76. A person ceases to be a Director, and the office of that Director becomes vacant, if a person:
- (a) dies;



- (b) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (c) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (d) is removed from Office by the Institute in General Meeting;
- (e) becomes prohibited from being a director of, or managing a company by reason of any order made under the Act or any other applicable law;
- (f) with respect to an Elected Director, is no longer a Member;
- (g) resigns as a Director by written notice to the Secretary and the resignation must take effect at the time expressed in the notice (provided the time is not earlier than the date of service of the written notice to the Secretary);
- (h) unless the Board determines otherwise, is absent from three (3) consecutive or four (4) cumulative Board meetings during the period of 12 months from one Annual General Meeting to the next;
- (i) being a person within the meaning of Clauses 74(a) or 74(b), is no longer engaged in Real Estate Practice within the relevant area; or
- (j) being a person within the meaning of Clauses 74(c), 74(d) or 74(e), is no longer engaged in Real Estate Practice within the relevant field of practice.

### **Casual Appointments**

- 77. Subject to Clauses 78 and 79, an appointment to a vacancy arising in an appointment under Clauses 74(a), 74(b), 74(c), 74(d), 74(e) or 74(g) must be made by the Board and must be made in accordance with the requirements of the applicable vacancy.
- 78. The Board may allow a Director whose office is vacated under Clauses 76(f), 76(i) or 76(j) to retain office, but only for a period not exceeding three (3) months.
- 79. The Board may decline to make an appointment to a vacant position but only if there are a minimum of ten (10) Directors.

### **Term**

- 80. Subject to Clauses 84, 85, 86, and 87, a person holds office as a Director for that person's Director's Term.
- 81. Each year, the positions which become Positions for Election at the conclusion of that year's Annual General Meeting must be open for election.

- Subject to Clause 82, the Directors whose positions are due to become Positions for Election are eligible for re-election.
82. Subject to Clause 72(f), an Elected Director can serve a maximum of four (4) Director's Terms.
  83. Notwithstanding Clause 72(f), an Elected Director can serve a maximum of four (4) Director's Terms either consecutively or cumulatively, however, an Elected Director may hold position as Director after the expiry of the fourth Director's Term as follows:
    - (a) by appointment of the Board pursuant to Clause 74(g); or
    - (b) by re-election after the expiry of three (3) years from the date on which their last Director's Term ends, unless appointed under Clause 83(a) in which case the three (3) year period is reduced by any amount of time the person served as an appointed Director under Clause 83(a). If a Director is elected under this Clause, then they may serve a maximum of two (2) consecutive Director's Terms and cannot be re-elected after the expiry of the second of the Director's Terms voted pursuant to this Clause. By way of example, a Director who has been appointed under Clause 83(a) and has served one (1) year as an appointed Director will have a two (2) year hiatus period remaining before they can be re-elected under this Clause.
  84. The President-Elect holds Office as President-Elect for the President-Elect's Term.
  85. The President holds Office as President for the President's Term.
  86. The Immediate Past President holds Office as Immediate Past President for the Immediate Past President's Term unless they resign.
  87. The Deputy President(s) (if any) holds Office as Deputy President(s) for such period as the Board determines from time to time.
  88. A person appointed to fill a casual vacancy pursuant to Clause 77 holds Office for the unexpired portion of the Director's Term of the Director whose position the person is appointed to fill.
  89. Where a person is:
    - (a) appointed to fill a casual vacancy, the term of the appointment must be counted for the purposes of Clause 82; or
    - (b) elected as an Office Bearer, the term of the election must not be counted for the purposes of Clause 82.
  90. The President can be re-elected or appointed by the Board as President and Director, such further term to commence immediately after the expiry of the

President's Term and must be treated as the "President's Term" or "Director's Term", as applicable.

91. A Past President cannot, at any time, be re-elected either as President or as a Director, unless the Past President has been re-elected or appointed pursuant to Clause 90.

### **Attorney**

92. The Board may appoint a person for a specified time to be an attorney of the Institute for the purposes of and with the powers specified in, the power.

### **Remuneration**

93. A Director is:
- (a) subject to Clause 94, not entitled to Remuneration merely for acting in its capacity as a Director, however is entitled to Remuneration not above reasonable market-rate for work as an employee where the Director is also an employee of the Institute;
  - (b) entitled to reasonable out of pocket expenses incurred associated with Institute business as may be determined by the Board; and
  - (c) entitled to payment for goods and services supplied to the Institute in the ordinary course of business, other than in their capacity as Director, where the provision of the goods or services has the prior approval of the Board.
94. The Board may determine that a Director appointed pursuant to Clause 74(g) is entitled to Remuneration on such terms (including the amount) as determined by the Board in its absolute discretion.
95. Notwithstanding Clause 93, the President is entitled to an allowance and expenses for the conduct of official duties as the Board may determine.

### **Contracts**

96. The Institute may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
97. A Director who has an interest in a contract or arrangement made by the Institute and has disclosed this interest to the Board, subject to compliance with applicable provisions of the Act, may:
- (a) not vote on the matter;
  - (b) still be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or

- proposed contract or arrangement;
  - (c) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (d) not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
98. A Director's failure to make disclosure under Clause 97 does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

### **Interests**

99. Without limiting the application of the Act, Directors must disclose any interest or conflict of interest they have in the business of the Institute.
100. A declaration may be oral or in writing and its terms must be recorded in the minutes of the Board meeting at which the declaration was made, pursuant to Clause 122.

### **Office Bearers**

101. A position of Office Bearer is vacant if the person:
- (a) ceases to be a Director under Clause 76; or
  - (b) resigns as an Office Bearer by written notice to the Secretary.
102. If a vacancy occurs amongst the Office Bearers, the Board (other than the relevant Office Bearer) must, at the first meeting of the Board after the relevant position becomes vacant, elect one (1) Director (other than the relevant Office Bearer) by popular vote of the Board to fill the vacancy.

### **Alternate Directors**

103. Alternate Directors are not permitted.

### **Meetings of Directors**

104. The Board determines:
- (a) where it will meet;
  - (b) the frequency of meetings, which must be at least four (4) times in each Financial Year; and
  - (c) how its meetings are conducted.
105. A Director not physically present at a meeting of the Board may be permitted to participate in the meeting by the use of technology that allows that

Director and the Directors present at the meeting to clearly and simultaneously communicate with each other.

106. A Director participating in a meeting of the Board as permitted under Clause 105 is taken to be present at the meeting and, if the Board votes at the meeting, is taken to have voted in person.
107. The Chair must chair meetings of the Board, but if the Chair is absent, unwilling or unable to act, or is otherwise not present within fifteen (15) minutes after the time appointed for the holding of the meeting, then the President-Elect, and in the absence of the President-Elect the Deputy President, must take the chair.
108. In the event that neither the President, President-Elect or Deputy President takes the chair due to being absent, unwilling or unable to act or otherwise not present within fifteen (15) minutes after the time appointed for the holding of the meeting, the Directors present must choose one from amongst them to chair the meeting.

### **Notice**

109. A Director may at any time, and the Secretary upon the request of a Director must, convene a meeting of the Board by giving at least seven (7) days' written notice of the meeting to all Directors, unless at least seventy-five (75) per cent of the Board decides on a shorter notice period, which may be given electronically, but a failure to give notice does not affect the validity of convening the meeting.

### **Quorum**

110. The quorum for meetings of the Board is a majority of Directors.
111. A quorum must be present at all times during the meeting.

### **Voting**

112. Each Director has a single vote.
113. A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors must for all purposes be taken to be a determination of the Board.
114. In the event there is a deadlock of votes at the meeting of the Board, the Chair has a casting vote.
115. A declaration by the Chair that a resolution is carried unanimously, or by a majority or lost and an entry to that effect is made in the minutes is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

### **Resolution in Writing**

116. The Board may pass a resolution without a Board meeting being held if a majority of Directors sign a document containing a statement that they are in favour of the resolution.
117. The resolution will be deemed to have been passed at a meeting of the Board on the day and time at which the document was last signed by a Director.
118. Each Director 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.
119. An email which is received by the Institute, contains statements as required by Clause 116 and which purports to have been sent by a Director, will for the purposes of Clause 116, be taken to be in writing and signed by that Director at the time of the receipt of the email by the Institute.
120. A vote made by a Director using an online voting platform operated or commissioned by the Institute will, for the purposes of Clause 116, be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.

### **Rescission of Resolution**

121. The Board may rescind a Board resolution at a subsequent Board meeting if:
  - (a) for a resolution that was unanimously passed, the Board unanimously votes in favour of rescinding that resolution;
  - (b) for a resolution that was passed by special resolution, the Board by special resolution votes in favour of rescinding that resolution; or
  - (c) for a resolution that was passed by a majority of the Board, the majority of the Board votes in favour of rescinding that resolution.

### **Minutes**

122. The Board must cause minutes to be kept in such a manner as is required by the Act (which can be in electronic form if not prohibited by the Act) for the purpose of recording:
  - (a) the names of Directors present at meetings and Directors present at each meeting of any committee;
  - (b) all proceedings, orders and resolutions of the Board and of any

committee; and

(c) such matters as are required by the Act.

123. The minutes must be approved, with or without amendment, at the next meeting of the Board and signed by the person chairing that meeting.

## **EXECUTIVE**

124. An Executive is established comprising the Office Bearers.

125. The President is chairperson of the Executive.

126. The chairperson of the Executive must chair meetings of the Executive, and if the President is absent, unwilling or unable to act then the President-Elect must take the chair. If the President-Elect is also absent, unwilling, unable to act, or if there is no President-Elect, then a chairperson is elected from the Office Bearers in attendance at the relevant meeting.

127. The quorum for a meeting of the Executive is three (3) Office Bearers.

128. If a quorum is not present within thirty (30) minutes after the time appointed for the meeting, it stands adjourned to the same day, time and place of the next week, or as otherwise agreed by the Executive.

129. If at the adjourned meeting a quorum is not present, the meeting of the Executive is taken to be cancelled.

130. The Board may, from time to time, delegate such powers and authorities to the Executive, as determined by the Board.

131. The Executive may exercise the power, authority and discretion delegated to it by the Board.

132. The Executive determines:

(a) where it will meet;

(b) the frequency of meetings; and

(c) subject to Clauses 133, 134 and 135, how its meetings are conducted.

133. The Executive must cause minutes to be made of the names of persons present at meetings, together with the proceedings and resolutions passed by the Executive.

134. The minutes must be approved, with or without amendment, at the next meeting of the Executive and signed by the person chairing the meeting.

135. Resolutions of the Executive, except a resolution referring a matter for consideration by the Board, must be unanimous.

136. The Executive may pass a resolution without a meeting being held if all the Executive sign a document containing a statement that they are in favour of the resolution.
137. For the purposes of Clause 136, each member of the Executive 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.
138. The resolution will be deemed to have been passed at a meeting of the Executive on the day and time at which the document was last signed by an Office Bearer.
139. Each Office Bearer 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.
140. In the event there is a deadlock of votes at a meeting of the Executive, the Board may determine the outcome of the resolution.

### **STANDING COMMITTEES**

141. The Board may form and delegate any of its powers to a committee consisting of such Directors and of other persons as the Board thinks fit and may from time to time revoke such delegation.
142. The Board must appoint the chairpersons and members of these committees for a period not exceeding the President's Term.
143. A committee may meet on such occasions as are approved by the Board and, subject to the requirement that its proceedings and resolutions be recorded in writing, determine how its meetings are conducted.

### **CHAPTERS**

144. The Board may form and delegate any of its powers to a Chapter consisting of such Directors and other persons as it thinks fit and may, from time to time, revoke such delegation, and may create rules (including rules and criteria for Chapter Membership) for those Chapters as it sees fit.



145. Pursuant to Clause 144, the Institute may have these Chapters:
- (a) Agency Services Chapter;
  - (b) Auctioneers' Chapter;
  - (c) Business Agents' Chapter;
  - (d) Buyer's Agents' Chapter;
  - (e) Commercial Chapter;
  - (f) Residential Property Management Chapter;
  - (g) Residential Sales Chapter;
  - (h) Strata Management Chapter;
  - (i) Valuers' Chapter; and
  - (j) any other Chapter determined by the Board without the need to change this Clause 145 of the Constitution.
146. The Board may dissolve Chapters of the Institute as it deems appropriate from time to time.
147. A Chapter:
- (a) monitors and reports to the Board on matters affecting Chapter members in Real Estate Practice;
  - (b) contributes to the development and delivery of Institute services; and
  - (c) makes recommendations to the Board on Professional Standards, including accreditation, that should be required of Members in the conduct of the discipline of Real Estate Practice specific to the Chapter.
148. A Member may join one or more Chapters.
149. The activities of a Chapter must, subject to Clause 150 and any direction from the Board, be controlled and managed by a committee of not more than twelve (12) Chapter members who are engaged in the discipline of Real Estate Practice specific to that particular Chapter.
150. If, during the President's Term, a Member applies to the Institute to sit on a Chapter committee, then the Institute may determine whether to accept or reject the application, irrespective of whether or not the Committee already comprises twelve (12) members.
151. The following provisions apply to the selection of Chapter committee members and are subject to the Chapters By-Law:

- (a) subject to Clause 151(b), Chapter committee members are elected by Chapter members for the duration of the President's Term;
  - (b) if there are less than twelve (12) elected persons on a Chapter committee, then the President may, at the President's discretion, appoint Chapter committee members for the remainder of that President's Term;
  - (c) a Chapter committee member must be a Member principally engaged in Real Estate Practice specific to their Chapter; and
  - (d) a Chapter committee member must have been engaged in Real Estate Practice for a period of twelve (12) months immediately prior to nomination.
152. The President, or a nominee of the President, must convene a meeting of Chapter committee members as soon as practicable after their election, at which meeting Chapter committee members must elect from those who have nominated and are eligible to act as Chapter Chairperson and Deputy Chapter Chairperson for the relevant Chapter committee pursuant to the election process set out in the Chapters By-Law.
153. Where no nominations are received for the position of Chapter Chairperson or Deputy Chapter Chairperson, the Board may appoint a person to the position, in its sole discretion and with the consent of that person, for the President's Term.
154. The Chapter Chairperson and Deputy Chapter Chairperson of a Chapter are elected for the President's Term.
155. After the expiry of their term under Clause 154, the Chapter Chairperson must sit on the Chapter committee as Immediate Past Chapter Chairperson unless they resign.
156. Subject to Clause 153, the Immediate Past Chapter Chairperson may be elected as Chapter Chairperson or as a Chapter committee member for the President's Term immediately following the expiry of their term as Immediate Past Chapter Chairperson.
157. Where there is a vacancy in the office of Chapter Chairperson or Deputy Chapter Chairperson, a Chapter committee member must be elected (in accordance with the election process set out in the Chapters By-Law) and, if there are no nominees to elect, then as appointed by the Board pursuant to the process set out in the Chapters By-Law to fill that vacancy.
158. A Chapter committee member may be removed from a Chapter committee at any time at the sole discretion of the President acting on advice of the relevant Chapter Chairperson.

159. The Institute may determine:

- (a) the occasions on which a Chapter committee may meet; and
  - (b) subject to the requirement that resolutions be recorded in writing, how Chapter committee meetings must be conducted,
- unless otherwise specified or determined by the Board.

160. The quorum for a Chapter committee meeting is a majority of Chapter committee members.

## **REGIONS**

161. The Board may establish, and delegate any of its powers to, Regions against any criteria it considers appropriate and may, from time to time, revoke such delegation and/or dissolve such Regions as it considers appropriate.

## **PRESIDENT**

162. In addition to any role required by this Constitution or the Act, the President:

- (a) is one of the official spokespersons for the Institute;
- (b) officiates at all major Institute functions;
- (c) leads the Institute in contact with its stakeholders; and
- (d) provides leadership and guidance to the Chief Executive Officer and staff of the Institute on strategic and governance issues associated with implementing the business plans and budgets approved by the Board.

163. The role of the President under Clause 162 may be delegated to another person as approved by the President.

## **SECRETARY**

164. There must be at least one (1) Secretary appointed by the Board on conditions determined by the Board and in accordance with the Act.

165. The Board may remove any appointed Secretary.

166. The role of the Secretary includes (but is not limited to):

- (a) maintaining the Register; and
- (b) maintaining the minutes and other records of General Meetings (including notices of meetings), Board meetings and circular resolutions.

## **PART 5**

### **ELECTIONS**

167. The Returning Officer is responsible for the direction and control of elections under this Part.
168. An election under this Part must be conducted by a majority vote by those entitled to vote upon such elections.

#### **Electronic Voting**

169. The Board may from time to time determine that a Member may record their vote using an electronic voting system.
170. If the Board makes such a determination:
- (a) a Member may vote by electronic means, but may vote only once;
  - (b) the Returning Officer must ensure the provision of an interactive copy of the ballot paper in a secure online system to facilitate voting by electronic means and make available to each Member all information reasonably necessary to facilitate voting by electronic means;
  - (c) the online system must ensure that a Member cannot vote by electronic means more than once in the election;
  - (d) a Member who votes by electronic means must ensure that their vote is submitted to the Returning Officer in accordance with any instructions given for voting by electronic means; and
  - (e) the Returning Officer must cause all votes received by electronic means to be recorded in such a way that they cannot subsequently be identified with any particular Member.

#### **Board of Directors**

171. Not less than ninety (90) days before each Annual General Meeting, the Returning Officer must invite nominations from persons eligible for election as Elected Directors in respect of those positions which are due to become Positions for Election at the conclusion of that Annual General Meeting. The Returning Officer may do this by post, email or in such other manner as determined by the Returning Officer.
172. An eligible person may only nominate for election as a Director under one (1) of Clauses 74(a), 74(b), 74(c), 74(d) or 74(e).
173. A nomination must be (in accordance with the Voting Rights By-Law):

- (a) in a form approved by the Returning Officer;
  - (b) proposed and seconded by Members in accordance with the Voting Rights By-Law;
  - (c) have the consent of the candidate; and
  - (d) received by the Returning Officer not less than forty-two (42) days before the Annual General Meeting.
174. A nomination received outside the time specified in Clause 173(d) is invalid.
175. A nomination may be withdrawn at any time prior to the commencement of the Annual General Meeting.
176. If the Returning Officer finds a nomination is defective, the proposer or candidate must be given the opportunity of remedying the defect on conditions determined by the Returning Officer, and if not remedied in accordance with the conditions set by the Returning Officer, the nomination is invalid.
177. Where the required number of nominations is received in a category, the persons nominated must be declared elected at the Annual General Meeting.
178. Where there are more than the required number of nominations for a position, an election by ballot (whether paper or electronic) must be held.
179. The Returning Officer must send or make available for access electronically, the ballot to each Member not less than thirty (30) days before the Annual General Meeting.
180. Members may vote for persons to be elected as Directors under Clauses 74(a), 74(b), 74(c), 74(d) or 74(e) and in accordance with the Voting Rights By-Law.
181. A ballot paper must include:
- (a) a description of the positions to be filled;
  - (b) the name(s) of candidates for each position to be filled, the order of such names to be determined by lot, with surnames first;
  - (c) instructions that the Member must only mark on the ballot paper the candidate the Member wishes to elect; and
  - (d) the name and address of the Returning Officer to whom the ballot paper must be returned, the closing date determined by the Returning Officer and instructions that the ballot paper be returned to the Returning Officer or, if the vote is taken electronically, instructions on how the vote is to be made and returned.

182. A ballot paper must be returned to the Returning Officer in a sealed envelope provided for that purpose or, if electronic, in such manner as specified in the instructions for electronic voting, on or before the closing date for voting.
183. Non-receipt of a ballot paper by a Member, or the non-return of a ballot paper or return of a ballot paper improperly completed or not enclosed in a sealed envelope does not invalidate a ballot.
184. A ballot paper not completed or received in accordance with this Constitution is informal, and a ballot paper must not be rejected only because it and other papers were placed in the same envelope.
185. Any doubt as to the formality of a ballot paper must be resolved in the absolute discretion of the Returning Officer, whose determination is final and conclusive.
186. The ballot must be counted by the Returning Officer or, if electronic, the Returning Officer must view the results for the first time in the presence of two independent persons (whether in person or online) who must keep secret the manner in which Members have voted in the ballot.
187. The Returning Officer must count the votes indicated upon the ballot papers that are properly marked and the candidates who receive the greatest number of votes must be progressively elected until all positions are filled.
188. The Returning Officer must, at least seven (7) days before the Annual General Meeting, prepare a report setting out the number of:
  - (a) votes cast in the ballot;
  - (b) formal votes;
  - (c) informal votes; and
  - (d) formal votes received for each candidate.
189. A copy of the report must be given to each candidate and the Board and be tabled at the Annual General Meeting.
190. The successful candidates must be declared elected at the Annual General Meeting.
191. If there is a tie for a position, the Returning Officer must, at the Annual General Meeting, draw by lot which of the tied candidates must fill the relevant position.
192. Subject to any direction from the Annual General Meeting, ballot papers, or if electronic records of electronic voting, may be retained by the Returning Officer for thirty (30) days after the Annual General Meeting and then destroyed and, if electronic, permanently deleted.

### **Election of President-Elect and Declaration of President**

193. Subject to Clause 90, the President-Elect is to be elected from the current Elected Directors immediately after the Directors are declared elected by the Annual General Meeting held in the year before the President's Term is due to commence.
194. The person so elected will hold office as President-Elect for the President-Elect's Term, at the conclusion of which they must be declared President and their President's Term automatically commences.
195. Not less than fourteen (14) days before the Annual General Meeting held in the year before the President's Term is due to commence and subject to Clause 90, the Returning Officer must invite nominations for President-Elect from persons who are, or may be, eligible for appointment as President.
196. A nomination:
  - (a) must be in a form approved by the Returning Officer;
  - (b) must be received by 5pm on the Business Day immediately before the Annual General Meeting; and
  - (c) may be withdrawn at any time.
197. Where only one (1) nomination is received for the position, the person nominated must be declared elected as President-Elect at the Annual General Meeting.
198. Where there are more than the required nominations for the position of President-Elect, the Board may elect one (1) person to hold Office as President-Elect from the persons nominated and that person must be declared elected as President-Elect at the Annual General Meeting.
199. Subject to any direction by the Annual General Meeting, the ballot papers may be destroyed at the conclusion of the meeting.

### **Election of Deputy President**

200. The Board may, from time to time, elect up to three (3) persons from amongst them (excluding the President, and any President-Elect and Immediate Past President) to act as a Deputy President for a term not exceeding the Director's Term of the person or persons as the Board may determine.

### **Chapter Committees**

201. Subject to the Chapters By-Law, a Member from any Chapter may nominate another Member to sit on a Chapter committee and that nominating Member does not necessarily have to be a member of the nominee's Chapter but the nominee must satisfy the eligibility requirements in Clause 151.

202. A Member can be nominated for a position on more than one (1) Chapter committee provided that they are engaged in the discipline of Real Estate Practice specific to the nominated Chapters.
203. Nominations must (in accordance with the Chapters By-Law):
  - (a) be in the form approved by the Institute;
  - (b) be proposed and seconded by Members in accordance with the Chapters By-Law;
  - (c) have the consent of the candidate; and
  - (d) be received by the Returning Officer not less than forty-two (42) days before the Annual General Meeting.
204. A nomination received outside the time specified in Clause 203(d) is invalid.
205. A nomination may be withdrawn at any time prior to the commencement of the Annual General Meeting.
206. If the Returning Officer finds a nomination is defective, the proposer or candidate must be given the opportunity of remedying the defect on conditions determined by the Returning Officer, and if not remedied in accordance with the conditions set by the Returning Officer, the nomination is invalid.
207. Where the required number of nominations is received for a Chapter committee, the persons nominated must be declared elected at the first committee meeting for that Chapter after the Annual General Meeting.
208. Where there are more than the required number of nominations for a position on a Chapter committee, an election of committee members for that Chapter must be conducted in the time and manner approved by the Returning Officer.
209. If there is a tie for a position, the Returning Officer must draw by lot which of the tied candidates must fill the relevant position.
210. The successful candidates on a Chapter committee must be declared elected at the first committee meeting for that Chapter after the Annual General Meeting.
211. Subject to any direction from the Returning Officer, voting records may be retained by the Returning Officer for thirty (30) days after the Annual General Meeting and then destroyed and, if electronic, permanently deleted.



## **PART 6**

### **GENERAL MEETINGS**

#### **Annual General Meeting**

212. An Annual General Meeting must be held each year at a time and place determined by the Board, but before the commencement of the sixth (6<sup>th</sup>) month following the end of the Financial Year.
213. A General Meeting of the Institute may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting, or in any other manner permitted under the Act. For the avoidance of doubt, a General Meeting may be held at one (1) or more physical locations, entirely virtually, or in a hybrid manner (where Members have a choice to either physically attend or use virtual meeting technology to participate).
214. Despite any other Clause, the Institute may hold a General Meeting at two (2) or more venues using technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.

#### **General Meeting**

215. A General Meeting may be convened by the Board.
216. A General Meeting must be convened by the Board if a written request by not less than five (5) per cent of all Members is given to the Secretary and the request specifies the business sought to be transacted at the meeting.
217. If the Board does not convene a General Meeting within twenty-one (21) days from receipt of a request referred to in Clause 216, then more than half of the Members who made the request under Clause 216 may convene the meeting so it is held no later than three (3) months after the request under Clause 216 is given to the Secretary.

#### **Notice**

218. Subject to consent to shorter notice being given in accordance with the Act, at least twenty-one (21) days' notice of a General Meeting is to be given to every Member, every Director and the Auditor (if any).
219. Notice of a General Meeting must specify:
- (a) the date, time and place of the meeting;
  - (b) the nature of business to be transacted;
  - (c) if a Special Resolution is proposed, the details of an intention to

propose it and the proposed resolution;

(d) if the meeting is to be held in two (2) or more places, the technology that must be used to facilitate this; and

(e) any other information required by the Act.

220. Notice under Clause 219 may be given in any manner permitted under this Constitution or by the Act or in an Institute publication circulated to Members.

221. The accidental omission to give notice of a General Meeting to, or non-receipt of notice by, a person entitled to receive notice and attend the meeting does not invalidate the proceedings or any resolution of the meeting.

### **Cancellation and Postponement**

222. Subject to the provisions of the Act and this Constitution, the Board may cancel a General Meeting:

(a) convened by the Board; or

(b) which has been convened by Members pursuant to Clause 216 upon receipt by the Institute of a written notice withdrawing the requisition signed by those Members.

223. The Board may postpone a General Meeting or change the venue at which it is to be held. No business must be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.

224. Where any General Meeting is cancelled or postponed or the venue for a General Meeting is changed:

(a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and

(b) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice must not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

## **Business**

225. The business of an Annual General Meeting is to include:
- (a) receiving and considering the audited balance sheet, profit and loss account and other reports and statements required by the Act including any Auditor's Report;
  - (b) receiving and considering the report of the President for the preceding Financial Year;
  - (c) declaring, as appropriate, the result of any election of Directors;
  - (d) declaring, when applicable, the election of the President-Elect;
  - (e) welcoming the President at the commencement of President's Term;
  - (f) appointing Auditors as required by the Act;
  - (g) determining any matter referred to it by the Board; and
  - (h) transacting any business:
    - (i) of which written notice has been given to the Secretary at least twenty eight (28) days before the meeting; or
    - (ii) the meeting agrees to transact; or
    - (iii) that may be required under this Constitution or the Act.
226. The business of a General Meeting is:
- (a) where the meeting is convened by the Board pursuant to Clause 215, to transact the business specified in the notice of meeting; and
  - (b) where the meeting is convened pursuant to Clause 216, to transact the business specified in the request for the General Meeting.

## **Quorum**

227. No business may be transacted at any General Meeting unless there is a quorum of Members present at all times during the meeting.
228. The quorum for a General Meeting is twenty (20) Members (which includes any proxies appointed under Clause 235).
229. If a quorum is not present within thirty (30) minutes after the time appointed for the meeting, it stands adjourned to a time and place as determined by the Chair.

230. If at the adjourned meeting a quorum is not present, the number of Members present constitutes a quorum.

### **Chair**

231. The President is entitled to take the Chair at every General Meeting.
232. If the President is absent, unwilling or unable to act, or is otherwise not present within fifteen (15) minutes after the time appointed for the holding of the meeting, the President-Elect or the Deputy President must take the Chair, otherwise the majority of Members present must elect a Member to chair the meeting.
233. The rulings of the Chair of a General Meeting on all matters relating to the order of business, procedure and conduct of the meeting must be final and no motion of dissent from such rulings will be accepted.

### **Representation**

234. A Member may attend a General Meeting in person, by proxy, by attorney under a power of attorney or by an authorised representative where the Member is a corporation.

### **Proxy**

235. A Member is entitled to appoint another Member as the Member's proxy to attend and vote as if the person was the Member.
236. An instrument appointing a proxy may be delivered in any form permitted by the Act.
237. The proxy is not entitled to vote on the resolution except as specified in the instrument.
238. An instrument appointing a proxy is deemed to confer authority to demand, or join in demanding, a poll.
239. An instrument appointing a proxy must be in the following form or in a form that is similar to the following form as the circumstances allow or in another common form approved by the Returning Officer:

*"I [full name and address], a Member of The Real Estate Institute of New South Wales Limited, appoint [full name and address] and, if not present, [full name and address] as my proxy to vote for me on my behalf at the [Annual/Extraordinary] General Meeting of the Institute to be held on [date] and at any adjournment of that meeting.*

*My proxy is authorised to:*

***[Note: delete the inapplicable options below]***

- *vote [for/against] the resolution [specified]; or*
- *vote as my proxy decides on any issue arising at the meeting; or*
- *vote [for/against] the resolution [specified] and as my proxy decides on any other issue arising at the meeting.*

*[Dated]*

*[Signature of Member]"*

240. An instrument appointing a proxy is valid if it is received by the Secretary at least forty-eight (48) hours before the time appointed for the meeting or adjourned meeting.
241. A vote by a proxy is valid despite the incapacity of the person appointing the proxy or revocation of the appointment, unless notice of such is given to the Secretary prior to the meeting at which the appointment is to be exercised.
242. A person must not act as a proxy for more than five (5) Members at a meeting.
243. If a person appointed as a proxy is not present, or is unable to vote, at a meeting, the Chair must automatically be granted the right to act as a proxy for the Member that the proxy represented.

### **Adjournment**

244. The Members present at a meeting may consent to or direct an adjournment of the meeting by the Chair.
245. A notice of the date, time and business to be transacted at an adjourned meeting need not be given unless the meeting is to be adjourned for thirty (30) days or more, in which case notice of the adjourned meeting must be given as if it were for the original meeting.
246. No business may be transacted at any adjourned General Meeting other than the business left unfinished at the meeting from which the adjournment took place.
247. A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

### **Voting**

248. At a General Meeting, a resolution put to the vote of the meeting must be decided on a show of hands by a majority of votes by the Members entitled to vote pursuant to the Voting Rights By-Law, whether personally or by proxy.

249. A poll may be called-for before the vote is taken, or before or immediately after the voting results on a show of hands are declared by not less than five (5) Members present at the meeting or by the Chair.
250. Notwithstanding Clause 249, where a poll is called for and is not withdrawn, it must be taken immediately or as directed by the Chair so as not to disrupt the conduct of other business at the meeting, but in any event not more than fourteen (14) days after the call is made.
251. A poll called-for on the election of the Chair or on a question of adjournment must be taken immediately.
252. A call for a poll may be withdrawn.
253. At a General Meeting, in the case of an equality of votes, the Chair has a deliberative and casting vote.
254. A declaration by the Chair that a resolution has, on a show of hands or following a poll, been carried, carried unanimously or by a majority, or lost, and an entry to that effect is made in the minutes of the meeting, is conclusive evidence of the fact without proof of the number, or proportion, of the votes recorded in favour of, or against, the resolution.

#### **Right to Vote**

255. Subject to Clause 248, only Members entitled to vote in accordance with the Voting Rights By-Law, or the proxy of those Members, may vote at a General Meeting of the Institute and in any ballot held pursuant to this Constitution.

#### **Rights of Non-Members to Attend General Meeting**

256. The Board may invite any person who is not a Member to attend and address a General Meeting.
257. Any Auditor and any Director must be entitled to attend and address a General Meeting.

## **PART 7**

### **PROFESSIONAL STANDARDS**

258. The Board may prescribe professional standards to be observed by any category of Membership in the conduct of Real Estate Practice and such standards must be binding on those Members.

## **PART 8**

### **CONCERNS, COMPLAINTS AND DISPUTES**

259. The Board may prescribe a procedure to assist the resolution of Concerns, Complaints and Disputes involving Members, and Members must abide by that procedure.



## **PART 9**

### **PROPERTY AND DOCUMENTS**

260. For the purposes of the Institute's Objects and activities, the Institute may, as determined by the Board:
- (a) acquire, hold and dispose of real or personal property in whatever manner it considers appropriate; and/or
  - (b) borrow money and mortgage or charge its undertaking and property, or any part thereof, and issue securities as security for any debt, liability or obligation of the Institute.
261. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Institute must be executed in such manner as determined by the Board.
262. The Board's powers under this Part 9 are reserved for the Board.

## **PART 10**

### **ACCOUNTS AND AUDIT**

263. The Institute must keep accounting records in accordance with the Act that correctly record and explain its transactions and financial position.
264. Accounting records must be kept at the Registered Office in accordance with the Act and may be kept in electronic form unless otherwise prohibited by the Act.
265. The Board must cause to be presented at the Annual General Meeting an audited balance sheet, profit and loss account and reports and statements:
- (a) that are made up to, and relate to, a period ending on a date not earlier than six (6) months before the meeting; and
  - (b) are reported upon by the Auditor and comply in all respects with the Act and accounting standards.
266. The appointment, removal, remuneration rights and duties of the Auditor are regulated by the Act.
267. Prior to an Annual General Meeting, each Member must be given or provided with access to a copy of the Institute's accounts and Auditor's report to be considered at that meeting in any manner permitted by the Act.

## **PART 11**

### **GENERAL**

#### **Amendment**

268. An amendment of this Constitution is only valid if it is made by Special Resolution or otherwise as required by the Act.

#### **Validity of Acts**

269. All acts done by a Director or at a meeting of any of the bodies referred to in Part 4 must, notwithstanding it is alleged or discovered later that there was a defect in the appointment or continuance in office of the Director or that body, or that they or any of them were disqualified or were not entitled to vote, be as valid as if the defect, disqualification or non-entitlement did not exist.

#### **Awards**

270. The Board may determine awards to be conferred on a body or person in recognition of their contribution to the Institute's activities and Real Estate Practice.

#### **Appointments**

271. The Board may, as necessary or desirable and as appropriate, make appointments to any other body determined by the Board.
272. The Board may appoint a Chief Executive Officer on terms it approves to manage the resources and operations of the Institute, including the implementation of business plans and budgets approved by the Board.
273. The Chief Executive Officer may, with the consent of the Board, employ persons on terms necessary to assist in the conduct of the Institute's activities.

#### **Notice**

274. Subject to this Constitution, notice to a Member may be given:
- (a) personally;
  - (b) by post or electronic mail to the Member's address entered on the Register; or
  - (c) as otherwise approved by the Board.

275. A notice to the Institute may be given:

- (a) personally;
- (b) by registered post; or
- (c) by electronic mail.

276. Where a notice is given:

- (a) by post, it is deemed to have been given on the fifth (5<sup>th</sup>) Business Day after it was posted;
- (b) by electronic mail, it is deemed to have been given as soon as it is sent provided that:
  - (i) the sender does not receive a message indicating that there has been an error in the transmission;
  - (ii) the sender also sends the notice by way of an alternative method of service (but Clauses 276(a) and 276(c) will not apply to the alternative method); and
  - (iii) the email contains the word "notice" in the subject line; or
- (c) otherwise, it is deemed to have been given as determined by the Board.

277. A signature on any notice may be written or printed, or an electronic notice may be electronically signed.

### **Execution of documents**

278. The Institute may execute a document:

- (a) if the Institute has a Seal, it may execute a document if the Seal is fixed to the document and the fixing of the Seal is witnessed by a Director and the Secretary, or two (2) Directors; or
- (b) if the Institute does not have a Seal, it may execute a document if the document is signed by two (2) Directors of the Institute or by a Director and the Secretary of the Institute.

### **Indemnity**

279. To the extent permitted by the Act, but not otherwise:

- (a) the Institute must indemnify each person who is or has been an Officer of the Institute against any liability incurred by such person in that

capacity, and for costs and expenses in defending proceedings in relation thereto; and

- (b) the Board may determine that the Institute indemnify a person who is or has been an Officer of a Related Entity of the Institute against any liability incurred by such person in that capacity and, should the Board so determine, for costs and expenses in defending proceedings in relation thereto,

but not where it is in respect of a liability:

- (c) to another person (other than the Institute) where the liability to the other person arises out of conduct involving a wilful, negligent or reckless breach of duty or lack of good faith, including but not limited to the obligations of the Officer or former Officer under the Act; or
- (d) for costs and expenses incurred:
  - (i) in defending proceedings, whether civil or criminal, in which the Officer or former Officer is found guilty; or
  - (ii) in connection with an application, in relation to such proceedings, in which the Court does not grant relief to the Officer or former Officer under the Act.

### **Insurance**

280. To the extent permitted by law, the Board may cause the Institute to pay or agree to pay premiums in respect of any contract or contracts insuring any:

- (a) Officer;
- (b) former Officer; or
- (c) current or former holder of Office under this Constitution,

against any liability incurred by such person acting in good faith in such capacity, provided that such insurance is not in relation to a liability arising out of conduct involving a wilful, negligent or reckless breach of duty in relation to the Institute or a contravention of sections 182 or 183 of the Act, or is of a type otherwise prohibited by the Act.

### **Indemnity to Continue**

281. The indemnity granted by the Institute pursuant to Clauses 279 and 280 continues in full force and effect notwithstanding the deletion or modification of those Clauses, in respect of acts and omissions occurring prior to the date of the deletion or modification.

## **Confidentiality**

282. All notices, proceedings and statements made at a meeting or other event in the ordinary course of the Institute's business, any communication between Members and, without limiting the generality of the foregoing, any Complaint, Dispute or Concern made to the Institute in respect of the conduct of a Member are confidential and a Member may not take proceedings against the Institute or any Member in respect of such notices, proceedings and statements or such communications.

## **Winding Up**

283. Subject to Clauses 9 and 10, a motion for the winding up of the Institute must be dealt with in accordance with the Act and at a General Meeting called for consideration of the motion.

## **By-Laws**

284. The Board may make and approve By-Laws not inconsistent with this Constitution, prescribing any matter which:
- (a) under this Constitution is required or permitted to be prescribed; or
  - (b) is necessary or convenient for the proper management and conduct of the Institute.
285. A By-Law must be tabled at the next Annual General Meeting after which it is made for information purposes to Members only.
286. When in force, a By-Law is binding on all Members and has the same effect as this Constitution.
287. Subject to Clause 288, the Board must adopt such measures as it deems appropriate to bring to the notice of Members all By-Laws, amendments and repeals.
288. The Board must provide Members with reasonable notice of any proposed changes to the By-Laws regarding the:
- (a) eligibility requirements of Membership classes; and
  - (b) voting rights of a Membership class;
- prior to the changes being implemented.

## **PART 12**

### **SAVINGS AND TRANSITIONAL**

289. Except as otherwise provided in this Part:

- (a) this Constitution commences on the date that it is adopted by the Members;
- (b) so much of the policies and procedures then existing within the Institute that are required or permitted, expressly or impliedly, by this Constitution, continue as if they were implemented under this Constitution; and
- (c) nothing in this Constitution that may detrimentally affect the interests of a Member operates retrospectively.

290. For the purposes of Clause 21, a person enrolled in the Institute immediately before the commencement of this Constitution as a "Life Fellow" (as defined in the constitution of the Institute applicable immediately before the commencement of this Constitution) is deemed to be admitted as a Life Fellow of the Institute.

291. For the purposes of Clauses 74(a) to 74(e):

- (a) the person elected by Members principally engaged in Real Estate Practice in the "Sydney Central Business District" (as defined in the constitution of the Institute applicable immediately before the commencement of this Constitution) is deemed to be an Elected Director elected pursuant to Clause 74(a);
- (b) the persons elected by Members principally engaged in Real Estate Practice in the "Sydney Metropolitan Area, but not in the Sydney Central Business District" (in accordance with the constitution of the Institute applicable immediately before the commencement of this Constitution) are deemed to be the Elected Directors elected pursuant to Clause 74(a);
- (c) the persons elected by Members principally engaged in Real Estate Practice outside the "Sydney Metropolitan Area" (in accordance with the constitution of the Institute applicable immediately before the commencement of this Constitution) are deemed to be the Elected Directors elected pursuant to Clause 74(b);
- (d) the person elected by Members principally engaged in business or commercial Real Estate Practice in accordance with the constitution of

the Institute applicable immediately before the commencement of this Constitution, is deemed to be the Elected Director elected pursuant to Clause 74(d);

- (e) the person elected by Members principally engaged in residential Real Estate Practice in accordance with the constitution of the Institute applicable immediately before the commencement of this Constitution, will continue to hold that position until the conclusion of the Annual General Meeting held in 2024; and
  - (f) the Director's positions pursuant to Clauses 74(c) and 74(e) will be vacant until persons are declared elected into those positions at the Annual General Meeting held in 2024.
292. Where a person was elected as an "Office Bearer" within the meaning of the constitution of the Institute applicable immediately before the commencement of this Constitution, the period of that election must not be counted for the purposes of Clause 82.
293. Each Deputy President elected in 2023 must continue in Office until the conclusion of the first Board meeting immediately after the Annual General Meeting held in 2024.
294. The Chapters existing at the commencement of this Constitution are deemed to be, respectively, the Chapters within the meaning of Clause 144.
295. Part 8 of this Constitution applies to Concerns, Complaints and Disputes arising from the conduct of Real Estate Practice before and after the commencement of this Constitution.
296. In the event of a dispute or ambiguity about the application and operation of the provisions of this Part, such dispute or ambiguity may be determined by the Board.