



**Constitution**  
**of**  
**Australian Council of**  
**Superannuation Investors Ltd.**

**23 July 2018**

**ACN 164 568 610**

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# CORPORATIONS ACT 2001

## A PUBLIC COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL

### CONSTITUTION OF

#### AUSTRALIAN COUNCIL OF SUPERANNUATION INVESTORS LIMITED A.C.N. 164 568 610

## 1 INTERPRETATION

### 1.1 This Constitution

- (a) This Constitution contains clauses setting out the manner in which the Members of ACSI have agreed to conduct the internal administration of ACSI.
- (b) The Replaceable Rules contained in the Act do not apply to ACSI unless repeated in this Constitution or specifically made applicable to ACSI by this Constitution.

### 1.2 Definitions

In this Constitution, unless the context otherwise requires:

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

**Accounting Standards** means:

- (a) the accounting standards required under the Act (including the Approved Accounting Standards issued by the Australian Accounting Standards Board) and other mandatory professional reporting requirements issued by the joint accounting bodies (including the Australian Accounting Standards issued either jointly by CPA Australia and the Institute of Chartered Accountants in Australia or by the Australian Accounting Research Foundation on behalf of CPA Australia and the Institute of Chartered Accountants in Australia); and
- (b) if no accounting standard applies under the Act or other mandatory professional reporting requirements, the principles set out in the Australian Statement of Accounting Concepts;

**ACSI** means Australian Council of Superannuation Investors Limited A.C.N. 164 568 610;

**ACSI's Beliefs** means the Beliefs adopted and approved by the Member Council from time to time;

**AGM** means an annual general meeting of ACSI held in accordance with section 250N of the Act;

**Annual Subscription Fee** means the amount payable by a Member under clause 8.9;

**Associate Member** means a Member who is admitted as an Associate Member under clause 8.2;

**ASIC** means the Australian Securities and Investments Commission;

**Auditor** means the auditor for the time being of ACSI;

**Board** means the Directors present at a meeting, duly convened as a Board meeting, at which a quorum is present;

**Constitution** means this Constitution and any supplementary, substituted or amended Constitution in force from time to time;

**Deputy President** means a Director elected by the Board to serve as Deputy President;

**Director** means any person formally and lawfully appointed as a director of ACSI, including an alternate Director;

**Directors** means all or any number of the Directors for the time being;

**Eligible Member** means any Trustee or Organisation that:

- (a) commits in writing to adopt and pursue the ACSI's Beliefs;
- (b) satisfies any criteria specified by the Board from time to time; and
- (c) satisfies any criteria specified by the Member Council from time to time;

**Financial Year** means the period of 12 months ending on 30 June and includes the period commencing on the date this Constitution is adopted by the Members and ending on the following 30 June;

**General Meeting** means a Meeting of Members in accordance with the provisions of clause 11;

**Guarantee** means the maximum amount each Member agrees to pay to ACSI in accordance with clause 2.3;

**International Associate Member** means a Member who satisfies the requirement of clause 8.4(c);

**Larger Full Member** means a Member who satisfies the requirement of clause 8.4(a);

**Meeting** includes where persons are able to simultaneously communicate with each other using any technology that is widely available to participants and gives the participants as a whole a reasonable opportunity to participate;

**Member** means an Eligible Member admitted as a Larger Full Member, a Smaller Full Member, an Associate Member or an International Associate Member under clause 8.2;

**Member Council** means the council established under clause 7.1;

**Membership Year** means a period of 12 months commencing on or after 1 July and ceasing on 30 June of the following year;

**Minimum Eligibility Criteria** means the criteria defined at clause 8.4 and as in force from time to time;

**Officer** means an officer of ACSI within the meaning of the Act;

**Organisation** means a body corporate or, in the case of any entity or group that is not a legal person, the nominated legal representative of that entity or group;

**President** means a Director elected by the Board to serve as President;

**Register** means the register of Members to be kept pursuant to section 169 of the Act;

**Secretary** means any person formally and lawfully appointed as a secretary of ACSI including any assistant or acting Secretary or any substitute for the time being for the Secretary;

**Smaller Full Member** means a Member who satisfies the requirement of clause 8.4(b);

**Sub-Committee** means a sub-committee established by the Member Council in accordance with clause 7.6;

**Superannuation Fund** means either:

- (a) a superannuation fund which is:
  - (i) constituted under the laws of Australia, and
  - (ii) regulated by the *Superannuation Industry (Supervision) Act 1993* and any regulations made under or pursuant to that statute; and

- (iii) complies with any applicable law in order for the fund to qualify for concessional taxation treatment as a complying superannuation fund; or
- (b) a public sector superannuation fund constituted by the laws of the Commonwealth of Australia or any State or Territory of Australia; or
- (c) a non-Australian superannuation fund, that is constituted by the laws of a jurisdiction outside Australia as a superannuation fund or pension fund;

**Trustee** means a trustee from time to time of any Superannuation Fund in its capacity as trustee of that fund; and

**Vote** includes a vote cast using any technology that gives the participants as a whole a reasonable opportunity to participate and provides for a clear and instantaneous statement of the voter's opinion on the issue.

### 1.3 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (b) a reference to a **body** or **authority** which ceases to exist is a reference to a body or authority having substantially the same objects as the named body or authority;
- (c) a reference to a **clause** is a reference to a clause of this Constitution;
- (d) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this Constitution;
- (e) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (f) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Act;
- (g) a reference to **signatures** or **signed** include electronic signatures, being the result of a process applied to a document in electronic form by which a person authenticates the document and acknowledges that the document is being executed;
- (h) a reference to the **sending** of a document includes the sending of that document via electronic means, including electronic mail;

- (i) **including** and **includes** are not words of limitation;
- (j) the words **at any time** mean at any time and from time to time;
- (k) a word that is derived from a defined word has a corresponding meaning;
- (l) **monetary amounts** are expressed in Australian dollars;
- (m) the singular includes the plural and vice-versa;
- (n) words importing one gender include all other genders; and
- (o) words or expressions contained in this Constitution shall be interpreted in accordance with the *Acts Interpretation Act 1901* (Cth) and the Act as in force from time to time.

#### **1.4 Application of Legislation**

- (a) Division 8 of Part 1.2 (other than section 109X) of the Act applies in relation to this Constitution, so far as it is capable of application.
- (b) Section 4.29 and 46(1), Parts III, IV, V, VII, and VIII of the *Acts Interpretation Act 1901* (Cth) apply in relation to this Constitution so far as they are capable of application.
- (c) Unless the context otherwise requires, an expression used in this Constitution that has a particular meaning in the Act has the same meaning as in the Constitution.
- (d) Subject to the Act, the Replaceable Rules contained in the Act do not apply to ACSI.
- (e) This Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.

## **2 NATURE OF ACSI**

### **2.1 Public company limited by guarantee**

ACSI is a public company limited by guarantee.

### **2.2 Limitation of ACSI**

- (a) ACSI must not carry out any activity for the purpose of the profit or gain of any Member.
- (b) ACSI does not have the power to:
  - (i) issue shares of any kind; or

- (ii) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of ACSI for the benefit of, or to, a Member.

## **2.3 Guarantee of Members**

Each Member undertakes to contribute a maximum of \$100.00 to ACSI for payment of:

- (a) the debts and liabilities of ACSI;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves,

if ACSI is wound up:

- (d) while the Member is a Member; or
- (e) within one year after the Member ceases to be a Member.

## **2.4 Objects of ACSI**

The objects for which ACSI are established are:

- (a) to undertake or commission independent research into the area of governance including environmental, social and corporate governance for Members;
- (b) where required, to provide specific research to Members to assist them to manage environmental, social and corporate governance investment risk; and
- (c) to develop educational activities and such other related activities including at least one annual conference dedicated to the issue of governance.

## **2.5 Scope of powers of ACSI**

ACSI has the legal capacity and powers set out in section 124 of the Act, provided that its capacities and powers are exercised directly or indirectly in the furtherance of its objects.

# **3 DIRECTORS**

## **3.1 Number of Directors**

- (a) For the period until 30 June 2018, ACSI must have at least 3 and not more than 12 Directors.

- (b) For the period 1 July 2018 until 30 June 2020, ACSI must have at least 3 and not more than the number of Directors determined as follows:  
  
Maximum Number of Directors = number of Larger Full Members + 4
- (c) For the period starting from 1 July 2020, ACSI must have at least 3 and not more than 13 Directors.
- (d) A minimum of 2 Directors must ordinarily reside in Australia.

### **3.2 Number of Directors to be appointed by class of Members**

- (a) For the period until 30 June 2018:
  - (i) the Larger Full Members may, by resolutions of the Larger Full Members, appoint up to 8 Directors; and
  - (ii) the Smaller Full Members may, by resolutions of the Smaller Full Members, appoint up to 4 Directors.
- (b) For the period 1 July 2018 until 30 June 2020:
  - (i) each Larger Full Member may appoint one Director; and
  - (ii) the Smaller Full Members may, by resolution of the Smaller Full Members, appoint up to 4 Directors,

if there are more than 9 Directors appointed by the Larger Full Members as at 30 June 2020, all the Directors appointed by the Larger Full Members will retire from office as Directors and are eligible to be re-appointed or re-elected subject to clause 3.5(c).
- (c) For the period starting from 1 July 2020:
  - (i) the Larger Full Members may, by resolutions of the Larger Full Members, appoint up to 9 Directors; and
  - (ii) the Smaller Full Members may, by resolutions of the Smaller Full Members, appoint up to 4 Directors.
- (d) Each Larger Full Member and each Smaller Full Member cannot have more than one of its nominee appointed as a Director on the Board.
- (e) Prior to the expiry of a Director's term of office, the Company will seek nominations to fill that Director's office from the class of Members who appointed the Director whose term of office is expiring. If the number of nominations that the Company receives is:

- (i) equal to or less than the number of Directors whose term of office is expiring, subject to clause 3.2(d), all the nominees will be deemed to have been appointed or re-appointed as a Director without requiring the relevant class of Members to pass a resolution to appoint or re-appoint those nominees as Directors; or
- (ii) more than the number of Director whose term of office is expiring, all the nominees will stand for election by the relevant class of Members. The Company will issue ballot papers to the relevant class of Members to elect or re-elect nominees as Directors and, subject to clause 3.2(d), the nominees with the most number of votes will be elected or re-elected as Directors in place of the Directors whose term of office are expiring without requiring the relevant class of Members to pass a resolution to elect or re-elect those nominees as Directors.

### **3.3 Casual vacancy appointment**

(a) Subject to clauses 3.1 and 3.2(d), in the event of a casual vacancy in the office of a Director:

- (i) if the Director in whose respect the casual vacancy arose was a Director appointed by the Larger Full Members, the Directors appointed by the Larger Full Members may appoint another person; and
- (ii) if the Director in whose respect the casual vacancy arose was a Director appointed by the Smaller Full Members, the Directors appointed by the Smaller Full Members may appoint another person;

as a Director who will hold office for a term expiring at such time as the term of office of the Director in whose respect the casual vacancy arose would have expired.

(b) The Directors may act to make such an appointment even if the number of Directors voting on such appointment is not sufficient to constitute a quorum.

### **3.4 Non-eligibility of Auditor**

The Auditor is ineligible to be elected or appointed as a Director or alternate Director.

### **3.5 Period of appointment of Directors**

- (a) Each Director may hold office until they die, vacate the office in accordance with clause 3.10, are removed in accordance with clause 3.11, or until the term for which they are appointed or elected expires.
- (b) Unless otherwise provided for at the time of appointment, a Director is appointed for a term of 3 years.
- (c) Subject to this Constitution, and the Act, on and from 1 July 2018, a Director may serve up to 3 consecutive terms as a Director, provided they are re-appointed or re-elected in accordance with the provisions of this Constitution. In determining whether a Director has served the maximum 3 consecutive terms as a Director:
  - (i) a Director appointed or re-appointed on 1 July 2018 will be that Director's first term of appointment for the purposes of this clause; and
  - (ii) a Director's first term of appointment for the purposes of this clause is deemed to occur when a Director is appointed or re-appointed after 1 July 2018.

### **3.6 Alternate Directors**

- (a) Subject to clause 3.6(b), each of the Larger Full Members and the Smaller Full Members may appoint:
  - (i) one or more persons who are Directors appointed by that Member; and
  - (ii) one other person,to act as an alternate Director in the place of a Director appointed by that Member for a meeting, until the happening of a specified event or for a specified period. If more than one person is appointed under clauses 3.6(a)(i) and (ii) by that Member to act as an alternate Director in the place of a Director appointed by that Member, the following will apply:
  - (iii) the appointments must clearly specify the rank order of each appointment for the purposes set out in clause 3.6(a)(iv); and
  - (iv) if the Director in whose place an alternate Director has been appointed to act is not present at a meeting of Directors and more than one alternate Director attends in his or her stead, only the alternate Director that is given the highest rank order is:
    - (A) entitled to vote in his or her stead; and

- (B) to be counted in a quorum at the meeting.
- (b) The Board must ratify each appointment of an alternate Director made under clause 3.6(a) and, in doing so, must comply with:
- (i) all laws that apply to it; and
  - (ii) all policies and procedures put in place by ACSI in consequence of such laws.
- (c) An alternate Director is entitled to all notices of meetings that the Director in relation to whom the alternate Director has been appointed is entitled to receive.
- (d) If the Director in whose place an alternate Director has been appointed to act is not present at a meeting of Directors, that alternate Director is entitled to attend and, subject to clause 3.6(a), vote in his or her stead.
- (e) When an alternate Director exercises the Director's powers, the exercise of the power is just as effective as if the powers were exercised by the Director in whose place an alternate Director has been appointed to act.
- (f) An alternate Director may exercise all the powers and, subject to the Act, perform all the duties of the Director in whose place the alternate Director has been appointed to act insofar as the latter has not exercised or performed them.
- (g) An alternate Director whilst acting as a Director is responsible to ACSI for his or her own acts and defaults and the Director in whose place the alternate Director has been appointed to act is not responsible for them.
- (h) A Larger Full Member and a Smaller Full Member may suspend or revoke the appointment of an alternate Director appointed by that Member.
- (i) The appointment, suspension or revocation under this clause takes effect immediately on the delivery of the instrument of appointment, suspension or revocation at the registered office of ACSI. The instrument may also be delivered in the same way notice is given under clause 18.
- (j) The appointment of an alternate Director automatically terminates:
- (i) if the Director in whose place the alternate Director has been appointed to act ceases to hold office as director;
  - (ii) on any event which causes a Director to vacate the office of director; or
  - (iii) if the alternate Director resigns from the appointment by written notice left at the registered office of ACSI.

- (k) A Director or any other person may be appointed as alternate Director for more than one Director.

### **3.7 Responsibilities of the Board**

The Board is responsible for:

- (a) approving the annual financial accounts for presentation to the AGM;
- (b) approving the annual budget after consultation with the Member Council;
- (c) approving the yearly business plans after consultation with the Member Council;
- (d) the oversight of ACSI's audit, compliance and risk management;
- (e) consulting the Member Council on ACSI's research program;
- (f) appointing and managing the chief executive officer including performance assessment;
- (g) approving the changes to the Annual Subscription Fee after consultation with the Member Council;
- (h) the Board's performance and renewal;
- (i) the admission of new Members;
- (j) the interpretation of ACSI's rules and policies; and
- (k) such other duties as the Member Council may delegate to the Board from time to time.

### **3.8 Other offices held by Directors**

A Director may hold any other office or position of profit in ACSI together with the directorship on such conditions including additional remuneration as may be agreed by the Directors in accordance with clause 3.9.

### **3.9 Remuneration of Directors for extra services**

- (a) If the Board requests a Director to perform services in addition to those required by the Act, ACSI may remunerate the Director in any manner the Board thinks fit.
- (b) Within one month of the Board's request for the additional services, the Board must provide a written report to the Member Council specifying the material terms of the request, including the name of the Director who is requested to perform the additional services, a description of the additional services and the remuneration for performing the additional services.

### **3.10 Director may resign**

A Director may resign as a director of ACSI by giving written notice of resignation to ACSI at its registered office.

### **3.11 Removal of Directors**

- (a) Subject to section 203D of the Act, the Members may, by resolution:
  - (i) remove a Director from office; and
  - (ii) appoint another person as a Director in the Director's place.
- (b) The removal of a Director under clause 3.11(a) has no effect until the class of Members who appointed that Director has appointed a replacement Director.
- (c) A Director will not be removed by, or required to vacate their office because of, any resolution, request or notice of the Directors or any of them.

### **3.12 Vacation of office of Director**

- (a) A Director must vacate office if the Director:
  - (i) ceases to be a Director or becomes prohibited from being a Director by virtue of any provision of the Act;
  - (ii) resigns their office by written notice to ACSI;
  - (iii) for more than 3 months, is absent without permission of the other Directors from meetings of the Directors held during that period;
  - (iv) is directly or indirectly interested in any contract or proposed contract with ACSI (other than as a Member) and fails to disclose details of that interest as required by clause 4.1; or
  - (v) is removed from the office of Director by a resolution of ACSI in accordance with clause 3.11.
- (b) Subject to clause 3.11(a), where there are only 3 Directors, a Director must not vacate their office voluntarily unless they have appointed, prior to their vacation, another person to be a Director.

## **4 MANAGEMENT OF BUSINESS BY DIRECTORS**

### **4.1 Material personal interest - Director's duty to disclose**

- (a) Unless an exception under section 191 of the Act applies, if a Director has a material personal interest in a matter that relates to the affairs of ACSI, a Director must give the other Directors notice of the interest.

- (b) The notice required by clause 4.1(a) must:
  - (i) include details of:
    - (A) the nature and extent of the interest; and
    - (B) the relation of the interest to the affairs of ACSI; and
  - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter.

#### **4.2 Director may give standing notice about an interest**

A Director with a material personal interest in a matter that relates to the affairs of ACSI may give standing notice of this ongoing interest in accordance with clause 4.1 and section 192 of the Act.

#### **4.3 Voting and completion of transactions in which a Director has a material personal interest**

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

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

unless:

- (c) the interest does not need to be disclosed under section 191 of the Act; or
- (d) the Directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature of their interest in the matter and its relation to the affairs of ACSI; and
  - (ii) states that the Directors are satisfied that the interest should not disqualify the Director from voting or being present.

#### **4.4 Financial benefits to related parties**

ACSI must not give a financial benefit to a related party of ACSI unless it is authorised in accordance with the Act.

#### **4.5 Powers of Directors**

- (a) Subject to the Act and to any provision of this Constitution, the business of ACSI is to be managed by or under the direction of the Directors.

- (b) The Directors may exercise all of the powers of ACSI except any powers that the Act or this Constitution requires ACSI to exercise in a General Meeting.

#### **4.6 Delegation**

- (a) The Directors may delegate any of their powers to the Member Council, a committee of Directors, a Director, an employee of ACSI or any other person.
- (b) A delegate must exercise the powers delegated to it in accordance with any directions of the Directors.
- (c) The effect of the committee so exercising a power is the same as if the Directors exercised it.

#### **4.7 Appointment of attorney for ACSI**

The Directors may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney of ACSI for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors under this Constitution.

#### **4.8 Accounting for profit**

Where a Director's interest is approved by a resolution of Directors in accordance with clause 4.3(d), no Director will be liable to account for that interest to ACSI for any profit arising from any office or place of profit or realised from any contract or arrangement by reason only of the Director holding that office or of the fiduciary relations so established.

### **5 DIRECTORS' MEETINGS**

#### **5.1 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) A document is deemed to be validly signed if the document is signed by a Director and sent to the Secretary via facsimile, email or such other technology consented to by the Directors.

- (d) The resolution is passed when the last Director signs.

## **5.2 Calling Directors' meetings**

A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.

## **5.3 Use of technology**

- (a) A Directors' meeting may be called or held using any technology consented to by the Directors.
- (b) Any consent may be a standing consent.
- (c) A Director may only withdraw their consent within a reasonable period before the meeting.

## **5.4 Chairing Directors' meetings**

- (a) The President will be the chair for the Board meetings and if the President is not available or declines to act as chair for the meeting or part of it, the Deputy President will be the chair for the meeting.
- (b) The Directors must elect a Director present to chair a meeting, or part of it, if both the President and Deputy President are not available or decline to act as chair for the meeting or part of it.

## **5.5 Quorum at Directors' meetings**

Unless the Directors determine otherwise, the quorum for a Directors' meeting is more than half of the Directors present and the quorum must be present at all times during the meeting.

## **5.6 Passing of Directors' resolutions**

- (a) A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (b) The President and Deputy President do not have a casting vote in addition to any vote they have in their capacity as a Director.

# **6 SECRETARY**

## **6.1 Appointment**

The Directors must appoint a Secretary in accordance with the Act.

## **6.2 Terms and conditions of office**

A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors think fit.

## **7 MEMBER COUNCIL**

### **7.1 Formation of Member Council**

The Member Council will comprise of representatives of Members nominated in accordance with clause 7.4.

### **7.2 Role of the Member Council**

The role of the Member Council is to establish the strategic direction of ACSI and to serve as the policy making body of ACSI.

### **7.3 Responsibilities of the Member Council**

The Member Council is responsible for:

- (a) approving the ACSI strategic plan;
- (b) approving ACSI policy;
- (c) advising the Board on the annual business plan;
- (d) advising the Board on the annual budget;
- (e) advising the Board on the research program;
- (f) seeking input from Members in relation to ACSI policy and strategic priorities;
- (g) providing information sharing and education opportunities for Members;  
and
- (h) such other duties as the Board may delegate to the Member Council from time to time or as may be necessary for the fulfilment of the role of the Member Council pursuant to clause 7.2.

### **7.4 Member Council Representatives**

Each Larger Full Member and Smaller Full Member with a Vote at a General Meeting is entitled to:

- (a) nominate one representative to the Member Council; and
- (b) remove and replace its representative on the Member Council.

## **7.5 Governance arrangements**

In the absence of any determination by the Board to the contrary, the governance arrangements for the Member Council will be as follows:

- (a) the Member Council will meet at least 4 times each year;
- (b) a meeting of the Member Council must be held at a reasonable time and place;
- (c) a Member Council meeting may be held at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate;
- (d) notice for each meeting is to be given to all members of the Member Council;
- (e) the President or, in their absence, the Deputy President, will be responsible for chairing the Meetings of the Member Council.
- (f) a quorum for a Meeting of the Member Council will be at least one-third of the members of the Member Council;
- (g) the members appointed by the same Larger Full Member or the same Smaller Full Member will have one Vote only and decisions will be made by the majority Votes of members of the Member Council;
- (h) the secretariat to the Member Council will be provided by ACSI; and
- (i) the secretariat is responsible for taking minutes of meeting of the Member Council and reporting those minutes to the Board.

## **7.6 Sub-Committees**

- (a) The Member Council may establish one or more Sub-Committees at any time. A Sub-Committee is established to assist the Member Council with particular activities of a once-off or on-going nature.
- (b) The Member Council will determine the charter for the Sub-Committee, how members become a member of the Sub-Committee, the term of membership, the rights to Vote, the number and type of persons required to form a quorum, the voting procedures and any other governance arrangements necessary or convenient for the good order and operation of the Sub-Committee.
- (c) A Larger Full Member and a Smaller Full Member is eligible to propose a person to be appointed as a member of a Sub-Committee with entitlement to a Vote.

- (d) In the absence of any determination by the Member Council of specific governance arrangements for a Sub-Committee, the Sub-Committee will be governed by the same governance arrangements as are in place for the Member Council.

## **8 MEMBERSHIP**

### **8.1 Number of Members**

- (a) There must be at least one Member.
- (b) The Directors may set a limit on the maximum number of Members.

### **8.2 Admission to membership**

- (a) An Eligible Member who applies and is approved for membership as provided in this Constitution is eligible to be a Member on payment of the Annual Subscription Fee.
- (b) An Eligible Member that is not a Member at the time of the incorporation of ACSI will not be admitted to membership:
  - (i) unless an application is made as provided in clause 8.2(c); and
  - (ii) the admission as a Member is approved by the Board in accordance with the Minimum Eligibility Criteria contained in clause 8.4.
- (c) Application by an Eligible Member to be a Member of ACSI:
  - (i) must be made in writing;
  - (ii) must specify in writing that it adopts and pursues the ACSI's Beliefs; and
  - (iii) must be lodged with the Secretary.
- (d) As soon as is practicable after the receipt of an application, the Secretary will refer the nomination to the Board.
- (e) Upon an application being referred to the Board, the Board will determine whether to approve or to reject the application, and to determine the initial class of membership to be granted to the applicant.
- (f) Upon an application being approved by the Board, the Secretary will notify the applicant in writing of the approval for membership of ACSI and request payment of the Annual Subscription Fee within the period of 28 days after receipt of the notification.

- (g) The Secretary must, upon payment of the Annual Subscription Fee, enter the applicant's name and class of membership in the Register and, upon the name being so entered, the applicant becomes a Member.
- (h) Each Member must sign an undertaking to be bound by this Constitution.

### **8.3 Classes of Members**

ACSI consists of the following classes of Members:

- (a) Larger Full Members;
- (b) Smaller Full Members;
- (c) Associate Members; and
- (d) International Associate Members.

### **8.4 Minimum Eligibility Criteria**

The Minimum Eligibility Criteria for the various classes of membership of ACSI are as follows:

- (a) membership as a Larger Full Member is open to any Eligible Member which contributes to at least 5% of ACSI's total revenue contributed by the Larger Full Members and the Smaller Full Members in the immediately preceding Financial Year;
- (b) membership as a Smaller Full Member is open to any Eligible Member which contributes less than 5% of ACSI's total revenue contributed by the Larger Full Members and the Smaller Full Members in the immediately preceding Financial Year; and
- (c) membership as an International Associate Membership is only available to a non-Australian Superannuation Fund.

### **8.5 Notification of Change in Qualifications**

Each Member must promptly provide written notice to ACSI of any change in the qualification of the Member to be in a particular class of membership.

### **8.6 Change in Class of Membership**

- (a) The Board must review each Member's class of membership each Membership Year.
- (b) If the Board considers that a Member no longer qualifies to remain a Member in particular class of membership, the Board may by notice in writing to the Member:

- (i) change the class of membership for that Member to a class of membership appropriate for that Member; or
  - (ii) if that Member is no longer eligible to be a Member, remove that Member as a Member.
- (c) The Secretary must make appropriate amendments to the Register to reflect any change in the class of Membership.

## **8.7 Rights of Each Class of Member**

- (a) All Members are entitled to access any of ACSI's Voting Alert Services or other services as developed from time to time upon payment of a subscription fee as determined by the Member Council from time to time.
- (b) A Larger Full Member is entitled to:
- (i) appoint one representative to the Member Council;
  - (ii) full access to all research and research materials of ACSI, whether completed or pending, including without limitation, any publications promoted by ACSI;
  - (iii) submit proposals for specific research;
  - (iv) propose research, within ACSI's budget and research priorities determined by the Board, that may be required specifically by that Larger Full Member; and
  - (v) attend and vote at a General Meeting of ACSI and participate in all conferences and other activities promoted by ACSI,

but is not entitled to vote on a resolution for the appointment of a person to the position of Director where that specific position is specifically required to be held by a person elected by the Smaller Full Members pursuant to clause 3.2.

- (c) A Smaller Full Member is entitled to:
- (i) appoint one representative to the Member Council;
  - (ii) full access to all research and research materials of ACSI, whether completed or pending, including without limitation, any publications promoted by ACSI;
  - (iii) submit proposals for specific research;

- (iv) propose research, within ACSI's budget and research priorities determined by the Board, that may be required specifically by the Member; and
- (v) attend and vote at a General Meeting of ACSI and participate in all conferences and other activities promoted by ACSI,

but is not entitled to vote on a resolution for the appointment of a person to the position of Director where that specific position is specifically required to be held by a person elected by the Larger Full Members pursuant to clause 3.2.

(d) An Associate Member is entitled to:

- (i) attend and Vote at a General Meeting of ACSI including an AGM;
- (ii) access to major research projects funded by ACSI; and
- (iii) attend conferences convened by ACSI.

(e) An International Associate Member is entitled to:

- (i) attend, but not to Vote, at a General Meeting of ACSI including an AGM;
- (ii) access major research projects funded by ACSI; and
- (iii) attend conferences convened by ACSI.

## **8.8 Duties of Members**

A right, privilege or obligation of a Member:

- (a) is not capable of being transferred to another Superannuation Fund or Organisation; and
- (b) terminates upon the cessation of membership in accordance with clause 10.

## **8.9 Annual Subscription Fee**

- (a) The Annual Subscription Fee for membership is such amounts determined for each category of membership by the Board from time to time.
- (b) Subject to clause 8.9(c), the Annual Subscription Fee is payable in advance on or before 1 July in each Financial Year.
- (c) In the case of any application for membership of ACSI made after 1 July in any Financial Year, the Annual Subscription Fee will be:

- (i) pro-rated for the remainder of that Financial Year calculated from the date on which the Board approves the application; and
- (ii) payable in advance on the date determined in accordance with clause 8.2.

#### **8.10 Address of Member**

- (a) Each Member must provide to the Secretary details of an address in Australia where ACSI can send notices.
- (b) If a Member fails to provide an address in accordance with clause 8.10(a), the address of the Member is deemed to be the registered office of ACSI.

### **9 REGISTER**

The Secretary will maintain the Register and will enter in it the full name, address and nominated officer of each Member, the date on which the Member became a Member, the class of membership of the Member, the date upon which each Member ceased to be a Member and any other details required by ACSI.

### **10 CESSATION OF MEMBERSHIP**

#### **10.1 Events leading to cessation**

A Member ceases to be a Member if they:

- (a) resign in writing in accordance with clause 10.2;
- (b) are expelled in accordance with clause 10.4; or
- (c) are a company which has:
  - (i) a receiver or a receiver and manager appointed to its assets or some of them; or
  - (ii) passed a resolution or took or has taken against it any action with the effect of its winding up.

#### **10.2 Resignation**

- (a) A Member who has paid all moneys due and payable by that Member to ACSI may resign from ACSI by first giving three months' notice in writing to the Secretary of its intention to resign.
- (b) Upon the expiration of that period of notice, the Member ceases to be a Member and the Secretary must make an entry in the Register recording the date on which the Member ceased to be a Member.

- (c) If a Member gives notice of its intention to resign as a Member, that Member remains obligated to pay the Annual Subscription Fee for the period it remains a Member (pro-rated for the period that Member remains a Member).
- (d) Once a Member ceases to be a Member, ACSI is not obligated to refund any Annual Subscription Fee paid by that Member.

### **10.3 Non-payment of Annual Subscription Fee**

If any Annual Subscription Fee of a Member remains unpaid, the Member will be barred from all privileges of membership provided that the Directors may, if they think fit, reinstate the Member on payment of all arrears.

### **10.4 Powers of Directors to deal with Members**

- (a) Subject to this Constitution, the Directors may by resolution censure, fine, suspend or expel a Member from ACSI, if the Directors are of the opinion that the Member:
  - (i) has refused or neglected to comply with any provision of this Constitution; or
  - (ii) no longer meets the Minimum Eligibility Criteria described in clause 8.4; or
  - (iii) has been guilty of conduct which is unbecoming of a Member, or prejudicial to the interests of ACSI; or
  - (iv) has become insolvent.
- (b) A resolution of the Directors pursuant to clause 10.4(a) does not take effect unless the Directors confirm the resolution in accordance with clause 10.4(c).
- (c) At least one week before the meeting of the Directors at which a resolution under clause 10.4(a) is passed, ACSI must provide the relevant Member with:
  - (i) a notice of the meeting including the date, place and time of the meeting;
  - (ii) a written notice of the allegations against them;
  - (iii) a written notice of the intended resolution; and
  - (iv) advice that the Member will have an opportunity, at the meeting and before the passing of the resolution, to give, orally or in writing, any explanation or defence they may think fit.

- (d) At a meeting of Directors held to confirm the resolution in accordance with clause 10.4(c), ACSI must:
  - (i) give the Member an opportunity to be heard;
  - (ii) give due consideration to any written statement submitted by the Member; and
  - (iii) by resolution determine whether to confirm or to revoke the resolution.
- (e) Any Member referred to in clause 10.4(a) may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Directors, elect to have the question dealt with at a General Meeting.
- (f) If notice is given under clause 10.4(e), a General Meeting must be held within 21 days after the date on which the Secretary received that notice.
- (g) At a General Meeting convened under clause 10.4(f):
  - (i) no business other than the question of the resolution in clause 10.4(a) can be transacted;
  - (ii) the Directors may place before the meeting details of the grounds for the resolution and the reasons for the passing of the resolution;
  - (iii) the relevant Member will be given an opportunity to be heard;
  - (iv) the other Members will vote by secret ballot on the question of whether the resolution should be confirmed or revoked; and
  - (v) the resolution in clause 10.4(a) is confirmed if the resolution is confirmed by a majority of two-thirds of the other Members present and voting (such vote to be taken by ballot).

## **10.5 Effect of cessation**

A Member who ceases to be a Member continues to be liable for:

- (a) any Annual Subscription Fee and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to ACSI; and
- (c) the Guarantee.

## **11 MEETINGS OF MEMBERS**

### **11.1 Calling of General Meeting by a Director**

A Director may call a General Meeting of Members.

### **11.2 Calling of General Meetings by Members**

Members with at least 5% of the votes that may be cast at a General Meeting may call and arrange to hold a General Meeting in accordance with section 249F of the Act.

### **11.3 Calling of General Meeting by Directors when requested by Members**

The Directors must call and arrange to hold a General Meeting in accordance with section 249D(1) of the Act, on the request of:

- (a) Members with at least 5% of the votes that may be cast at a General Meeting; or
- (b) at least 100 Members who are entitled to vote at the General Meeting.

### **11.4 Failure of Directors to call General Meeting**

Members with more than 50% of the votes of all Members who make a request under section 249D of the Act may call and arrange to hold a General Meeting if the Directors do not do so within 21 days after the request is given to ACSI in accordance with section 249E of the Act.

### **11.5 Calling of meetings by the Court**

The Court may order a meeting of Members to be called in accordance with section 249G of the Act if it is impracticable to call the meeting in any other way.

### **11.6 Amount of notice of meetings**

- (a) Subject to the Act, at least 21 days notice must be given of a meeting of Members.
- (b) Subject to clause 11.6(c), ACSI may call on shorter notice:
  - (i) an AGM, if all of the Members entitled to attend and vote at the AGM agree beforehand; and
  - (ii) any other General Meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) At least 21 days notice must be given of a meeting of Members at which a resolution will be moved to:

- (i) remove a Director under clause 3.11;
- (ii) appoint a Director in place of a Director removed under clause 3.11;
- (iii) remove an Auditor; or
- (iv) consider the resolution the subject of a notice given by a Member pursuant to clause 10.4(e).

#### **11.7 Notice of meetings of Members**

- (a) Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director.
- (b) Notice to joint Members must be given to the joint Member first named in the Register.
- (c) ACSI may give the notice of meeting to a Member:
  - (i) personally;
  - (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by the Member;
  - (iii) by sending it to the fax number or electronic address (if any) nominated by the Member; or
  - (iv) by any other means authorised by the Act.
- (d) A notice of meeting sent by post is taken to be given three days after it is posted. A notice of meeting sent by fax or other electronic means is taken to be given on the business day after it is sent.

#### **11.8 Auditor entitled to notice and other communication**

ACSI must give its Auditor:

- (a) notice of General Meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communication relating to the General Meeting that a Member is entitled to receive.

#### **11.9 Contents of notice of meeting**

- (a) The notice of meeting must conform with the requirements of section 249L of the Act.

- (b) If the meeting is to be held via teleconference, video conference or other instantaneous means, the technology and access details that will be used to facilitate the meeting must be included in the notice of meeting.

#### **11.10 Notice of adjourned meetings**

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

#### **11.11 Members' resolutions**

The Members may propose a resolution to be moved at a General Meeting only in accordance with the provisions of Division 4 of Part 2G.2 of the Act.

#### **11.12 Time and place for meetings of Members**

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

#### **11.13 Technology**

ACSI may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

#### **11.14 Quorum**

- (a) The quorum for a meeting of Members is at least one-third of the Members. The quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are to be counted.
- (c) If a Member has appointed more than one proxy or representative, only one of them is to be counted.
- (d) If an individual is attending both as a Member and as a proxy or representative, they are to be counted only once.
- (e) A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Directors specify.
- (f) If the Directors do not specify one or more of those requirements, the meeting is adjourned to:
  - (i) if the date is not specified, the same day of the week in the following week;
  - (ii) if the time is not specified, the same time; or

- (iii) if the place is not specified, the same place.
- (g) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

#### **11.15 Chairing meetings of Members**

- (a) The President will be the chair for the meeting of Members and if the President is not available or declines to act as chair for the meeting or part of it, the Deputy President will be the chair for the meeting.
- (b) The Directors at the meeting of Members must elect an individual present to chair the meeting (or part of it) if both the President and Deputy President are not available or decline to act as chair for the meeting or part of it.
- (c) The Members present at a meeting of the Members must elect a Member present to act as the chair of the meeting (or part of it) if:
  - (i) a chair has not previously been elected by the Directors to chair the meeting; or
  - (ii) a previously elected chair is not available or declines to act as chair for the meeting (or part of the meeting).
- (d) The chair must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the chair must do so.

#### **11.16 Auditor's right to be heard at meetings of Members**

- (a) The Auditor is entitled to attend and be heard at meetings of Members.
- (b) The Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.
- (c) The Auditor is entitled to be heard even if:
  - (i) the Auditor retires at the meeting; or
  - (ii) the meeting passes a resolution to remove the Auditor from office.
- (d) The Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any General Meeting.

### **11.17 Proxies and body corporate representatives**

- (a) A Member who is entitled to attend and cast a vote at meetings of Members may appoint a proxy or, if the Member is a body corporate, a representative, to attend and cast a vote at that meeting.
- (b) Any proxy or representative appointed under clause 11.17(a) must be appointed and has the rights set out in Division 6 of Part 2G.2 of the Act and will have the rights set out in that Division.

### **11.18 How many votes a Member has**

- (a) Subject to any rights or restrictions attached to any class of Member, at a meeting of Members each Member has one vote on a show of hands and on a poll.
- (b) The chair does not have a casting vote.

### **11.19 Objections to right to vote**

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair whose decision is final.

### **11.20 How voting is carried out**

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, a declaration by the chair is conclusive evidence of the result.
- (c) Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

### **11.21 Matters on which a poll may be demanded**

- (a) A poll may be demanded on any resolution other than resolutions concerning:
  - (i) the election of the chair; or
  - (ii) the adjournment of the meeting.
- (b) A poll may be demanded in accordance with section 250L of the Act.

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

- (a) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (b) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

#### **11.23 Holding of AGM**

- (a) ACSI must hold an AGM within 12 months after its incorporation.
- (b) ACSI must hold an AGM at least once in each calendar year and within five months after the end of its financial year.
- (c) An AGM must be held in addition to any other meetings held by ACSI in a year.
- (d) If ACSI only has one Member, it is not required to hold an AGM.

#### **11.24 Extension of time for AGM**

ACSI may lodge an application with ASIC to extend the period within which it is required to hold the AGM in accordance with section 250P of the Act.

#### **11.25 Consideration of reports at AGM**

The Directors must make the following available at an AGM:

- (a) the financial report;
- (b) the Director's report; and
- (c) the Auditor's report,

for the last Financial Year that ended before the AGM completed in accordance with the requirements of Part 2M.3 of Chapter 2M of the Act.

#### **11.26 Business of the AGM**

The business of the AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Director's report and Auditor's report;
- (b) the election of Directors;
- (c) the appointment of the Auditor; and

- (d) the fixing of the Auditor's remuneration.

### **11.27 Questions by Members of ACSI**

The chair of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of ACSI.

### **11.28 Questions by Members to Auditors**

If the Auditor or their representative is at the meeting, the chair of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

## **12 DIRECTORS' AND MEMBERS' MINUTES**

### **12.1 Minutes**

- (a) ACSI must keep minute books in which it records within one month:
  - (i) proceedings and resolutions of Members' meetings;
  - (ii) proceedings and resolutions of Directors' meetings, including committee meetings;
  - (iii) resolutions passed by Members without a meeting; and
  - (iv) resolutions passed by Directors without a meeting.
- (b) ACSI must ensure that the minutes of a meeting are signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.
- (c) ACSI must ensure that the minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

### **12.2 Members' access to minutes**

Members are entitled to gain access to the minute book of meetings of Members in accordance with the Act.

### **12.3 Member Council's access to minutes**

The Member Council is entitled to gain access to the minute book of meetings of Directors or a Sub-Committee.

## **13 ACCOUNTS AND AUDIT**

### **13.1 Accounting records**

- (a) The Directors must ensure that accounting and other records are kept to correctly record and explain the transactions and financial position of ACSI, to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Act or this Constitution.
- (b) The records must be kept:
  - (i) in a manner that enables them to be conveniently and properly audited;
  - (ii) for seven years after the completion of the transactions or operations to which they relate; and
  - (iii) at ACSI's registered office or at such other place as the Directors think fit.
- (c) The records must at all times be open to inspection by the Directors.

### **13.2 Accounts**

- (a) Each Financial Year, ACSI must prepare a financial report and a Directors' report in accordance with the Act.
- (b) The financial report for each Financial Year must consist of:
  - (i) the financial statements for the year;
  - (ii) the notes to the financial statements; and
  - (iii) the Directors' declaration about the statement and the notes.
- (c) The financial statements for the year will consist of:
  - (i) a profit and loss statement for the previous Financial Year;
  - (ii) a balance sheet at the date to which the profit and loss statement is made up;
  - (iii) a statement of cashflows for the year; and
  - (iv) if required by the Accounting Standards, a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (d) The notes to the financial statements must consist of:

- (i) disclosures required by the Corporations Regulations;
  - (ii) the notes required by the Accounting Standards (if any); and
  - (iii) if required, any other information necessary to give a true and fair view of the financial position and performance of ACSI.
- (e) The Directors' declaration made pursuant to clause 13.2(b)(iii) is a declaration by the Directors:
- (i) that the financial statement, and the notes required by the Accounting Standards comply with the Accounting Standards;
  - (ii) that the financial statements and the attached notes give a true and fair view of the financial position and performance of ACSI;
  - (iii) whether, in the Directors' opinion, there are reasonable grounds to believe that ACSI will be able to pay its debts as and when they become due and payable; and
  - (iv) whether, in the Directors' opinion, the financial statement and attached notes are in accordance with the Act.

### **13.3 Auditor**

ACSI will appoint an auditor to audit ACSI's financial statements in accordance with the Act.

## **14 VALIDATION OF IRREGULAR ACTS**

### **14.1 Acts within power**

All acts done by an Officer or a meeting of the Board that would ordinarily be within the power of the Officer or the meeting will be valid notwithstanding that at the time of the decision, there may have been some defect or invalidity of any appointment provided that such act if properly performed would not have been unlawful, or invalid under this Constitution.

### **14.2 Other acts**

All acts done by an Officer or a meeting of the Board that are invalid by reason of:

- (a) lack of entitlement to Vote;
- (b) acting beyond power; or
- (c) any other reason (any one being an "Irregular Act"),

may be ratified by the Board so that the act is as valid as it would have been without the Irregular Act, provided that such act if properly performed would not have been unlawful, or invalid under this Constitution.

## **15 WINDING UP**

### **15.1 Rights of Members on winding up**

If ACSI is wound up or dissolved, the Members have no right to participate in any distribution or payment of the assets or property of ACSI.

### **15.2 Distribution of assets**

- (a) If ACSI is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities must be given or transferred to some other institution or institutions:
  - (i) whose objects are similar to the objects of ACSI;
  - (ii) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by clause 2.2(b); and
  - (iii) which is approved by the Commissioner of Taxation as an institution exempt from income tax.
- (b) The Directors must determine the identity of the institution or institutions for the purpose of clause 15.2(a) at the time of dissolution.
- (c) If the Directors fail to determine the identity of the institution or institutions under clause 15.2(b), the Supreme Court of Victoria may make that determination.

## **16 INDEMNITY**

### **16.1 Indemnity**

- (a) Subject to Part 2D.2 of the Act, a person who is an Officer or Auditor is indemnified by ACSI against any liability to another person (other than ACSI or a related body corporate of ACSI as defined in the Act) incurred in that person's capacity as an Officer or Auditor unless the liability:
  - (i) arises out of conduct involving a lack of good faith; or
  - (ii) is for a pecuniary penalty order or composition order under Part 9.4B of the Act.
- (b) ACSI will indemnify any other employee of ACSI at the Directors' discretion.

- (c) ACSI will indemnify an Officer against a liability for costs and expenses (including, legal expenses on a full indemnity basis) incurred by the Officer:
  - (i) in defending proceedings, whether civil or criminal, in which:
    - (A) judgment is given in favour of the Officer; or
    - (B) the Officer is acquitted; or
  - (ii) in connection with an application, in relation to proceedings under clause 16.1(c)(i), in which a court grants relief to the Officer under the Act,

**SUBJECT** only to an obligation on the Officer to repay to ACSI the expenses advanced by ACSI if:

- (i) judgment is not given in the Officer's favour;
  - (iii) the Officer is not acquitted;
  - (iv) a court subsequently determines that the indemnification is not permitted; or
  - (v) the indemnification is not permitted by the Act.
- (d) For the purposes of this clause, ACSI will have the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.
  - (e) The indemnification rights in this clause constitute a contract between the relevant parties seeking indemnification and ACSI and will continue to have effect following the rescission or restrictive modification of the clause with respect to events occurring prior to the rescission or modification of the clause.

## **16.2 Payment Of Costs**

The Directors may, out of the funds of ACSI, pay all costs, losses and expenses which any Officer may incur or become liable to pay by reason of any contract entered into or act or thing done by them in their capacity as an Officer or in any way in discharge of their duties.

## **16.3 Limit of Indemnity**

- (a) Subject to the provisions of the Act, an Officer will not be liable for:
  - (i) the acts, receipts, neglect or defaults of any other Officer;
  - (ii) joining in any receipt or other act of conformity or for any loss or expense happening to ACSI through:

- (A) the insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of ACSI; or
- (B) the insufficiency or deficiency of any security in or upon which any of the moneys of ACSI is invested at any time;
- (iii) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects are deposited at any time;
- (iv) any loss occasioned by any error of judgment or oversight on the Officer's part; or
- (v) any other loss, damage or misfortune which occurs in the execution of the duties of the Officer's office,

unless the loss, damage or misfortune occurred through the Officer's own dishonesty.

## **17 CONTRACT OF INSURANCE**

Except to the extent precluded by the Act, if the Board considers it appropriate to do so, ACSI may pay amounts by way of premium for any contract effecting insurance on behalf of or in respect of a person who is or has been an Officer, against:

- (a) any liability incurred by the Officer which does not arise out of conduct involving a wilful breach of duty in relation to ACSI or a contravention of sections 182 or 183 of the Act; or
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with ACSI, whether civil or criminal and whatever their outcome.

## **18 NOTICES**

### **18.1 When Notice Deemed Given**

A notice is deemed to be given:

- (a) if the Notice is given by post, within 3 Business Days of being sent;
- (b) if the Notice is given by email, at the time the email is sent (provided that the sender does not get a notice of failure to transmit within 2 hours of the time of sending); and
- (c) if the Notice is given by any other form of technology that gives the Members as a whole a reasonable opportunity to participate and provides

the recipient with the information in a form that can be seen, saved and printed, within 1 Business Day of being sent.

**18.2 Where Notice May Be Served on a Member**

- (a) A Notice may be served by or on behalf of ACSI upon any Member either personally or by sending it by post, facsimile or e-mail to the Member at the address shown in the Register.
- (b) Where a document is properly addressed and despatched to a Member, the document will, unless the contrary is proved, be deemed to have been given to the Member at the time at which the document would have been delivered in the ordinary course.

**19 PROCEEDINGS AND DOCUMENTS CONFIDENTIAL**

Subject to the law all proceedings and documents of the Board are to be treated as strictly private and confidential.

**20 ALTERATION OF THIS CONSTITUTION**

Subject to the Act, this Constitution may only be varied by a resolution passed by at least 75% majority of Members entitled to Vote at a General Meeting.