

Company Constitution

The Real Estate Institute of the Australian Capital Territory Limited

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Company Constitution

The Real Estate Institute of the Australian Capital Territory Limited

Part A – Definitions, Company name and type

1. Definitions and Interpretations

1.1 In this Constitution, and any Codes or Rules made pursuant to this Constitution, the following terms shall have the following meanings:

- (a) “**Ballot Paper**” means either the physical piece of paper by which votes can be cast in an election for candidates listed on that paper or an electronic voting form contained on an Electronic Voting Site;
- (b) “**Board**” means the Board of directors elected or appointed in accordance with this Constitution, and Board members means directors;
- (c) “**Business Day**” means any day except a Saturday, Sunday or public holiday in Australian Capital Territory;
- (d) “**Business Agent Service**” means a business of:
 - (i) buying, selling, exchanging, disposing of, or otherwise dealing with, a business or professional practice or a share or interest in the goodwill or stock of a business or professional practice;
 - (ii) negotiating for the purchase, sale, exchange, disposition of, or other dealing with, a business or professional practice or any share or interest in the goodwill or stock of a business or professional practice;
 - (iii) any other service prescribed by regulation under section 10 of *Agents Act 2003* (ACT);

and a **Business Agent** means a person who carries on a Business Agent Service.

- (e) “**By-Laws**” means any by-laws developed, adopted by the Board in accordance with clause 12, and any amendments to them from time to time, including the Membership Subscription Policy By-Law;
- (f) “**Chief Executive Officer**” means the Chief Executive Officer of REIACT, appointed by the Board pursuant to clause 16;
- (g) “**Codes**” means the REIACT Standards of Business Practice and any other code prescribed from time to time by REIACT pursuant to clause 16;
- (h) “**Constitution**” means this company constitution of REIACT;

- (i) **“Continuing Professional Development”** means any program prescribed by the Board from time to time for structured and mandatory continuing education to be undertaken by Ordinary members who are real estate agents and business agents;
- (j) **“Electronic Vote”**, in relation to an election, means a vote cast in the election by means of an electronic ballot form;
- (k) **“Electronic Voting Site”**, in relation to an election, means a secure internet site approved or managed by the Returning Officer for the purposes of enabling eligible voters to cast an Electronic Vote in an election;
- (l) **“General Meeting”** means the Annual General Meetings or Special General Meetings of members of REIACT held by REIACT as referred to in clauses 24.1 and 24.2;
- (m) **“Licensed Agent”** means a real estate agent or business agent licensed pursuant to the provisions of the *Agents Act 2003* (ACT);
- (n) **Membership Subscription Policy By-Law** means the By-Law in respect of membership and payment of subscription fees annexed hereto and marked **“A”**, adopted in accordance with clause 16.3, and amended from time to time by the Board in accordance with clause 16.4.
- (o) **“Ordinary Resolution”** means a resolution that is passed by a majority of not less than one half of the members of the REIACT who are entitled under this Constitution to vote and who vote in person or by proxy at a General Meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with this Constitution;
- (p) **“Person”** means a natural person of either sex, a public body, company, partnership or association or body of persons, corporate or unincorporated;
- (q) **“Professional Standards Tribunal”** means the disciplinary tribunal referred to in this Constitution established pursuant to clause 11.1
- (r) **“Real Estate Agent Service”** means engaging in any one or more of the following:
 - (i) buying, selling, exchanging, leasing, assigning or otherwise disposing of land;
 - (ii) negotiating with, or inducing or attempting to induce, a person to —
 - (A) buy, sell, exchange, lease, assign or otherwise dispose of land; or
 - (B) enter into, or make or accept an offer to enter into, a contract to buy, sell, exchange, lease, assign or otherwise dispose of land;
 - (iii) collecting payments under a lease;
 - (iv) collecting payments under a mortgage of land or payments under a terms contract for land;
 - (v) acting as manager of an owners corporation for a units plan;
 - (vi) any other service prescribed by regulation under section 8 of *Agents Act 2003* (ACT);and a **Real Estate Agent** means a person who carries on a Real Estate Agent Service.

- (s) “**REIACT**” means this company, The Real Estate Institute of the Australian Capital Territory Limited ACN 008 553 277;
- (t) “**Register of Members**” means the register of current members kept and maintained by REIACT pursuant to clause 8 and the provisions of section 169 of the Corporations Act 2001 (Cth);
- (u) “**Registered Business Salesperson**” means a business salesperson registered pursuant to the *Agents Act 2003* (ACT);
- (v) “**Registered Real Estate Salesperson**” means a real estate salesperson registered pursuant to the *Agents Act 2003* (ACT);
- (w) “**Registered Salespeople**” means Registered Business Salespeople and Registered Real Estate Salespeople;
- (x) “**Returning Officer**” means the Chief Executive Officer in his or her capacity as the returning officer designated under clause 17.1 to conduct or control the election of the members of the REIACT Board as provided for in this Constitution;
- (y) “**Rules**” means any rules or bylaws prescribed from time to time by the REIACT Board pursuant to clause 16.1;
- (z) “**Scrutineers**” means the two persons appointed by the Board pursuant to clause 17.2;
- (aa) “**Special Resolution**”
 - (i) in relation to members, means a resolution that is passed by a majority of not less than three-fourths of the members of the REIACT who are entitled under this Constitution to vote and who vote in person or by proxy at a General Meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with this Constitution; and
 - (ii) in relation to directors or the Board, means a resolution that is passed by a majority of not less than three-fourths of the members of the Board who are entitled under this Constitution to vote, and who vote in person or by proxy at a meeting of the Board of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with this Constitution, and a quorum for such a meeting is present.
- (bb) “**Surplus Property of the REIACT**” means that property of REIACT remaining after satisfaction of the debts and liabilities of REIACT and the costs, charges and expenses of the winding up of the REIACT;

2. Company Name

- 2.1 The name of this company is The Real Estate Institute of the Australian Capital Territory Limited (**REIACT**).
- 2.2 REIACT is a public company limited by guarantee under the *Corporations Act 2001* (Cth).

3. Objects

- 3.1 The objects of REIACT shall be to ensure that REIACT members enjoy a reputation as highly

professional and ethical real estate and/or business agency practitioners operating in a sustainable business environment. In addition, REIACT shall strive to ensure the following specific objects:

As to reputation:

- (a) The public knows the REIACT brand and understands the benefits of using a REIACT agent.
- (b) REIACT members understand the importance of professional conduct and customer service on the reputation of the industry.

As to professional standards:

- (c) REIACT sets the standard for professional and ethical conduct in real estate and business sales in the Australian Capital Territory and REIACT members are leaders in real estate practice and business sales agency.
- (d) REIACT will continually strive to enhance the experience of their customers and to strive for excellence in all facets of real estate practice and business sales agency.
- (e) REIACT members understand the regulatory environment in which they operate and are committed to generating consumer confidence in the real estate and business sales industry.

As to a sustainable business environment:

- (f) REIACT members operate in a regulatory and fiscal framework that is conducive to profitable and efficient real estate businesses and business sales agencies.
- (g) REIACT members enjoy a range of innovative REIACT services.

- 3.2 The income and property of REIACT must be applied solely towards the promotion of the objects in clause 3.1.
- 3.3 REIACT must not pay or transfer (directly or indirectly) by way of dividend, bonus or otherwise any portion of the income or property to any Member.
- 3.4 Notwithstanding sub-clause 3.3, REIACT may pay in good faith to any Member:
 - (a) for any services rendered or goods supplied in the ordinary and usual course of business to REIACT;
 - (b) for any out of pocket expenses incurred by any Member on behalf of REIACT; or
 - (c) for any other bona fide reason or purpose for the attainment of the objects in clause 3.1.

4. Powers

- 4.1 Subject to the *Corporations Act 2001* (Cth) and to this Constitution, REIACT may do all things necessary or convenient for carrying out its objects in clause 3.1, and in particular, may:
 - (a) acquire, hold, deal with and dispose of any real or personal property;

- (b) open and operate bank accounts;
 - (c) invest its own money:
 - (i) as trust funds may be invested under Part 2 of the Trustees Act 1925 (ACT); or
 - (ii) in any other matter as determined from time to time by the Board;
 - (d) borrow money upon such terms and conditions as REIACT thinks fit;
 - (e) give such security for the discharge of liabilities incurred by REIACT as REIACT sees fit;
 - (f) employ, appoint and/or engage and at its discretion remove, dismiss or suspend any employees, officers, staff, servants, agents, contractors, tradespersons or professional persons;
 - (g) determine wages, salaries and gratuities of appointees and employees;
 - (h) appoint agents to transact any business of REIACT on its behalf;
 - (i) print and publish by any technological means newsletters, periodicals, books, leaflets or other documents;
 - (j) receive or make gifts, grants, devises, bequests, subscriptions or donations from or to any person, fund, authority, organisation or institution and accept any gift whether subject to special trust or not and to act as trustee of money or other property vested in the Company on trust;
 - (k) take any measures from time to time as the Company may deem expedient or appropriate for the purpose of procuring contributions to the funds of the Company, whether by way of donations, subscriptions, grants or otherwise;
 - (l) establish and support or aid in the establishment or support of, any other service formed for any of the objects in clause 3.1, consistent with any of those objects;
 - (m) enter into any other contract it considers necessary or desirable; and
 - (n) act as Trustee and accept and hold real and personal property upon trust.
- 4.2 REIACT may only exercise the powers in sub-clause 4.1 to:
- (a) carry out the objects of REIACT in clause 3.1; and
 - (b) do all things incidental or convenient in relation to the exercise of power under paragraph 4.2(a).

Part B – Membership

5. Membership

Categories of membership

- 5.1 The categories of membership of REIACT shall be Ordinary Members, Corporate Members,

Associate Members, Life Members, Affiliate Members and Past Service Members.

5.2 Subject to clause 6, a Person's eligibility for membership of the various categories stipulated in clause 5.1 shall be as follows:

- (a) An **Ordinary Member** is a natural person (not being a corporation, partnership or other body Corporate) who is:
- (i) a Licensed Agent;
 - (ii) A Registered Business Salesperson;
 - (iii) A Registered Real Estate Salesperson; or
 - (iv) If not licensed under the *Agents Act 2003* (ACT), is:
 - (A) the sole proprietor of a Corporate Member that is a Real Estate Agent Service and/or Business Agent Service trading in the Australian Capital Territory;
 - (B) a partner in a firm that is a Corporate Member and that is a Real Estate Agent Service and/or Business Agent Service trading in the Australian Capital Territory; or
 - (C) a director of a company that is a Corporate Member and that is a Real Estate Agent Service and/or Business Agent Service trading in the Australian Capital Territory.
- (b) A **Corporate Member** of REIACT:
- (i) Is a natural person who is a sole proprietor of a business which, either alone or as part of or in connection with any other business, is a Real Estate Agent Service and/or Business Agent Service trading in the Australian Capital Territory; or
 - (ii) Is a corporation or any partnership whose business, either alone or as part of or in connection with any other business, is a Real Estate Agent Service and/or a Business Agent Service trading in the Australian Capital Territory; and
 - (iii) Must satisfy all eligibility criteria of a Corporate Member designated by REIACT in its Rules (including but not limited to any requirement that a Corporate Member's employed Registered Real Estate Salespersons or Registered Business Salespersons or a proportion of them must be Ordinary Members of REIACT); and
- And upon an eligible Corporate Member joining and paying the designated fee:
- (iv) the sole proprietor of the Corporate Member;
 - (v) all directors of the Corporate Member; and
 - (vi) all partners of the Corporate Member (as defined under the *Partnership Act 1963* (ACT));
- (as appropriate) are automatically Ordinary Members without payment of an Ordinary Membership fee unless in the case of directors or partners, the director or partner concerned is ordinarily resident outside the Australian Capital Territory; and
- (c) **Life Member**: is an Ordinary Member who, in the light of a long, continuous and outstanding meritorious service to the real estate industry or business sales agency industry, is:
- (i) nominated for life membership by another ordinary member of REIACT in writing, who

shall provide that nomination to the Chief Executive Officer of REIACT, together with supporting documentation and information stipulated by the Chief Executive Officer;

- (ii) by resolution of the REIACT Board considered deserving of a life membership; and
 - (iii) Resolved by ordinary resolution at a general meeting of REIACT to be a life member.
- (d) **Associate Member:** is a Person who is the holder of some special qualification allied to real estate or business sales agency, being:
- (i) A legal practitioner admitted to practice in the Australian Capital Territory;
 - (ii) A qualified accountant;
 - (iii) A qualified valuer; or
 - (iv) such other special qualification that will complement and assist the Board and REIACT in achieving good governance and/or fulfilling the objects in clause 3.
- (e) **Honorary Member:** is a Person who is actively engaged, in whole or in part, in an occupation designated by the REIACT Board by Ordinary Resolution to be sufficiently related to the provision of real estate or business agency services, and one that advances the objects of REIACT in this Constitution, so as to warrant membership of REIACT. Honorary Members may be visiting members of other Real Estate Institutes or Associations or other kindred organisations, provided that Honorary Membership will only be for a period not exceeding one year from the date of admission (however an Honorary Member can be reappointed upon that period expiring).
- (f) **Past Service Member:** The Board may invite any former member of REIACT who:
- (i) is no longer a member of the categories of REIACT membership; and
 - (ii) does not conduct business as a Licensed Real Estate Agent, is not engaged by any real estate or business agency business to act as a Registered Salesperson,
- and on such invitation being accepted the person shall be admitted as a Past Service Member, subject to the following:
- (iii) the Board's invitation may be withdrawn at any time without reason before acceptance;
 - (iv) the conditions pertaining to the honour of admission as a Past Service Member may be regulated by Rules;
 - (v) the Board will set the annual membership fee payable (if any) by each Past Service Member to the intent that such fees for each Past Service Member need not be the same.

5.3 All Ordinary Members are entitled to vote on any issue arising at REIACT meetings, and have one vote per member.

5.4 Corporate Members:

- (a) will receive notices of REIACT meetings;
- (b) are not entitled to a vote in their own right at REIACT meetings but each;

- (i) sole proprietor of a Corporate Member;
 - (ii) director of a Corporate Member; and
 - (iii) partner of a Corporate Member (as defined under the *Partnership Act 1963 (ACT)*);
- may attend and speak at REIACT meetings and is entitled to vote on any issue arising and has one vote each as an Ordinary Member.
- 5.5 Associate Members are not entitled to vote at REIACT meetings however are entitled to receive notices of, to attend and to speak at REIACT meetings.
- 5.6 A Life Member is entitled to the same membership rights as an Ordinary Member, including voting at REIACT meetings, save that a Life Member is not liable to pay any membership subscription for his or her continuing membership.
- 5.7 An Honorary Member is not entitled to vote at REIACT meetings however is entitled to receive notices of, to attend and to speak at REIACT meetings, and is not liable to pay any membership subscription for his or her membership.
- 5.8 A Past Service Member is entitled to the same membership rights as an Ordinary member, including voting at REIACT meetings.
- 5.9 All Members will, in joining REIACT or renewing their REIACT membership, be bound by any Rules instituted by REIACT:
- (a) for the administration of memberships including but not limited to Corporate Membership eligibility requirements that all employed Registered Real Estate Salespersons or Registered Business Salespersons be Ordinary Members; and
 - (b) regarding the operation of any awards process facilitated by REIACT including but not limited to a requirement that every Member who is an awards candidate is either:
 - (i) a sole proprietor;
 - (ii) director;
 - (iii) partner (under the *Partnership Act (ACT) 1963*); or
 - (iv) employeeof a Corporate Member

6. Eligibility for membership

- 6.1 No Person shall be eligible to apply for membership or to remain a member of REIACT (no matter when that Person was admitted to membership of REIACT) in relation to any of the classes of membership stipulated in clause 5.2:
- (a) unless that Person agrees in writing to abide by the Constitution, Codes and Rules of REIACT on request by the Board;
 - (b) if that Person:
 - (i) is a person whose licence under the Agents Act 2003 (ACT) or any other

corresponding law, is currently under suspension, disqualification or cancelled in any way including by an order of the state or territory Administrative Tribunal under that Act;

- (ii) is an undischarged bankrupt or otherwise is an insolvent under administration within the meaning of the Corporation law;
 - (iii) has a mental incapacity that may affect the exercise of the person's functions as a Licensed Agent;
 - (iv) is licensed and has contravened, or is contravening, an order of the Administrative Tribunal of a state or territory;
 - (v) has been convicted of an indictable offense in respect of which a sentence has been imposed of imprisonment for more than one year or for an indeterminate period;
 - (vi) has been convicted, in the Australian Capital Territory or elsewhere, of an offence involving dishonesty;
 - (vii) is a director of a corporation, is a partner in a partnership or is the sole proprietor of a business which is indebted to REIACT or, alternatively, is indebted to another member of REIACT pursuant to any arbitration award made under REIACT's Constitution, Codes or Rules, and the debt remains unpaid for a period greater than 60 days;
 - (viii) is an ex-director of a corporation, is an ex-partner in a partnership or is the ex-sole proprietor of a business which is indebted to REIACT or alternatively, is indebted to another member of REIACT pursuant to any arbitration award made under REIACT's Constitution, Codes or Rules unless the corporation, partnership or business did not owe that debt at the date of the Person applying for membership or ceasing to be a director of that corporation, partner in that partnership or sole proprietor of that business;
- (c) unless, in the case of:
- (i) Ordinary and Corporate Members; and
 - (ii) Life Members whose business, either alone or as part of or in connection with any other businesses, is to act as an agent in respect of Real Estate Agent Service and/or Business Agent Service;

the member concerned (in this clause referred to as "the member") for the period of his or her membership of REIACT has in place a professional indemnity insurance contract (or their employer has such a policy in place) that includes the following features:

- (iii) It provides a limit of indemnity in value that is prudent and to a level acceptable to the real estate industry in the Australian Capital Territory, or such sum as is prescribed by the Board from time to time;
- (iv) It includes as insured events all activities undertaken by the member in respect to the operations of carrying on the business, either alone or as part of or in connection with any other business, of acting as an agent in respect of Real Estate Agent Service and/or Business Agent Service in which the member is involved including but not limited to, the general provision of real estate services, business agency services and auctions; and
- (v) the insurance contract includes as insured events as to which the insured is entitled to indemnity under the contract any claims that arise out of, or are in any way related to, the provisions of the *Competition and Consumer Act 2010* (Cth);

and supplies to REIACT on request a written declaration of the insurer confirming this insurance is in place; and

- (d) unless, in the case of:
- (i) existing Ordinary and Associate members who are licensed real estate and/or business agents –the member completes Continuing Professional Development; and
 - (ii) new applicants for Ordinary and Associate membership who are licensed real estate and/or business agents;

the applicant agrees to complete Continuing Professional Development.

7. Applications for membership

- 7.1 Applications for membership of REIACT shall be made in a form stipulated by the Board, to be accompanied by the payment by the applicant of a non-refundable application fee as stipulated by the Board.
- 7.2 Applications for membership of REIACT shall be determined by the Chief Executive Officer of REIACT.
- 7.3 Applicants for membership shall have no right to be heard prior to the making of the determination regarding that application for membership by the Chief Executive Officer. However, the applicant for membership shall be provided with written notice of the Chief Executive Officer's determination within a period of 14 days following the determination, together with written reasons for any rejection of that application.
- 7.4 Any Person whose application for membership is rejected may appeal pursuant to clause 14.1.
- 7.5 Notice of any successful application for membership of REIACT shall be provided, within a month of the application being approved, to all existing members by way of written notice, notice by e-mail, notice by posting on the internet or such other method determined by the Board.

8. Register of members

- 8.1 REIACT shall keep and maintain in an up to date condition a register of the members of REIACT, the categories of membership applicable to those members and their postal or residential addresses.
- 8.2 Upon the request of a member, REIACT shall make the register available for the inspection of that member and the member may make a copy or take an extract from the register but shall have no right to remove the register for that purpose.

9. Members' Obligations

Requirements for ongoing membership

- 9.1 Members of REIACT will at all times adhere to the Constitution, By-Laws, Codes and Rules of REIACT, including payment of any membership subscription fees payable in accordance with the Membership Subscription Policy By-Law.
- 9.2 Members of REIACT will not in any way assist or in any other way be a party to the breach by any

Person of REIACT's intellectual property rights or any unauthorised use by a Person of REIACT's membership services.

9.3 Members of REIACT will not:

- (a) In any way infringe any intellectual property rights held by REIACT including, but not limited to, REIACT's copyright and REIACT's rights in designs, patents, confidential information and trademarks.
- (b) In any way assist or in any other way be a party to the breach by any Person of REIACT's intellectual property rights (including, but not limited to, REIACT's copyright and REIACT's rights in designs, patents, confidential information and trademarks) or any unauthorized use by a person of REIACT's membership services.

9.4 Members of REIACT shall not:

- (a) engage in conduct that is misleading or deceptive of REIACT or its servants or agents or is likely to mislead or deceive REIACT or its servants or agents;
- (b) with respect to their dealings or association with REIACT or any of its services, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

10. Cessation of Membership

Suspension of REIACT trading services to members

10.1 If any member of REIACT owes to REIACT a debt in excess of REIACT's stipulated trading terms, REIACT may cease supplying membership services to that member until the debt has been paid in full. The terms of this clause shall not, when applied, amount to a termination or suspension of a Person's membership and a member aggrieved by a decision under this clause may appeal such decision pursuant to clause 14.1.

Resignation

10.2 Any member may at any time submit a resignation from membership of REIACT by providing written notice of that intention to the Chief Executive Officer and such a Person shall cease to be a member of REIACT should that Person's resignation be accepted by the Board pursuant to the provisions of clause 10.3 below. No membership fees are refundable in the event of a resignation.

10.3 The REIACT Board may refuse to accept the resignation of a member of REIACT for any reason that it shall in its absolute discretion determine warrants such a refusal including, but not limited to, the fact that a Person is indebted to REIACT or due to the fact that the member is the subject of an arbitration hearing or a Professional Standards Tribunal hearing pursuant to this Constitution.

Cessation of Membership

10.4 Should the Chief Executive Officer of REIACT determine that a member of REIACT does not comply with the criteria for membership stipulated in clauses 5 and 6 above, that Person shall cease to be a member of REIACT immediately upon notice of that fact being provided to that member by the Chief Executive Officer.

10.5 Should a member be provided with a notice by the Chief Executive Officer that that Person ceases to be a member of REIACT pursuant to the provisions of clause 10.4 above that Person shall have

a period of 14 days from the date that the Person is provided with that notice to make written request to the Chief Executive Officer that the issue of that member's compliance with the criteria of membership stipulated in clauses 5 and 6 above be referred to a Professional Standards Tribunal for determination .

- 10.6 Upon receipt of a request under clause 10.5, the Chief Executive Officer shall convene a Professional Standards Tribunal hearing and shall reinstate the membership of that Person until further order of the Professional Standards Tribunal.

Part C – Tribunals and Appeals

11. Professional standards tribunals and the disciplining of members

- 11.1 REIACT shall establish from time to time Professional Standards Tribunals that shall be made up of three individuals consisting of:

- (a) the Chief Executive Officer, or if there is a conflict of interest for the Chief Executive Officer to hear a particular matter, any person the President appoints who does not have a conflict of interest and who is suitably qualified to be a member of a professional standards tribunal;
- (b) an Australian legal practitioner under section 8 of the Legal Profession Act 2006 (ACT), who will be the Chairperson of the Professional Standards Tribunal; and
- (c) a Licenced Agent,

and in the case of subclauses (b) and (c), these persons will be appointed by the Chief Executive Officer (or if there is a conflict of interest for the Chief Executive Officer, then by the President) from a panel of individuals previously approved by the Board.

- 11.2 Should the Chief Executive Officer:

- (a) receive a complaint from any Person, including a member of REIACT, ("the complainant") that a member of REIACT ("the defendant member") has breached one or more of REIACT's Constitution, Codes or Rules; or
- (b) make a complaint himself or herself that a member of REIACT ("the defendant member") has breached one or more of REIACT's Constitution, Codes or Rules,

the Chief Executive Officer must:

- (c) refer that complaint for determination at a hearing by a Professional Standards Tribunal; or
- (d) refer that complaint to the Board for a resolution, prima facie and without investigation, as to whether a case for a possible breach has been made out.

- 11.3 If the Chief Executive Officer refers the complaint to the Board under clause 11.2(d), then:

- (a) if the Board resolves that prima facie and without investigation a case for possible breach has been made out, the Board will refer the complaint for determination at a hearing by a Professional Standards Tribunal; and
- (b) if the Board resolves that prima facie and without investigation a case for possible breach has not been made out, the Board will formally respond to the complainant advising that no action will be taken by REIACT in relation to the complaint.

- 11.4 The members of each Professional Standards Tribunal appointed under this clause 11.1:
- (a) are not required to be members of REIACT;
 - (b) must not be conflicted in relation hearing a particular matter by virtue of:
 - (i) knowing the complainant or the defendant member on a personal or professional basis; or
 - (ii) having prior or external information regarding the complaint; and
 - (c) must immediately inform the Chief Executive Officer of any conflict that arises and stand down, such that the Chief Executive Officer or the President may appoint someone else.
- 11.5 Upon the hearing of a matter referred to a Professional Standards Tribunal the Tribunal shall have the power to:
- (a) Make a finding as to whether the defendant member has committed a breach of any of REIACT's Constitution, Codes or Rules;
 - (b) If a finding is made that the defendant member has committed a breach (being any breach, not just the breach that is complained of) under subclause (a):
 - (i) terminate or suspend the REIACT membership of the defendant member;
 - (ii) impose on the defendant member the penalties prescribed in any of REIACT's Constitution, Codes or Rules in respect of any breaches of those Constitution, Codes or Rules;
 - (iii) impose monetary penalties on the defendant member of not more than \$10,000.00, or such alternate maximum sum as prescribed from time to time by the Board, for any breach of any of REIACT's Constitution, Codes or Rules;
 - (iv) require the defendant member to undertake a course of further training provided by REIACT or another service provider as stipulated by the Professional Standards Tribunal;
 - (v) impose a reprimand;
 - (vi) dismiss the matter without penalty; or
 - (vii) order the restitution of any monies held or received by the defendant member to any Persons determined by the Professional Standards Tribunal to be entitled to those monies, provided that any sum ordered by way of restitution shall be no more than \$25,000.00 in total.
 - (c) If a finding is made that no breach has been committed, the Professional Standards Tribunal will dismiss the matter.
- 11.6 Notwithstanding the provisions of clause 11.2 above, a Professional Standards Tribunal that is hearing a particular matter that has been referred to it may decline to hear or determine that matter on the ground that:
- (a) the subject of the matter is not within the capacity of the Professional Standards Tribunal to determine;
 - (b) the matter is frivolous or vexatious; or

- (c) it is otherwise inappropriate for the Professional Standards Tribunal to hear or determine the matter concerned.
- 11.7 Should a Professional Standards Tribunal decline to hear or determine a matter pursuant to clause 11.6, the Chief Executive Officer must then refer the matter to the Office of Regulatory Services if, in the opinion of the Professional Standards Tribunal or the Chief Executive Officer, the matter might amount to a breach of the provisions of the *Agents Act 2003* (ACT) or the Rules or Codes.
- 11.8 Prior to the commencement of any hearing before a Professional Standards Tribunal, the complainant may at any time give written notice that he or she wishes to withdraw their complaint. In that event, the hearing before the Professional Standards Tribunal shall not take place unless the Board decides by Ordinary Resolution that a matter should nevertheless proceed to be heard by a Professional Standards Tribunal.
- 11.9 The following procedure shall apply with respect to any hearing conducted by a Professional Standards Tribunal:
- (a) Not less than 14 days before the Professional Standards Tribunal meets to hear the relevant matter (“the Hearing”), the Tribunal shall give to the defendant member and to the complainant:
- (i) written notice of the nature of the matter to be heard and particulars of the events that are alleged to have occurred;
 - (ii) copies of any documentary evidence proposed to be considered by the Professional Standards Tribunal at the hearing including, but not limited to, any relevant written complaints that have been made; and
 - (iii) written notice stating the date, time and place of the Hearing and informing the member and the complainant that:
 - (A) the member and the complainant and any witnesses that they wish to call may attend and speak at the Hearing and/or submit to the Professional Standards Tribunal written representations or evidence prior to the date of the Hearing;
 - (B) the member and the complainant must submit any documentary evidence on which they intend to rely, including written evidence of a witness under subclause (A) above, to the Tribunal no later than 7 days prior to the Hearing;
 - (C) all written evidence submitted to the Professional Standards Tribunal prior to the Hearing will be circulated by the Professional Standards Tribunal to the other party;
 - (D) if any written evidence of a witness is submitted to the Professional Standards Tribunal prior to the Hearing and the other party or the Professional Standards Tribunal requires that witness to attend the Hearing, the witness must attend for their written evidence to be taken into account; and
 - (E) the member and the complainant will share equally in the cost of Hearing in an amount to be determined by the Professional Standards Tribunal and included in the written notice, and the notice will state that payment is due before the date of the Hearing.
- (b) At the hearing by the Professional Standards Tribunal, prior to the Tribunal making its determination, the Tribunal shall call before it any evidence that it deems fit and the defendant member shall be given an opportunity to call evidence and make oral representations. The Tribunal shall give due consideration to all the evidence and

representations before it.

- (c) Following the hearing by the Professional Standards Tribunal, the Tribunal shall deliver its decision and the reasons for that decision in writing. A copy of the decision and the reasons for that decision shall be provided to the defendant member within 14 days of the decision being made.
- (d) Should a REIACT member be found at a disciplinary hearing conducted by a Professional Standards Tribunal to have committed a breach and that finding not be overturned upon appeal pursuant to clause 14.1, the outcome of the Tribunal hearing and any appeal must be communicated to REIACT Members through a REIACT publication. That communication shall take place upon the latter of either the determination of any appeal under clause 14.1 or, if there is no appeal, upon the expiration of the time permitted under clause 14.1 for an appeal to be lodged. Further, the relevant Professional Standards Tribunal shall have the power to exercise its discretion to rule that the identity of the defendant member shall not be published if the Tribunal considers that this would be substantially unfair in the circumstances. Any member aggrieved by the exercise of such discretion by a Tribunal may appeal against such a determination pursuant to clause 14.1.

11.10 The Professional Standards Tribunal shall not have the power to make any costs orders with respect to the hearing of any matters before it other than the requirement for the member and the complainant to pay the administrative costs of REIACT and the Professional Standards Tribunal for the Hearing.

11.11 The member and the complainant must pay the administrative costs of REIACT and the Professional Standards Tribunal for the Hearing to REIACT prior to the date of the Hearing.

11.12 Notwithstanding any suspension of a member pursuant to clause 11.5 above, the member shall remain liable for all monies that otherwise would have been payable if the member had not been under suspension during the period of suspension.

11.13 Notwithstanding any termination of a member's membership pursuant to clause 11.5 above the member shall remain liable for all monies due at the date of that termination to:

- (a) REIACT; or
- (b) another member.

11.14 Any member who is expelled or suspended from membership of REIACT or who is penalised by a Professional Standards Tribunal pursuant to this Constitution shall have a right of appeal against that expulsion, suspension or penalty in accordance with the provisions of clause 14.1 below; provided that if a member has been expelled or suspended the member shall remain under suspension until the determination of the appeal.

11.15 Expulsion of a member pursuant to clause 11.5 above shall be deemed to not take effect until:

- (a) the date upon which any time given to appeal against the decision to expel expires pursuant to clause 14.1 below; or
 - (b) the date that notice of the determination of any such appeal is given to the member,
- whichever is the later.

12. Arbitrations

- 12.1 REIACT may create and maintain Arbitration Panels for the purpose of hearing and resolving disputes between REIACT's member agents to which any of REIACT's Constitution, Codes or Rules, relate or which otherwise arise out of the provision of real estate or business agency services by one or more members of REIACT.
- 12.2 So as to avoid any doubt, Arbitration Panels and the processes referred to in this clauses 12 have no application to the matters set out in this Constitution as being matters to be determined by the Professional Standards Tribunal, the Appeals Board or the Chief Executive Officer.
- 12.3 Arbitration Panels shall be empowered to determine arbitration disputes under this Constitution in accordance with the terms of the Commercial Arbitration Act 1986 (ACT) and all parties to such arbitration hearings shall be bound by the provisions (including appeal provisions) of that Act, except insofar as the terms of the Commercial Arbitration Act 1986 (ACT) are lawfully modified by REIACT's Constitution, Codes or Rules.
- 12.4 All disputes between REIACT members, including member of the REIACT Board, to which any of REIACT's Constitution, Codes or Rules relate or which otherwise arise out of the provision of real estate or business agency services by one or more members of REIACT must be submitted to REIACT for resolution by arbitration pursuant to the provisions of this Constitution.
- 12.5 Any REIACT member who is a party to a dispute with a member of the public or another member shall, if and when required by REIACT by resolution of the REIACT Board, submit such dispute for arbitration to an Arbitration Panel provided that no dispute with a member of the public can be referred for resolution by arbitration under this Constitution unless the member of the public concerned agrees in writing to submit to and abide by such a resolution. The opinion of the President of the Board as to whether any REIACT member is or is not a party to a dispute shall be final.
- 12.6 Notwithstanding the provisions of this Constitution, an Arbitration Panel that is hearing or resolving a particular dispute may decline to hear or determine that dispute on the ground that the subject matter of the dispute is not within the capacity of the Arbitration Panel to determine or that it is otherwise inappropriate for the Arbitration Panel to hear or determine the dispute concerned.
- 12.7 No arbitration shall determine any dispute in which the subject matter of that dispute exceeds a monetary amount of \$50,000.00, or such other sum as shall be stipulated from time to time by the Board.
- 12.8 Arbitration Panels shall be made up of no less than two individuals selected by the Board.
- 12.9 With respect to any arbitration:
- (a) any Person seeking arbitration of a dispute pursuant to this Constitution shall at the time of lodging the request for arbitration forward such sum as the Chief Executive Officer shall determine to be appropriate, together with such sums as the Chief Executive Officer may consider as being in dispute;
 - (b) the Chief Executive Officer may require any other party to an arbitration held pursuant to this Constitution to lodge with REIACT, to hold on trust, such sum as the Chief Executive Officer may determine; and
 - (c) after an arbitration has been finalised, any sum held pursuant to this Article may be retained

or refunded in whole or in part, or paid out as determined by the Arbitration Panel after the hearing of the dispute.

13. Legal Representation

- 13.1 A Person shall be entitled to legal representation at any hearing or appeal conducted pursuant to this Constitution or any of REIACT's Codes or Rules if the decision-maker conducting that hearing or appeal considers that such legal representation is necessary to enable the party concerned to effectively present the party's case and it is otherwise appropriate in the circumstances for the party to be legally represented.

14. Appeals

- 14.1 Any Person who is given a right to appeal against a decision pursuant to the provisions of this Constitution may so appeal by notice in writing addressed to the Chief Executive Officer, such notice of appeal to be lodged with the Chief Executive Officer, together with a written statement of the grounds of that appeal, within 28 days from the date of REIACT providing the notice of the decision appealed against.
- 14.2 All appeals pursuant to clause 14.1 above shall be heard by an Appeals Board made up of the following individuals who shall not have been members of the original decision-making body:
- (a) a chairperson of the Appeals Board, being an Australian legal practitioner as defined under section 8 of the Legal Profession Act 2006 (ACT), appointed by the President of the Australian Institute of Arbitrators and Mediators, who is a member of that Institute but is not an Ordinary member of REIACT and is not a licensed real estate/business agent or salesperson under the Agents Act 2003 (ACT);
 - (b) a consumer representative who shall be appointed by the Board but who is not a licensed real estate/business agent or sales representative under the Agents Act 2003 (ACT) and who is not an Ordinary member of REIACT; and
 - (c) an individual appointed by the REIACT Board who is a Licensed Agent.
- 14.3 The Chairperson of the Appeals Board shall be responsible for making all determinations on issues of law, including interpretation of REIACT's constitution, Codes or Rules. Issues of fact shall be determined by a majority decision of three members of the Appeals Board.
- 14.4 Any Person appealing pursuant to clause 14.1 above shall pay to REIACT at the time that the appeal is lodged such sum as the Board shall determine based on the circumstances of the appeal. A notice of appeal shall not have been duly lodged pursuant to clause 14.1 above unless and until the required sum is paid to REIACT.
- 14.5 Any sum of money lodged with REIACT pursuant to clause 14.4 will be held on trust by REIACT and will be retained or refunded or paid to REIACT in whole or in part as determined by the Appeals Board.
- 14.6 Appeals to the Appeals Board under this Constitution from decisions of the Professional Standards Tribunal will be by way of re-hearing and not by way of new hearing. Appeals to the Appeals Board under this Constitution from the decision or action of the Chief Executive Officer or any other Person will be by way of new hearing.

- 14.7 Upon the hearing of an appeal the Appeals Board shall only have the power to make a decision that the decision-maker who made the original decision appealed from was empowered to make; provided that the Appeals Board may make such orders as to the costs of the hearing of the appeal as the Appeals Board considers to be just including, but not limited to, payment of the administrative costs of REIACT relating to the appeal and the costs of the parties to the appeal.
- 14.8 At any appeal to the Appeals Board, REIACT shall be a respondent to that appeal and shall be entitled to appear at the hearing of the Appeal.
- 14.9 The following procedure shall apply with respect to the hearing of any appeal by the Appeals Board pursuant to this Constitution:
- (a) Not less than 14 days before the Appeals Board sits to hear the relevant appeal the Chief Executive Officer shall give to the parties to the appeal:
 - (i) written advice of the appeal and copies of the notice of appeal and grounds of appeal lodged in accordance with clause 14.1 above;
 - (ii) copies of any documentary evidence considered by the decision-maker who made the decision the subject of the appeal;
 - (iii) written notice stating the date, time and place of the hearing or, if ordered by the Appeals Board, any preliminary conference to be held with respect to the Appeal, and informing the parties to the appeal that they may attend and speak at the hearing and/or submit to the Appeals Board written representations at or prior to the date of the hearing;
 - (b) At the hearing of the appeal by the Appeals Board, prior to the Appeals Board making its determination, the parties to the appeal shall be given an opportunity to be heard and the Appeals Board shall give due consideration to any oral or written representations submitted by the parties to the appeal;
 - (c) Following the hearing of the appeal the Appeals Board shall deliver its decision in writing. A copy of the decision and the reasons for that decision shall be provided to the parties to the appeal within 14 days of the decision being made.

Part D – The Board of Directors

15. The REIACT Board

Name of Management Committee

- 15.1 The persons who have the power to manage the affairs of REIACT for the purposes of the Corporations Act 2001 (Cth) will be known as the Board.

Membership of Board

- 15.2 The Board shall be comprised of between seven and ten individuals as set out in clause 20 and all Board members shall be either an Ordinary Member, a Life Member, a Past Service Member or an Associate Member of REIACT and in order to be eligible to stand for election or appointment as a member of the Board, the member concerned must not be a member whose membership is under suspension.

16. Powers of the Board

- 16.1 The Board shall have the power to do all things necessary so as to effectively manage the affairs of REIACT, including:
- (a) the power to appoint or dismiss a Chief Executive Officer, designate in writing (by resolution or Rules) the role, powers and duties of the Chief Executive Officer; and
 - (b) the power to prescribe from time to time Codes and Rules as it thinks necessary or desirable for:
 - (i) the proper advancement, management and administration of REIACT;
 - (ii) the assessment of the qualifications of Members and applicants for membership;
 - (iii) the membership structure of REIACT, and process and administration of REIACT memberships;
 - (iv) the assessment of the qualifications of Directors and nominations of Directors;
 - (v) the procedure for nomination and election of Directors;
 - (vi) the delegation of its power or functions; and
 - (vii) the advancement of the objects of the Company in clause 3.1.
- 16.2 Codes and Rules made by the Board under clause 16.1(b):
- (a) Must not be inconsistent with this Constitution or the *Agents Act 2003 (ACT)*; and
 - (b) Are binding on the Company, the Board and all Members.
- 16.3 In addition to the powers afforded to the Board under clause 16.1(b), the Board may, from time to time, develop and adopt By-Laws as it thinks necessary and desirable for the management and conduct of REIACT:
- (a) provided that such By-Laws are approved by a Special Majority of the Board;
 - (b) provided that, if there are any inconsistencies between a By-Law and the terms of this Constitution, the terms of this Constitution will prevail, but only to the extent that such inconsistency exists; and
 - (c) on the date that this Constitution is adopted, the Membership Subscription Policy By-Law is deemed to be adopted in accordance with clause 16.3(a).
- 16.4 The Board may, from time to time, amend any By-Laws, including any of the By-Laws identified in clause 16.3(b) above, by a Special Resolution of the Board.
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17. Board Elections

- 17.1 The Chief Executive Officer will act as the Returning Officer to conduct elections for the members of the Board provided that the Chief Executive Officer may appoint a delegate to perform all or some of the duties of the Returning Officer set out in this Constitution.
- 17.2 At the meeting of the Board held each year prior to the Annual General Meeting, the Board will

appoint two Scrutineers to observe the conduct of the Board election process and who will be required to:

- (a) advise the Returning Officer of any issues or problems that arise in their view with respect to that election process; and
- (b) report to the Annual General Meeting as to any observations by them of any issues or problems with the Board election process.

Provided that, to the extent that the election is conducted by the casting of an Electronic Vote on an Electronic Voting Site, the Scrutineers shall not participate in that aspect of the election process.

17.3 A candidate for election as a member of the Board must lodge with the Returning Officer no earlier than one month prior to and no later than 5pm on the seventh day prior to the election concerned a nomination in writing signed by two Ordinary or Life members and counter-signed by the candidate.

17.4 The Returning Officer shall reject the nomination of any candidate who:

- (a) is not an Ordinary, Life, Past Service or Associate member of REIACT;
- (b) is a person whose membership of REIACT is under suspension; or
- (c) does not lodge his or her nomination within the required time period.

17.5 Prior to the preparation of the Ballot Paper for the election of Board members there shall be a draw conducted or caused to be conducted by the Returning Officer in the presence of the Scrutineers to determine the order of the names of the candidates appearing on the Ballot Paper. The candidates shall be entitled to attend the draw but it is not mandatory for them to do so.

17.6 The election of Board members is able to be conducted, in the discretion of the Returning Officer (such discretion to be exercised prior to the draw referred to in clause 17.5 above), by the casting of votes on a Ballot Paper that is a physical piece of paper and/or by the casting of an Electronic Vote on an Electronic Voting Site.

17.7 Following the draw referred to in clause 17.5 above, Ballot Papers shall be prepared or caused to be prepared by the Returning Officer, upon which shall be printed or otherwise identified the names of all candidates. The Returning Officer shall:

- (a) post or cause to be posted a Ballot Paper to each member who is entitled to vote as soon as practicable; and/or
- (b) if the Returning Officer determines, as provided for in clause 17.6 above, that voting shall be permitted to occur by the casting of an Electronic Vote on an Electronic Voting Site, give notice to members entitled to vote of that fact.

17.8 In the case of a ballot that is conducted that enables the casting of Electronic Votes, the Returning Officer is to ensure that each member who is entitled to vote is provided with notice of all the necessary information required in order to vote in the election, including (but not limited to):

- (a) the internet address of the Voting Site; and
- (b) the passwords (if any) required to access the voting site.

- 17.9 In the case of a ballot that is conducted that enables the casting of Electronic Votes, the Returning Officer is to ensure that the Voting Site contains:
- (a) instructions for voting;
 - (b) a method of declaration of identity and entitlement to vote; and
 - (c) any other information that the Returning Officer considers appropriate.
- 17.10 To ensure secrecy in the election process the Returning Officer will prepare or cause to be prepared Ballot Papers in such a way so as to keep confidential the manner in which a member has voted but in a way by which the Returning Officer can readily ascertain which members have actually voted and to prevent multiple voting.
- 17.11 Members entitled to vote in Board member elections shall mark on their Ballot Papers in a manner directed by the Returning Officer those candidates for whom the member wishes to vote. The number of candidates selected by the member on the Ballot Paper shall be equal to or less than the number of vacant Board member positions the subject of the election.
- 17.12 Votes must be submitted by members to the Returning Officer either prior to the commencement of the General Meeting at which the Ballot Papers are to be used, or at that meeting.
- 17.13 As Ballot Papers are received by the Returning Officer they shall be stored in a secure closed ballot box or, in the case of Electronic Votes, in a secure electronic format, in the custody of the Returning Officer. Neither the Returning Officer nor any other person shall count or access the contents or substance of Ballot Papers until the formal voting procedure occurs as set out immediately below. The Returning Officer shall open the ballot box and access any Electronic Votes at the Annual General Meeting only after all votes have been called for at the meeting. The Returning Office will count the votes received according to the following procedure:
- (a) the Returning Officer shall first ascertain the identity of the Person who has purported to vote and shall reject the vote of any member not qualified to vote or who has already voted;
 - (b) the Returning Officer shall then proceed to count the valid Ballot Papers;
 - (c) the Returning Officer shall then total the number of votes cast for each candidate;
 - (d) this procedure, in so far as it applies to Ballot Papers that are physical pieces of paper, shall be conducted in the presence of the Scrutineers. However, in so far as the procedure applies to Electronic Votes, the procedure shall not be conducted in the presence of the Scrutineers.
- 17.14 The candidates elected to the Board member positions the subject of the election shall be those candidates receiving the highest number of votes cast for them.
- 17.15 In the event that candidates to a Board member position receive the same number of votes then the candidate elected shall be determined by way of a lot organised by the Returning Officer.
- 17.16 The Returning Officer shall sign a certificate of the results of the Board election and hand the same, together with details of the number of votes each candidate at the election received, to the Chairperson of the Annual General Meeting, who shall then:
- (a) declare the result of the Board election to the meeting;

- (b) announce the number of votes received by each candidate at the election; and
- (c) direct the Chief Executive Officer to enter the result of the election and the number of votes received by each candidate in the Minutes.

17.17 Contemporaneously with the announcement by the Chairperson of the result of the Board election as provided for in clause 17.16 above the Scrutineers shall provide a report to the meeting on their observations of the conduct of the election process and any issues or problems they have observed with that process.

17.18 All ballot papers shall be destroyed or caused to be destroyed by the Returning Officer as soon as practicable after the result of the ballot is declared by the Chairperson at the General Meeting.

17.19 If for any reason an election scheduled to occur at an Annual General Meeting cannot or does not take place then the Returning Officer shall call a Special General Meeting for as soon as possible following the date of the original General Meeting for the purpose of conducting the necessary Board election and the procedures set out above in this Constitution in relation to the conducting of the Board election pertaining to the Annual General Meeting shall apply to the following Special General Meeting *seriatim*.

17.20 If there are no nominations in excess of the Board vacancies the members nominated shall be declared elected by the Chairperson at the Annual General Meeting and those facts shall be entered in the Minutes.

17.21 If the candidates nominated and elected at a General Meeting are fewer than the Board positions then vacant, the positions that remain unfilled shall be deemed to be casual vacancies and shall be treated in accordance with the provisions of clause 21.2 below.

18. Directors' terms of office

18.1 Each member of Board shall hold office for a period of two years and at the expiry of each such period the position on Board held by a Board member shall become vacant. However, the Board member concerned shall be eligible for re-election subject to the provisions of clause 18.2 below.

18.2 No member of the Board shall remain on the Board at the expiration of a cumulative, although not necessarily consecutive, total of 15 years total service on the Board. However, at the expiration of a further three years any person who has been rendered ineligible to serve on the Board as a consequence of this provision shall become re-eligible to do so and may again stand for election to the Board.

18.3 Each successful candidate for election to the Board shall take office from the close of the General Meeting at which he or she was elected and shall remain in office until the commencement of business at the Annual General Meeting at which time that Board position has become vacant.

18.4 Subject to clause 18.2 above, if the two year electoral term of a Board member expires at a time when that Board member is President of REIACT, that person shall be entitled to continue to fill that position on the Board until the next election occurs for any other Director position following the ending of that person's term as President.

19. Composition of the Board

19.1 The REIACT Board will be composed of:

- (a) the President,
- (b) the Deputy President,
- (c) the Treasurer;
- (d) the Immediate Past President,
- (e) REIACT's elected nominee to the executive of the Real Estate Institute of Australia, and
- (f) between three and five REIACT members, elected in accordance with this Constitution, and of which at least one is to be a skills based appointment of an Associate Member with expertise in an area or areas that the Board resolves is important to effectively execute the powers of the Board, and to achieve or promote the objects of REIACT in clause 3.1.

19.2 The President:

- (a) will be elected at the Annual General Meeting;
- (b) will remain in office in that position for a period of two years until the commencement of business at the Annual General Meeting two years from his or her appointment;
- (c) will preside as chairperson at each Board meeting and will have:
 - (i) All the authority usually vested in a chairperson of any meeting;
 - (ii) the right to vote on all questions other than where there is a conflict of interest, and in the event of an equality of votes shall have a second or casting vote;
 - (iii) power to cause any meeting of the REIACT members, the Board, or REIACT committees to be convened;
 - (iv) power to cancel and appoint other dates of meetings of the Board, or any committees;
 - (v) power to delegate his or her authority to another Board member; and
 - (vi) power to exercise such additional powers and duties as may be delegated to him or her by the Board, or by the members at a meeting.

19.3 A President on retirement from office:

- (a) will automatically become the Immediate Past President and a Board member; and
- (b) will continue as such until his successor retires from office.

19.4 The Deputy President:

- (a) will be elected at the Annual General Meeting;
- (b) will remain in office in that position for a period of two years until the commencement of business at the Annual General Meeting two years from his or her appointment;
- (c) will preside as chairperson at any Board meeting where the President is not present with all authority referred to in subclauses 19.1(c)(i) to (vi)

19.5 The Treasurer:

- (a) will be elected at the Annual General Meeting;
 - (b) will remain in office in that position for a period of two years until the commencement of business at the Annual General Meeting two years from his or her appointment;
- 19.6 At the election of the office bearers, the position of President (if vacant) will be voted for firstly, the position of Deputy President will be voted for secondly, the position of Treasurer will be voted for thirdly, and the three Board members will be done fourthly.
- 19.7 A person appointed as a skills based Board member by the Board under clause 19.1(g) will remain in office for a period of one year, and may be re-appointed on a yearly basis for a cumulative maximum of 12 years.
- 19.8 A person shall be eligible to be elected as President, Deputy President or Chairperson of the Finance and Risk Management Committee without having served any minimum term as a Director.
- 19.9 A Director may, with the approval of the other Directors, appoint a person who is a member of REIACT to be an alternate director in his or her place (Alternate Director) during such period as he or she thinks fit, and the following will apply:
- (a) An Alternate Director is entitled to notice of meetings of the Board and, if the appointor is not present at such a meeting, is entitled to attend and vote in his or her place.
 - (b) If the Alternate Director is already a Director of the Company he or she will be entitled to vote on his own behalf as well as on behalf of the Director appointing him or her, but for the purpose of determining whether a quorum is present, he or she will be counted only once.
 - (c) An Alternate Director may exercise any powers that the appointor may exercise and the exercise of any such power by the Alternate Director will be deemed to be the exercise of the power by the appointor.
 - (d) An Alternate Director is not required to have any qualifications.
 - (e) The appointment of an Alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor vacates office as a Director.
 - (f) An appointment or the termination of an appointment, of an Alternate Director will be effected by a notice in writing signed by the appointor and served on the Company.
- 19.10 The Chief Executive Officer appointed by the Board under clause 16 will perform the responsibilities of secretary of the Company, in accordance with the directions from time to time of the Board.
- 19.11 The Chief Executive Officer's remuneration, emoluments and conditions of employment will be determined by the Board.
- 19.12 The Chief Executive Officer is empowered, at the direction of the Board and subject to clause 19.13, to:
- (a) engage and dismiss any employees, contractors and agents of REIACT; and
 - (b) manage and direct all employees, contractors and agents.

19.13 The Board will by special resolution set amounts over which any action by the Chief Executive Officer under clause 19.12 must have the approval of the Board:

- (a) For the engagement or dismissal of employees whose income is over the specially resolved amount; and
- (b) For any contracts, contractors or agents, the cost of which engagement is over the specially resolved amount.

20. Removal of Office Bearers

20.1 The Board may remove any Board member from his or her position by Special Resolution of the REIACT Board (excluding the member to be removed).

Removal of Directors

20.2 A member of the Board may be removed from that position as a Director before the expiration of his or her period of office should members determine by way of Special Resolution at a Special General Meeting convened pursuant to clause 24.2 below that the person concerned shall be so removed as a Director. In such circumstances, the members voting at that Special General Meeting may resolve by ordinary resolution to appoint a person to fill the position on the Board made vacant by the earlier removal of the member of Board for the balance of the relevant term. Otherwise the vacancy concerned shall be treated as being a casual vacancy in accordance with the provisions of clause 21.2 below.

20.3 Any member of the Board who shall:

- (a) cease to be an Ordinary or Life member of REIACT, or be suspended from that membership; or
- (b) be absent without leave of the Board for three consecutive meetings of the Board,

shall vacate his or her position as a Director unless, in the latter case, the disqualification shall be dispensed with by resolution of the Board.

21. Casual vacancies

21.1 A Director may resign his or her position by giving written notice of that action to the Chief Executive Officer.

21.2 If a casual vacancy arises with a Director position, then the Board may appoint by its own resolution a person to fill that vacant Director position who must be a member of REIACT and who would otherwise be eligible to stand for election to the Board in accordance with the terms of clause 17.4 above. That person shall continue to fill that Director position until the commencement of business at the next Annual General Meeting, at which time an election for that Director position will take place in accordance with the procedures set out in clause 17 .

21.3 If the Board determines not to fill a casual vacancy as provided for in clause 21.2 above then:

- (a) that position shall remain vacant for the balance of the term of that vacant position unless the position is filled pursuant to the provisions of clauses 21.3(b) or 21.3(c) below;
- (b) should a Special General Meeting of members be called in accordance with clause 24.2

below for the purpose of moving a resolution to fill a casual vacancy for the balance of the term of the vacant Director position, at such a Special General Meeting it may be moved by ordinary resolution that the casual vacancy be filled by a specified person for the balance of the term of the vacated position;

- (c) should the number of casual vacancies on the Board be such that it is not possible to have a quorum pursuant to clause 22.1 below the Chief Executive Officer shall call a Special General Meeting for the purpose of appointing by ordinary resolution persons to fill the vacant Director positions for the balance of the terms of those positions.

21.4 In the case of a casual vacancy in the office of President, Deputy President or Chairperson the Board shall appoint from its own number by way of election by members of the Board a replacement President, Deputy President or Chairperson, as the case may be, until the expiration of that office bearer's term.

22. Quorum and procedures at Board meetings

- 22.1 At any meeting of Board the necessary number of Directors participating in that meeting, whether in person, by telephone or electronically, to form a quorum, is no less than one half of the current appointed Board members.
- 22.2 Meetings of the Board shall be held from time to time as determined by resolution of the Board, as directed by the Chief Executive Officer by notice to each of the members of the Board in the manner stipulated in clause 22.3 below or as requested in writing by no fewer than five members of the Board to the Chief Executive Officer.
- 22.3 Notice shall be given of every meeting of the Board to every Board member and shall be sent by post or by e-mail to the addresses of the Directors. However, notice need not be given of any meeting which has been fixed by a previous resolution of the Board, either as a specific date for the holding of a meeting or as a day upon which meetings are to be regularly held.
- 22.4 All questions and resolutions at a meeting of the Board shall be determined by Ordinary Resolution of the members of the Board participating in the meeting determining that question or resolution, whether participating in person, by telephone or electronically, unless this Constitution otherwise stipulates that a decision needs to be made by Special Resolution.
- 22.5 The Chairperson of a Board meeting shall be entitled to vote with respect to any question or resolution and, in the case of any vote not being decisive, the Chairperson will have a second and casting vote.
- 22.6 Meetings of the Board and the determination of questions and resolutions may be conducted by the Board with members of the Board meeting physically, speaking by telephone or by video conference, participating by electronic means such as e-mail or in such other manner as the Board deems fit to transact its business.
- 22.7 Board members shall ensure that they disclose any interest in a contract or proposed contract made by or in the contemplation of the Board as is required under section 191 of the *Corporations Act 2001* (Cth). Further, Board members shall ensure that they comply with the prohibition upon taking part in any deliberations or decisions of the Board with respect to contracts as stipulated in section 195 of that Act.
- 22.8 Information disclosed and matters discussed during the course of a meeting of a Board meeting

are to be regarded as strictly confidential. All persons present at a Board meeting have a duty of confidentiality in respect of such information and matters unless agreed to the contrary by a decision of the meeting.

23. Sub-committees, including Committees for specialist practice areas

23.1 The Board shall have the power to create at its discretion sub-committees of REIACT. Those sub-committees shall include such subcommittees as the Board may, in its discretion, determine. Each such sub-committee shall:

- (a) be established for such purposes as thought appropriate by the Board including, but not limited to:
 - (i) for the purpose of providing specialised membership services to particular groups of REIACT members, including groups defined with reference to particular areas of practice speciality;
 - (ii) for the purpose of enabling groups of members to have a voice in REIACT affairs, including to lobby outside institutions or to provide advice and representations to the REIACT Board.
- (b) be made up of persons either stipulated individually by the Board, whether or not those persons are members of REIACT, or who shall be elected. In the case of elected positions, the manner in which those elections are to take place, including which groups of members shall be entitled to vote at a particular election and whether non-members of REIACT shall be entitled to stand for that election, shall be determined by the Board;
- (c) not charge any fees of REIACT members or others with respect to the delivery of REIACT services associated with that sub-committee unless those fees have been approved by the Board.

Part E – General Meetings

24. General Meetings

Annual General Meetings

24.1 The Annual General Meeting shall be held each calendar year on a date and at a time the Board determines but no later than within 3 months of the end of REIACT's financial year (and provided for in clause 28 below) and shall be convened by not less than 28 days' notice being provided to members.

The calling of Special Meetings

24.2 The Chief Executive Officer shall convene a Special General Meeting to be held no less than 14 days nor more than 28 days from the date of the following:

- (a) the Board determining that a specified resolution or resolutions should be put to a Special General Meeting; or
- (b) the Chief Executive Officer receiving a request to hold a Special General Meeting, together with a proposed resolution or resolutions, in writing signed by no fewer than 100 Ordinary and/or Life members.

- (c) The Chief Executive Officer shall provide to Ordinary members and Life members notice of each Special General Meeting specifying the date, time and place of that meeting and the resolutions proposed to be put at that meeting.

Special and ordinary resolutions

- 24.3 All resolutions put to General Meetings, whether those meetings are Annual General Meetings or Special General Meetings, shall be ordinary resolutions determined by Ordinary Resolution excepting resolutions required by this Constitution or by the Corporations Act 2001 (Cth) to be Special Resolutions.
- 24.4 Where a resolution is required by this Constitution or under the Corporations Act 2001 (Cth) to be a Special Resolution, notice of the meeting at which that resolution will be put must specify the intention to propose the resolution as a Special Resolution.

Agenda for Annual General Meeting

- 24.5 The following shall be the agenda of each Annual General Meeting:
 - (a) the confirmation of the Minutes of the last Annual General Meeting and of any Special General Meeting held since the preceding Annual General Meeting;
 - (b) receipt of the formal reports of the Board;
 - (c) the receipt of the submitted financial accounts of REIACT showing the financial position of the REIACT at the end of the immediately preceding financial year;
 - (d) the determination of all resolutions;
 - (e) the election of Directors;
 - (f) the appointment of an auditor for the ensuing year;
 - (g) general business.

25. Procedure at General Meetings

- 25.1 At any General Meeting 10 percent of all members present personally or by proxy and whose membership shall not be under suspension shall form a quorum. If within half an hour from the time appointed for a General Meeting to commence a quorum is not present the meeting shall be dissolved.
- 25.2 The person who is President immediately prior to the commencement of business at the General Meeting, or in the absence of the President the Deputy President at that time, or in the absence of those persons, an Ordinary Member of the Board at that time, shall chair every General Meeting of REIACT. If within 10 minutes after the time appointed for the commencement of the General Meeting concerned none of the persons referred to above are present, the meeting may elect its own Chairperson.
- 25.3 A General Meeting may be adjourned from time to time and from place to place upon an ordinary resolution to that effect by the persons physically present at that meeting, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

26. Voting at General Meetings

- 26.1 At any General Meeting voting with respect to a resolution shall be by way of a show of hands and whether a resolution has been carried, carried by a particular majority, or lost, shall be determined by the Chairperson; provided that if a poll is demanded by at least 20 Ordinary and/or Life members present personally or by proxy at the General Meeting, the voting with respect to the resolution shall be conducted by such a poll.
- 26.2 If a poll is demanded in accordance with the provisions of clause 26.1 above it shall be taken immediately in such a manner as determined by the Chairperson and the result of the poll should be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.
- 26.3 Every Ordinary, Life, and Past Service Member shall be entitled to vote on resolutions put at General Meetings and shall have one vote on a show of hands and at a poll; provided that no member who has been suspended from membership shall be entitled to attend at the meeting, vote at the meeting, vote in relation to the election of Directors or to act as a proxy.
- 26.4 In the case of an equality of votes the Chairperson of the General Meeting shall have a casting vote in addition to the vote that the Chairperson was entitled to as a member.
- 26.5 Votes may be cast either personally or by proxy, but no person may be appointed a proxy who is not an Ordinary, Life or Past Service Member of REIACT and entitled on his or her own behalf to be present and to vote at the meeting for which the proxy is given.
- 26.6 The instrument appointing a proxy shall be deposited at the office of REIACT no later than 12 noon on the Business Day immediately prior to the day of the General Meeting, and if it is expressed as applying to an entire meeting it shall stand for every adjournment of that meeting.
- 26.7 Every instrument of proxy shall, as nearly as circumstances will admit, be in the following form or effect:

APPOINTMENT OF PROXY

I, being an Ordinary Member/Past Service Member/Life Member [delete as appropriate] of the Real Estate Institute of the Australian Capital Territory Limited ("REIACT") and entitled to attend and vote at the General Meeting referred to below, hereby appoint:

[Write here the name of the person you are appointing if this person is someone other than the Chairperson of the Meeting]

or if no person is named, the Chairperson of the Meeting, as my proxy to act at the General Meeting of members on my behalf and to vote in accordance with the following directions (or, if no directions have been given with respect to any motion put to the meeting, as the proxy sees fit including, but not limited to, any procedural motions or motions to amend) at the General Meeting of members of REIACT to be held

on day, the day of 20___,
and at any adjournment of that meeting.

Voting directions to your proxy - please mark ✓ to indicate your directions to vote.

Motion Item 1. The motion that ...
[describe motion] For Against

Motion Item 2. The motion that ...
[described motion] For Against

Lodgement of Proxy
This Proxy Form must be received at REIACT's Office no later than 12 noon on the business day immediately prior to the day of the above meeting. Any Proxy Form received after that time will not be valid for the scheduled meeting.

MEMBER'S SIGNATURE

Part F – Accounts and Records

27. Accounts

27.1 REIACT shall:

- (a) keep such accounting records as correctly record and explain the financial transactions and financial position of the REIACT;
- (b) keep its accounting records in such a manner as will enable true and fair accounts of the REIACT to be prepared from time to time; and
- (c) keep its accounting records in such a manner as will enable true and fair accounts of the REIACT to be conveniently and properly audited.

27.2 The financial year for REIACT shall end on 30 June in each year, unless otherwise determined by the Board.

27.3 REIACT shall submit to its members at the Annual General Meeting its accounts showing the financial position of the REIACT at the end of the immediately preceding financial year.

27.4 A copy of REIACT's financial statements for the immediately preceding financial year shall be provided by mail or e-mail to each member entitled to attend or vote at the Annual General Meeting seven days prior to that meeting occurring.

28. Auditor

28.1 At every second Annual General Meeting REIACT shall appoint an auditor or auditors for the ensuing year.

28.2 If a casual vacancy should occur in the office of auditor the Board may fill such casual vacancy.

28.3 A member of the Board shall not be eligible for election as auditor.

28.4 At least once every year the accounts of REIACT shall be audited by the appointed auditors.

Part G – Other

29. Common seal of REIACT

29.1 The common seal of REIACT engraved with the name shall be kept in the care of the Chief Executive Officer. The seal shall not be used or affixed to any deed or other document except pursuant to a resolution of the Board or a General Meeting. Further, the seal shall not be used or affixed to any deed or other document except in the presence of two members of the Board, both of whom shall subscribe their names as witnesses to the use or affixing of the seal.

30. Amendment to the Constitution

30.1 REIACT may amend this Constitution by Special Resolution at a General Meeting but not

otherwise.

- 30.2 Within 14 days of the passing of a Special Resolution altering its Constitution, or such further time as may be allowed pursuant to section 226 of the Corporations Act 2001 (Cth) the Chief Executive Officer shall lodge as required by section 226 of that Act notice of the Special Resolution setting out particulars of the alteration together with a certificate given by a member of the Board. That certificate shall certify that the resolution was duly passed as a Special Resolution and that the Constitution of REIACT as so altered conform with the requirements of the Corporations Act 2001 (Cth).
- 30.3 In accordance with section 137 of the Corporations Act 2001 (Cth) an amendment to the Constitution of REIACT shall not take effect until the provisions of clause 30.2 above have been complied with.

31. The custody and inspection of records and documents

- 31.1 The custody of all records, books, documents and securities of REIACT shall be held by the Chief Executive Officer or as otherwise determined by the Board.
- 31.2 Members of REIACT shall not be entitled to inspect any of the records and documents of the REIACT unless the member is otherwise entitled to do so pursuant to the terms of this Constitution or pursuant to the terms of the Corporations Act 2001 (Cth) or unless a written request for such an inspection is made to the Chief Executive Officer and approved by the REIACT Board.

32. Constitution to be available to Members

- 32.1 REIACT shall keep and maintain in an up-to-date condition this Constitution and, upon the request of a member of REIACT, shall make available the Constitution for the inspection of the member and the member may make a copy or take an extract from the Constitution but shall have no right to remove the Constitution for that purpose.

33. Record of office holders

- 33.1 REIACT shall maintain a record of:
- (a) the names, email addresses and residential or postal addresses of the persons who are the office bearers of REIACT, including all offices held by the persons who constitute the Board and persons who are authorised to use the common seal of REIACT; and
 - (b) the names and residential or postal addresses of any Persons who are appointed to act as trustees on behalf of REIACT,

and REIACT shall, upon the request of a member of REIACT, make available the record for the inspection of the member and the member may make a copy of or take an extract from the record but shall have no right to remove the record for that purpose.

34. Dissolution

- 34.1 REIACT may be wound-up voluntarily if REIACT is solvent and if it is resolved by special resolution at a General Meeting, whether Special or Annual, that REIACT be so wound-up voluntarily.

34.2 The President shall cause a copy of any special resolution passed by REIACT resolving that REIACT be wound-up voluntarily to be lodged in accordance with section 494 of the Corporations Act 2001 (Cth).

34.3 If, upon the winding up or any dissolution of REIACT, there remains any surplus property, that property shall not be paid to or distributed amongst the members of REIACT but shall be given or transferred:

- (a) to another association or institution having Objects similar to that of REIACT; or
- (b) to an organisation whose constitution prohibits the distribution of its income and property among its members to an extent as great as that imposed on REIACT under this Constitution,

provided that prior to the winding up or any dissolution of REIACT the Board shall be authorized and directed by the members at a general meeting to prepare a distribution plan of the Surplus Property of the REIACT. The incorporated association or charitable purpose which is to receive the Surplus Property shall be determined by a resolution of the eligible members of REIACT at that time.

34.4 In the event of the winding up or any dissolution of REIACT, REIACT must lodge the declaration with the ASIC before the meeting to resolve for the winding up or dissolution.

35. Notices

35.1 Any notice required to be provided under this Constitution shall, unless stipulated otherwise under the terms of this Constitution, must be in writing and must be served on the recipient by ordinary post, facsimile or e-mail.

35.2 Service of any notice pursuant to the Constitution by REIACT shall be deemed to have occurred:

- (a) the next business day after the notice was posted by mail to the address of a member recorded in REIACT's Register of Members or the address of any other Person previously provided by that Person to REIACT;
- (b) on the day upon which REIACT transmits the notice to a Person by facsimile to a facsimile number previously provided by that Person to REIACT and when the facsimile machine which transmits the notice prints an acknowledgement that every page comprising that notice has been transmitted to the specified number;
- (c) on the day upon which REIACT transmits the notice to a Person by e-mail to an e-mail address previously provided by that Person to REIACT and when an electronic receipt recording that the e-mail containing the notice has been received or read at the specified e-mail address.

The Real Estate Institute of the Australian Capital Territory Limited

ACN 008 553 277

(REIACT)

Rule for Applications for Membership by Individual Proprietors

This Rule for Applications for Membership by Individual Proprietors (**Rule**) is made, and adopted, in accordance with clause 16.1(b) of REIACT's constitution.

This Rule is binding on REIACT, its board and members (in accordance with clause 16.2(a) of REIACT's constitution), and all prospective members must agree to abide by this Rule, otherwise such member or prospective member ceases to be eligible for membership pursuant to clause 6.1 of REIACT's constitution.

1. For the purposes of this Rule, all capitalised terms which are not defined in this Rule, have the same meaning given to such term(s) in REIACT's constitution.
2. Subject to paragraph 3 below, for the purposes of this Rule, a **Relevant Applicant** means a natural person (not being a corporation, partnership, or other body corporate) who is a member, or prospective member, who is:
 - a. eligible, or falls within one of the categories, to be an Ordinary Member of REIACT pursuant to clause 5.2(a) of REIACT's constitution; and
 - b. eligible to be a Corporate Member of REIACT pursuant to clause 5.2(b)(i) (sole proprietor of a business which is a Real Estate Agent Service and/or Business Agent Service) of REIACT's constitution.
3. For the purposes of this Rule only, where a natural person who is eligible to be an Ordinary Member pursuant to REIACT's constitution, is the sole director, shareholder, employee, or otherwise the sole Licensed Agent, Registered Business Sales Person, or Registered Real Estate Salesperson, of a corporation, trust, partnership, or other body corporate, which is eligible to be a Corporate Member pursuant to clause 5.2(b) of REIACT's constitution (**Relevant Body Corporate**), that Relevant Applicant is deemed to be a sole proprietor of the business carried on by such Relevant Body Corporate, for the purposes of paragraph 2(b) above, and therefore deemed to be a Relevant Applicant.
4. A Relevant Applicant's:
 - a. application for membership in REIACT as an Ordinary Member; or
 - b. application for renewal of membership in REIACT as an Ordinary Member;must not be accepted or approved by REIACT or its Chief Executive Officer (pursuant to clause 7.2 of REIACT's constitution) unless, or until, that Relevant Applicant or the Relevant Body Corporate (as the case requires), has:
 - c. applied to be a Corporate Member of REIACT;
 - d. been accepted and approved to be a Corporate Member by REIACT in accordance with its constitution; and
 - e. done all things necessary, including applying for renewal of membership, and paying of all membership subscription fees, to become, or remain, a Corporate Member of REIACT.