

# Company Constitution

The Corporations Act 2001

Constitution of Australian Strategic Policy Institute Limited

A company limited by guarantee

Australian Government Solicitor 50 Blackall Street BARTON ACT 2600

The persons whose signatures are set out below consent to be members of the Australian Strategic Policy Institute Limited ('the Company') and agree that:

## 1. CONSTITUTION

This document, as amended from time to time in accordance with the Act, will be the Constitution of the Company, a public company limited by guarantee.

## 2. REPLACEABLE RULES

2.1 Subject to clause 2.2, the Replaceable Rules set out in the Corporations Act apply to the Company to the extent that they apply to companies limited by guarantee and are not inconsistent with this Constitution.

2.2 The Replaceable Rules set out in sections 201G (Company may appoint a Director), 201H (Directors may appoint other Directors), 198C, 201J and 203F (Managing Director), 248E (Chairing Directors' Meetings), Section 248F (Quorum at Directors' Meeting), Section 249T (Quorum at Meetings of Members), and 249U (Chairing Meetings of Members) of the Act do not apply to the Company.

## 3. OBJECTS AND POWERS

3.1 The company's object is to function as a strategic policy research centre, independent of Government, providing policy-relevant research and analysis to better inform Government decisions and public understanding of strategic and defence issues, by:

(a) Conducting and publishing research on issues related to Australia's strategic and defence policy choices;

- (b) Preparing policy inputs on strategic and defence issues to Government, as requested by Government, subject to funding;
- (c) Conducting a program of activities to increase understanding of strategic and defence policy issues among Australians, and to encourage the development of expertise in topics relevant to Australia's strategic and defence policy choices; and
- (d) Promoting international understanding of Australia's strategic and defence policy perspectives.

3.2 The Company has the powers set out in the Act but only to do all things that are necessary, convenient or incidental to carry out the objects set out in clause 3.1.

#### 4. APPLICATION OF COMPANY'S PROPERTY

4.1 Subject to this clause, all the Company's income and property must be applied solely towards the promotion of the Company's objects contained in clause 3 and must not be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to the Members.

4.2 Subclause 1 does not prevent the payment of:

- (a) reasonable and proper remuneration to an officer of the Company or a Member in return for goods or services supplied to the Company by that officer or Member;
- (b) principal and interest, at a rate not exceeding a normal commercial rate, on any money lent to the Company by a Member; or
- (c) any grant made by the Commonwealth to the Company under the terms of any relevant funding agreement.

#### 5. IDENTIFICATION OF MEMBERS

5.1 The Members of the Company are:

- (a) the subscribers to this Constitution;
- (b) such other persons admitted as Members of the Company in accordance with clause 6.

## 6. BECOMING A MEMBER

6.1 The Minister may invite a person to become a Member.

6.2 A person becomes a Member under this clause 6 upon receipt by the Company of that person's written acceptance of his or her invitation issued under clause 6.1.

## 7. CEASING TO BE A MEMBER

7.1 A Member can retire as a Member of the Company at any time by giving written notice to the Secretary of the retirement which is effective immediately.

7.2 A Member automatically ceases to be a Member:

- (a) in the case of a Member who is a natural person: on the death of that Member;
- (b) in the case of a Member who is a body corporate, on the winding up or dissolution of that Member;
- (c) on the date of receipt by that Member of a written notice from the Chairman or Secretary that the Members have passed a resolution to cancel that Member's membership in the Company.

## 8. MEETINGS OF MEMBERS - QUORUM

8.1 The quorum for a meeting of the Company is the majority of the total number of Members at the time the first notice of the relevant general meeting is sent out, and the quorum must be present at all times during the meeting.

## 9. CHAIRING MEETINGS OF MEMBERS

9.1 The Chairman is the Chairman at every general meeting.

9.2 If:

- (a) there is no Chairman;
- (b) the Chairman is not present at the meeting within 10 minutes of the time appointed for the

commencement of the meeting; or

(c) the Chairman is unwilling to act as Chairman of the meeting; the Directors present at the meeting can elect one of their number to be the Chairman of the meeting.

9.3 If no election is made under clause 9.2:

(a) the Members present at the meeting can elect one of the Directors present at the meeting to be the Chairman of the meeting; or

(b) if no Director is present at the meeting or willing to act as Chairman of the meeting, the Members present at the meeting can elect one of their number to be the Chairman of the meeting.

## 10. APPOINTMENT AND REMOVAL OF DIRECTORS

10.1 There shall be a minimum of 3 and a maximum of 12 Directors.

10.2 Subject to clause 10.1, the Minister may at any time by written notice to the Company appoint a person to be a Director of the Company.

10.3 The Minister may at any time by written notice to the Company remove a Director from his or her office

## 11. PERIOD OF OFFICE

11.1 Subject to the provisions of this Constitution, the first Directors hold office for a period of three year. Otherwise, subject to the provisions of this Constitution, a Director is appointed for between 3 and 5 years.

11.2 A Director retires but is eligible for re-appointment on the expiry of his or her term of office.

## 11A REMUNERATION OF DIRECTORS

11A.1 The remuneration of Directors will be in accordance with any applicable determination by the Remuneration Tribunal, under the *Remuneration Tribunal Act 1973*.

## 12. VACATION OF OFFICE

12.1 In addition to the situations set out in the Act, the office of a Director will become vacant if the Director:

(a) is absent without the consent of the Directors from meetings of the Directors held during a period of 12 months; or

(b) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest at a meeting of the Directors as soon as practicable after the relevant facts have come to the Director's notice. 12.2 In clause 12.1(b), a reference to a contract or proposed contract with the Company includes but is not limited to a grant of financial assistance or proposed grant of financial assistance by the Company.

## 13. QUORUM OF DIRECTORS

13.1 The quorum for a directors' meeting is the majority of the total number of Directors holding office at the time of the meeting, and the quorum must be present at all times during the meeting.

## 14. CHAIRING DIRECTORS' MEETINGS

14.1 A Chairman must be appointed by the Minister from one of the Directors.

14.2 Subject to clause 14.3, a Chairman holds office for so long as he or she remains a Director.

14.3 The Chairman can resign as Chairman by written notice of one month to the Company.

14.4 Subject to clause 14.5, the Chairman is the Chairman at every Directors' meeting.

14.5 If:

(a) there is no Chairman;

(b) the Chairman is not present at the meeting within 10 minutes of the time appointed for the commencement of the meeting; or

(c) the Chairman is unwilling to act as Chairman of the meeting the Directors present at the

meeting can elect one of their number to be the Chairman of the Directors' meeting.

## 15. CHIEF EXECUTIVE OFFICER

15.1 The Directors of the Company, in consultation with the Minister, may appoint a person to the office of Chief Executive Officer of the company (which position shall be known as the Director of the Australian Strategic Policy Institute) for the period, and on the terms (excluding remuneration), as the Directors see fit. Subject to subclause 15.2, the person appointed to the position of ASPI CEO, shall also be appointed to be a Director of the Company.

15.2 The CEO, as a Director of the Company, shall be excluded from participating in decisions, made under clause 15.3 and 15.4, relating to the appointment, remuneration or powers of the CEO.

15.3 The Directors, in consultation with the Minister, may revoke or vary:

(a) an appointment; or

(b) any of the powers conferred on the Chief Executive Officer.

15.4 Subject to the Act, any compensation payable to a person in respect of the revocation of that person's appointment as Chief Executive Officer will be governed by the terms of any agreement between the company and that person.

## 16. INDEMNITY AND INSURANCE

16.1 To the extent permitted by the Act, the Company indemnifies every person who is or has been a Director, Secretary, or executive officer of the Company, and may indemnify every person who is or has been an auditor of the Company, against:

(a) any liability incurred by that person in his or her capacity as a Director, Secretary, auditor or executive officer of the Company other than:

(i) a liability owed to the Company or a related body corporate, or

(ii) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H, or

(iii) a liability that is owed to someone other than the Company or a related body corporate which did not arise out of conduct in good faith; and

(b) any liability for legal costs incurred by that person in his or her capacity as a Director, Secretary, auditor or executive officer of the Company other than:

(i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 16.1(a); or

(ii) in defending or resisting criminal proceedings in which the person is found guilty; or

(iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (except in relation to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for a court order); or

(iv) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

16.2 The prohibition referred to in paragraph 16.1(b)(iii) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

16.3 The Company may, where the Directors consider it appropriate to do so, pay or agree to pay a premium in respect of a contract insuring a person who is or has been a Director, Secretary, auditor or executive officer of the Company, against:

(a) any liability incurred by that person in his or her capacity as a Director, Secretary, auditor or executive officer of the Company other than a liability which arises out of:

(i) conduct involving a wilful breach of duty in relation to the Company; or

(ii) a contravention of section 182 (Use of Position) or section 183 (Use of Information) of the Act; and

(b) any liability for legal costs incurred by that person in his or her capacity as a Director, Secretary, auditor or executive officer of the Company in defending proceedings, whether civil or criminal,

whatever their outcome, and without the qualifications set out above.

## 17. WINDING UP

17.1 Each Member undertakes to contribute not more than \$1 to the property of the Company if the Company is wound up.

## 18. SURPLUS ASSETS

18.1 If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property, this property must only be given or transferred to an organisation or organisations with:

(a) similar objects to the objects of the Company (as contained in clause 3); and

(b) a constitution which prohibits the distribution of its income and property at least to the extent set out in clause 4.

18.2 The identity of the transferee referred to in subclause 18.1 will be determined by the Members by ordinary resolution at or before the time of the winding up or dissolution of the Company.

18.3 If a transferee under clause 18.1 cannot be found, surplus assets must be transferred to the Commonwealth.

## 19. DEFINITIONS

19.1 In this Constitution, unless the contrary intention appears:

'Act' means the Corporations Act 2001; 'Chairman' means the Chairman appointed under clause 14;

'Company' means the Australian Strategic Policy Institute Limited;

'Constitution' means this document as amended from time to time;

'Director' means any person occupying the position of director of the Company and includes an alternate Director;

‘Directors’ means all or some of the Directors acting as a board;

‘Member’ means a person described as a Member of the Company in clause 5 and includes a Member present by proxy;

‘Minister’ means the Minister for Defence;

‘Replaceable Rules’ means the provisions referred to in section 141 of the Act;

‘Secretary’ means a person appointed by the Directors to perform any of the duties of secretary of the Company.

19.2 In this Constitution unless the contrary intention appears:

words importing the singular include the plural and vice versa;

words importing any gender include the other genders;

words or expressions defined in the Act have the same meaning;

headings do not affect construction or interpretation;

a reference to a person includes a body corporate and a body politic; and

an expression in a clause that deals with a matter dealt with by a particular provision of the Act has the same meaning as in that provision of the Act.

## 20. SIGNING

NameSignatureWitness

Commonwealth of AustraliaSigned for and on behalf of the Commonwealth of Australia by the Minister for Defence.....name:address:

DATED THIS TWELFTH DAY OF FEBRUARY 2007