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**BY-LAWS**

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April 2019

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### **1. Interpretation**

- 1.1** In these By-Laws, a reference to the Institute means the Australian Institute of Company Directors ACN 008 484 197.
- 1.2** Any term used in these By-Laws and not otherwise defined has the same meaning given to it in the Constitution of the Institute.
- 1.3** A reference to the Constitution of the Institute is a reference to the Constitution as it may be varied, amended or substituted from time to time.
- 1.4** These By-Laws are in addition to and supplement those provisions contained in Article 9 of the Constitution, which govern, regulate and affect the proceedings, powers and affairs of Division Councils and Divisions of the Institute and should be read together with such Article wherever possible.
- 1.5** In the event of any inconsistency between any provision contained in these By-Laws and any Constitution of the Institute, such Constitution will prevail to the extent of such inconsistency.

### **2. Membership**

#### **2.1 Membership Committees**

The role of the Membership Committee is to vet candidates for admission to any of the levels of membership of the Institute. Each Division Council (or its applicable sub-committee, if any) performs the function of the membership committee for applications received in their respective State. A Membership Committee may seek advice from the National Membership Committee on matters of interpretation of the criteria for membership or other matters delegated to the National Membership Committee by the Board.

#### **2.2 Membership Classes**

The Institute is comprised of seven membership classes, namely:

- (a) Affiliate Member;
- (b) Member;
- (c) Graduate Member;
- (d) Fellow;
- (e) Honorary Fellow;
- (f) Life Fellow; and
- (g) Retired Member.

#### **2.3 Criteria for Membership**

##### **2.3.1 Affiliate Member**

- (a) To be eligible for membership of the Institute as an Affiliate Member an applicant must meet the following criteria:
  - (i) Demonstrate an interest in the affairs of the Institute, or aspire to become a Member of the Institute or to enrol in the Company Directors Course; or
  - (ii) Be a full-time student at an Australian Tertiary Education institution.
- (b) The Mandatory DPD Requirement does not apply as a prerequisite for eligibility to admission into, or for membership renewal in, the class of Affiliate Member.

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### **2.3.2 Member**

- (a) To be eligible for membership of the Institute as a Member an applicant must meet at least one of the following criteria:
  - (i) Have been a director or alternate director of a company or companies for two or more years (concurrent directorships may not be added together in determining years of experience);
  - (ii) Be a senior executive with managerial responsibilities equivalent to those of an executive director (for example, chief financial officer or chief operating officer) or a member of local Boards of Advice of companies;
  - (iii) Be a partner or sole proprietor of a professional practice (for example, a legal, accountancy, architectural or stockbroking practice) or unincorporated business, or a senior person with professional qualifications employed by a body corporate (for example, an in-house senior legal counsel); or
  - (iv) Be an academic at the level of (or equivalent to) professor, or the head of a relevant faculty (for example, business or law) at a Tertiary Institution regulated by the Tertiary Education Quality and Standards Agency.
- (b) To be eligible to renew their membership of the Institute into the class of Member an existing Member must fulfil the Mandatory DPD Requirement (but is not required to demonstrate continuous compliance with the requirements set out in By-Law 2.3.2(a)) and must pay any applicable membership fee.

### **2.3.3 Graduate Member**

- (a) To be eligible for membership of the Institute as a Graduate Member, an applicant must have successfully completed the Company Directors Course and meet at least one of the following criteria:
  - (i) Have been a director or alternate director of a company or companies for two or more years (concurrent directorships may not be added together in determining years of experience);
  - (ii) Be a senior executive with managerial responsibilities equivalent to those of an executive director (for example, chief financial officer or chief executive officer) or a member of local Boards of Advice of companies;
  - (iii) Be a partner or sole proprietor of a professional practice (for example, a legal, accountancy, architectural or stockbroking practice) or unincorporated business, or a senior person with professional qualifications employed by a body corporate (for example, an in-house senior legal counsel); or
  - (iv) Be an academic at the level of (or equivalent to) professor, or the head of a relevant faculty (for example, business or law) at a Tertiary Institution regulated by the Tertiary Education Quality and Standards Agency.
- (b) To be eligible to renew their membership of the Institute into the class of Graduate Member, an existing Graduate Member must fulfil the Mandatory DPD Requirement (but is not required to demonstrate continuous compliance with the requirements set out in By-Law 2.3.3(a)(i) to (iv)) and must pay any applicable membership fee.

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### 2.3.4 Fellow and Honorary Fellow

#### 2.3.4.1 Fellow

##### Admission

- (a) **(General)** Admission as a Fellow of the Institute is by application or invitation only. Applications for admission as a Fellow must be made to the Institute (in the manner set out in these By-Laws and the Fellow Guidance Note) for consideration by the relevant Division Council. Subject to By-Law 2.1, the relevant Division Council will determine an application for admission as a Fellow. Any determination is final and not subject to review.
- (b) **(By application):** The relevant Division Council considers the applicant satisfies the following criteria in (i) to (iv) as at the date of the application or determination (as the case may be):
- (i) Has been a **Member** of the Institute for at least the last three consecutive years; **and**
  - (ii) Has provided **References** from three current Fellows of the Institute; **and**
  - (iii) Has been a **Director** on the **Board** of an **Eligible Organisation** and/or a **Senior Government Official** of a **Significant Government Entity** for a minimum of either:
    - (A) **Six Years** as follows:
      - (I) In one role for a minimum of six consecutive years; **or**
      - (II) Within a eight year period, in one role for a minimum of three consecutive years and a second role for the balance of six years, **and** has successfully passed the Institute's Company Directors Course assessment or its Mastering the Boardroom assessment (retired 2018); or completed the Boardroom Mastery course.
    - OR**
    - (B) **Ten Years** as follows:
      - (I) Within a twelve year period, in one role for a minimum of six consecutive years and a second role for a minimum of three consecutive years; **or**
      - (II) Within a twelve year period, in one role for a minimum of six consecutive years, in a second role for a minimum of two consecutive years and in a third role for a minimum of one year;
- and**
- (iv) In the opinion of the relevant Division Council, having regard to the information in the application (including supporting material submitted) and any other relevant considerations, the applicant has the requisite knowledge, experience, good standing and professionalism befitting a member of the class of Fellow of the Institute.
- (c) **(By invitation):** The Board of Directors may at any time, by resolution, invite a person to become and admit such person as a Fellow on the grounds that the person has the requisite knowledge, experience, good standing and professionalism befitting a member of the class of Fellow of the Institute.

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### Fellow Members and Division Council Discretion

- (d) A person who is a current member of the Institute in the class of Fellow and who was admitted as a Fellow of the Institute prior to 1 May 2017 is not required to satisfy the admission requirements set out in this By-Law 2.3.4.1.
- (e) Where a person was a member of the Institute in the class of Fellow, ceases to be a member and then later seeks to be admitted again to membership of the Institute as a Fellow, the relevant Division Council may in its absolute discretion admit the person to the class of Fellow in unusual or exceptional circumstances notwithstanding that person does not fulfil the requirements for admission to the class of Fellow set out in this By-Law 2.3.4.1. When deciding whether to apply its discretion under By-Law 2.3.4.1(e), the relevant Division Council will refer to the Fellow Guidance Note to determine whether it will apply its discretion.
- (f) The relevant Division Council must maintain a register of instances in which it has applied its discretion under By-Law 2.3.4.1(e).
- (g) The relevant Division Council may seek a recommendation from the National Membership Committee to assist the Division Council to determine if discretion by the Division Council should be applied pursuant to By-Law 2.3.4.1(e).

### Renewal

- (h) To be eligible to renew their membership of the Institute into the class of Fellow, an existing Fellow must satisfy the Mandatory DPD Requirement (but is not required to demonstrate continuous compliance with the admission requirements set out in this By-Law 2.3.4.1) and must pay any applicable membership fee.

### **Definitions and Interpretation**

#### **Definitions:**

**Fellow Guidance Note** means the guide on the process for admission as a Fellow of the Institute and interpretation of certain matters in By-Law 2.3.4.1 as in force from time to time.

#### **Interpretation:**

In By-Law 2.3.4.1(b):

- (a) Any term commencing with a capital letter and in bold has the meaning given to it in the Fellow Guidance Note;
- (b) Any term commencing with a capital letter and not defined in the Fellow Guidance Note has the meaning given in these By-Laws; and
- (c) If the roles referred to By-Laws 2.3.4.1(b)(iii)(A)(II) or 2.3.4.1(b)(iii)(B)(I) or (II) are served wholly or partly concurrently any concurrent period may only be counted once for the purposes of the criteria.

#### **2.3.4.2 Honorary Fellow**

By Board invitation only, the Board of Directors may appoint as an Honorary Fellow of the Institute any person who has contributed greatly to Australian governance.

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### 2.3.5 Life Fellow

- (a) The Board of Directors may appoint as a Life Fellow of the Institute any person who has been eminent in the field of directorship and who has provided distinguished service to the Institute.
- (b) The Mandatory DPD Requirement does not apply as a prerequisite for eligibility to admission into, or for membership renewal of, the class of Life Fellow.

### 2.3.6 Retired Member

- (a) The Institute may offer the class of Retired Member to any member who has been a member in any class of the Institute (or any of its predecessor bodies) for at least five years and who, having reached the age of 65, has relinquished all directorships and offices (of a nature referred to in By-Law 2.3.2) other than 'non-trading' family investment companies or unpaid directorships (for example, directorships of charities or educational institutions).
- (b) The annual subscription fee for membership in the class of Retired Member will be 50% of the normal subscription fee.
- (c) Members admitted to the class of Retired Member will retain all rights and privileges.
- (d) The Mandatory DPD Requirement does not apply as a prerequisite for eligibility to admission into, or for membership renewal of, the class of Retired Member.

## 2.4 Method of Admission and Duration of Membership

### Definition:

**Form** means the form for admission, renewal or upgrade as a member of the Institute (as the case may be) from time to time, including in electronic form.

- (a) Persons seeking membership of the Institute in any class of membership must complete and sign the Institute's Form, and otherwise satisfy the applicable criteria for the relevant class of membership in the form and substance specified by the Institute.
- (b) Membership is for a period of 12 months commencing on the date the person's application for admission is determined and accepted, and lapses if not renewed. Renewal of membership is subject to:
  - (i) A Member completing and delivering the Institute's Form within the time (if any) determined by the Directors;
  - (ii) The payment of any fee determined by the Directors; and
  - (iii) Fulfilment of any applicable Mandatory DPD Requirement.

### 2.5 Membership application determination

A Membership Committee must determine, having regard to the criteria set out in these By-Laws, the Form and any applicable guidance note, the acceptance or rejection of an application for membership or for renewal or upgrade of membership of the Institute within a reasonable time following the Membership Committee's receipt of the relevant application but no later than 90 days following receipt by the Membership Committee. The period of 90 days shall be suspended for the duration of any period when an application is referred to the National Membership Committee for consideration and response to the relevant Membership Committee.

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### 2.6 Director Professional Development

#### Definitions:

**Annual Renewal Date** means the date on which a member's annual renewal of their membership of the Institute falls due.

**Compliance Audit** means an audit in respect of a member conducted by the Institute before the end of the relevant membership year to determine whether that member, having been identified either by the Institute on a Random Audit or by themselves at the time of the renewal of their membership as not fulfilling the Mandatory DPD Requirement at the last renewal date, or otherwise being a member subject to By-Law 2.6.9(b)(ii), has fulfilled the DPD Make Good Requirement.

**DPD** means Director Professional Development.

**DPD Activities** means those courses, conferences, briefings programs or activities prescribed by the DPD Guidelines.

**DPD Guidelines** means the guidelines relating to DPD published by the Institute from time to time.

**DPD Make Good Requirement** means, in respect of a member, obtaining sufficient DPD Units to address the deficiency in their Mandatory DPD Requirement for the period ending on the last date of renewal of that member's membership prior to that point in time, together with obtaining such additional DPD Units to meet the Mandatory DPD Requirement for the relevant membership class to permit the member to obtain renewal in that class.

**DPD Units** means the number of units ascribed to a particular DPD Activity by the DPD Guidelines.

**Mandatory DPD Requirement** means the minimum number of DPD Units to be completed for admission into, and membership renewal within, a membership class prescribed by the DPD Guidelines.

**Random Audit** means an audit conducted under By-Law 2.6.4(a).

#### 2.6.1 Mandatory DPD Requirement

- (a) Subject to By-Law 2.6.7 each member of the Institute (other than a member admitted to the class of Affiliate Member, Life Fellow or Retired Member) must fulfil the Mandatory DPD Requirement as a prerequisite to their admission into a different membership class (where applied for by the member) or the renewal of their membership into their existing membership class.
- (b) A member may fulfil their Mandatory DPD Requirement by obtaining the requisite number of DPD Units from any combination of DPD Activities.
- (c) Each member required to fulfil the Mandatory DPD Requirement is:
  - (i) Responsible for keeping their own records evidencing their compliance with the Mandatory DPD Requirement; and
  - (ii) Required to indicate at the time of the renewal of their membership that they have fulfilled the Mandatory DPD Requirement prior to the Annual Renewal Date for the purpose of their admission into a different membership class or the renewal of their membership into their existing membership class.

#### 2.6.2 Renewal Into Existing Member Class

Subject to By-Law 2.6.4 and the fulfilment of any other requirement for membership (including the payment of any membership fee), if at the time of the renewal of their membership a



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member indicates (in the manner set out in the DPD Guidelines) that they have complied with the Mandatory DPD Requirement, their membership will be automatically renewed into their existing membership class.

### **2.6.3 Failure to Fulfil the Mandatory DPD Requirement**

Subject to By-Law 2.6.7, if at the time of the renewal of their membership a member indicates that they have not fulfilled the Mandatory DPD Requirement, then the member will be ineligible to renew their membership into their existing membership class and will instead be eligible to apply only for renewal into the class of Affiliate Member.

### **2.6.4 Random Audit**

- (a) The Institute may, in its absolute discretion, make enquiries of any member to which the Mandatory DPD Requirement applies to determine whether the member has fulfilled the Mandatory DPD Requirement.
- (b) Any Random Audit will be conducted according to the procedure set out in the DPD Guidelines.
- (c) Subject to clause 2.6.5, if, following a Random Audit, a member is found not to have fulfilled the Mandatory DPD Requirement, then the member will be ineligible to renew their membership into their existing membership class and will instead be eligible to apply only for renewal into the class of Affiliate Member.

### **2.6.5 Period of Grace**

- (a) If:
  - (i) On their Renewal Form, a member indicates that they have not fulfilled the Mandatory DPD Requirement; or
  - (ii) Following a Random Audit, a member is found not to have fulfilled the Mandatory DPD Requirement, then (subject to By-Law 2.6.5(c));
  - (iii) A period of grace will apply during which the member will be renewed into their existing membership class and will have the opportunity to accrue additional DPD Units to address the shortfall;
  - (iv) A Compliance Audit will be performed; and
  - (v) The period of grace referred to above will continue until the Compliance Audit is performed.
- (b) If as a result of the Compliance Audit referred to in By-Law 2.6.5(a) the member is found to have:
  - (i) Fulfilled the DPD Make Good Requirement, then their membership will be renewed into their existing membership class;
  - (ii) Not fulfilled the DPD Make Good Requirement, then the member will be ineligible to renew their membership into their existing membership class and will instead be eligible to apply only for renewal into the class of Affiliate Member.
- (c) Each member is entitled to only one period of grace under By-Law 2.6.5(a) during their membership of the Institute.

### **2.6.6 Elevation to a Different Membership Class**

Where a person who has been renewed as an Affiliate Member under By-Law 2.6.3 or By-Law 2.6.4(c) seeks elevation to a different membership class, that member must fulfil the

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Mandatory DPD Requirement that would apply to a member seeking renewal of membership in that other class (having been a member of the class for not less than three years) before they will be eligible for renewal into that class.

### **2.6.7 Lapses of Membership**

- (a) A person whose membership has lapsed for more than six months may re-apply for membership of the Institute and in that circumstance the person:
  - (i) Must satisfy the membership criteria set out in By-Law 2.3 for the class of membership they wish to apply for; and
  - (ii) Has no Mandatory DPD Requirement until the period referred to in By-Law 2.6.8 and on the third anniversary of the member's new membership having been accepted, that member will be subject to an automatic Compliance Audit unless the Board of Directors otherwise determines.
- (b) If a person's membership lapses for six months or less and is subsequently reinstated, then their DPD history and Mandatory DPD Requirement continue as if no such lapse occurred.

### **2.6.8 Foundation Period**

The Mandatory DPD Requirement does not apply to a member in any membership class until the later of:

- (a) The third consecutive Annual Renewal Date for that member's membership occurring after 1 January 2013; or
- (b) The third consecutive Annual Renewal Date occurring after that member's first admission as a member of a membership class to which the Mandatory DPD Requirement apply.

### **2.6.9 Discretion of the Board of Directors**

- (a) Administration of the Mandatory DPD Requirement remains wholly at the discretion of the Board of Directors (or, where the Board of Directors delegates some or all of that discretion to the Division Councils, at the discretion of the relevant Division Council or any person to whom a Division Council subsequently delegates that discretion).
- (b) The Board of Directors (or, where the Board of Directors delegates some or all of that discretion to the Division Councils, the Division Councils, or any person to whom a Division Council subsequently delegates that discretion) may, at any time, waive (in whole or in part) the Mandatory DPD Requirement that would otherwise apply to a member seeking either admission into or renewal into a membership class.
- (c) Any person to whom a Division Council has delegated discretion under By-Law 2.6.9(a) or 2.6.9(b) must:
  - (i) If the discretion has been delegated under By-Law 2.6.9(a), report regularly to the relevant Division Council with respect to the administration of the Mandatory DPD Requirement;
  - (ii) If the discretion has been delegated under By-Law 2.6.9(b), advise the relevant Division Council of any proposal to waive (in whole or part) the Mandatory DPD Requirement in respect of a member.

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### **3. Division Councils**

#### **3.1 Charter**

- 3.1.1 The role of Division Councils shall be specified by the Board of Directors in a Charter which will be determined from time to time.
- 3.1.2 A Division Council may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit subject to the Charter determined by the Board of Directors.

#### **3.2 Composition**

- 3.2.1 A Division Council shall consist of at least five but not more than ten members as reviewed from time to time by the Division.
- 3.2.2 Division Councillors may be appointed either by election, following the process described in By-Law 3.9, by a determination of the Division Council following the process described in By-Law 3.11 and by the operation of By-Law 3.11.3.
- 3.2.3 At any time the Division Council shall comprise:
- (a) Not more than five Councillors appointed by election pursuant to By-Law 3.9; and
  - (b) Not more than five Councillors, with four able to be appointed by determination of the Division Council pursuant to By-Law 3.11.2 and one appointed through the operation of By-Law 3.11.3.
- 3.2.4 The Division Council shall elect a President who shall serve for a term of up to three years at the discretion of the Council.

#### **3.3 Engaging Members of Division Councils**

- 3.3.1 Without the prior approval of the Board, the Institute must not directly or indirectly pay to or on behalf of any member of a Division Council, or any Associated Entity of that member, any fees or any payment or consideration (whether in cash or in kind) for services rendered or goods supplied by that member or Associated Entity to, or for the benefit of, the Institute or the Members of the Institute.
- 3.3.2 Reasonable remuneration in the ordinary course of business in consideration for services rendered or goods supplied by a body corporate or a partnership, where a member of a Division Council is an employee or officer of that body corporate or a partner of that partnership, is permitted.
- 3.3.3 For the purposes of this By-Law “Associated Entity” has the meaning given in section 50AAA of the Corporations Act, 2001 (Cth).

#### **3.4 General Meeting of a Division**

- 3.4.1 A General Meeting of a Division may be held if determined by the Division Council or the Board and at such times and places as the Division Council or Board may appoint. The chairman shall be the President or Chairman (as the case may be), or in their absence by another member of the Division Council or Board as determined by the members of the Division present at the relevant meeting. If no member of the Division Council or Board is present the members shall elect from amongst their number a chairman for the occasion.
- 3.4.2 By resolution of the Division Council or Board, or upon a requisition of 5% of the members of the Division, the Manager of the Division shall convene a General Meeting of the members of the Division.

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3.4.3 Every such General Meeting shall be held as soon as practicable but in any case not later than three months after the passing of such resolution or the receipt of such requisition.

3.4.4 The business of a General Meeting of a Division shall be determined by the Division Council or Board. The annual general meeting of the Institute held in accordance with the Constitution shall be the annual general meeting of each Division.

### **3.5 Conduct of General Meetings of a Division**

#### **3.5.1 Quorum**

At every General Meeting five members personally present shall form a quorum. If at any such meeting a quorum be not present with 15 minutes of the time appointed for holding the meeting, the meeting, if convened upon a requisition of members, shall be dissolved or if otherwise convened, shall stand adjourned to the same day in the next week at the same time and place and at such adjourned meeting the members present shall form a quorum.

#### **3.5.2 Adjournments**

The chairman of any General Meeting may with the consent of the meeting adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business not transacted or left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjourned meeting unless it is so directed in the resolution for the adjournment or unless the adjournment is for 30 days or more.

### **3.6 Notices of General Meetings of a Division**

3.6.1 At least 14 days notice of General Meetings shall be given to all Division members specifying the place, day and hour of meeting and the general nature of the business to be transacted.

3.6.2 The accidental omission to give notice of a General Meeting to or the non-receipt of notice of a meeting by any member shall not invalidate proceedings at a meeting.

### **3.7 Minutes of Division Council and of General Meetings of a Division**

3.7.1 Minutes of the proceedings of Division Councils and of all General Meetings shall be entered by the Secretary in books kept for that purpose and those minutes shall be signed by the Chairman of that meeting or by the Chairman of the next succeeding such meeting. Where minutes have been so entered and signed the minutes shall be prima facie proof of the proceedings of the meeting.

3.7.2 Each Division Council shall cause copies of the minutes of its meetings and General Meetings of the members of the Division to be supplied to the Institute's National Office, the Chairman and the Manager of each Division within 21 days of the approval of the minutes.

3.7.3 The books containing the minutes of proceedings of any General Meeting of a Division shall be open to the inspection of any Division member without charge at such times and places as the Division Council may permit.

### **3.8 Retirement of Council Members**

3.8.1 In respect of each Division Council, by no later than 30 September in each calendar year ("Retirement Date"), as a minimum one third of the elected and casual members of the relevant Division Council shall retire from office ("Retiring Members"). If this number is not a multiple of three, then the nearest integer number of members, rounded down, shall retire from office.

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The minimum number of Retiring Members shall be calculated on the basis of the aggregate number of members of the Division Council elected pursuant to By-Law 3.9 plus any members of the Division Council filling a casual vacancy pursuant to By-Law 3.11.1, and without reference to Division Council Members who have been appointed for a specified term pursuant to By-Law 3.11.2 or through the operation of By-Law 3.11.3.

Subject to By-Law 3.8.3(b), the Retiring Members may be eligible to stand for re-election immediately upon retirement.

3.8.2 The Retiring Members are to be determined as follows:

- (a) First, each member who has been appointed to fill a casual vacancy in accordance with By-Law 3.11.1 must retire but, subject to By-Law 3.8.3(b), may stand for re-election immediately upon retirement;
- (b) Second, each member who has served the maximum of three terms pursuant to By-Law 3.8.3(b), must retire;
- (c) Third, each member who has served a full three year term pursuant to By-Law 3.8.3(a), must retire, but, subject to By-Law 3.8.3(b), may stand for re-election immediately upon retirement; and
- (d) If required, fourth, each member who has been longest in office since their last election must retire, until the minimum number of Retiring Members required by By-Law 3.8.1 has been reached.

In relation to By-Law 3.8.2(d), as between persons who became members of the Division Council on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

Where the total number of members who have been appointed to fill a casual vacancy in accordance with By-Law 3.11.1 (or a member counted as such by virtue of By-Law 3.11.3(b)), plus those who have served a full three year term pursuant to By-Law 3.8.3(a) and those who have served the maximum of three terms pursuant to By-Law 3.8.3(b) equals, or exceeds the minimum number of Retiring Members, each of those members must retire (and subject to By-Law 3.8.3(b), may stand for re-election immediately upon retirement) but no additional members will be required to retire.

3.8.3 Subject to By-Law 3.11.3, no member of a Division Council is eligible to serve as a Councillor:

- (a) For a term in excess of three years in duration, whether elected pursuant to By-Law 3.9 or appointed pursuant to By-Law 3.11.2; or
- (b) For more than a maximum of three terms (whether or not terms are served consecutively) in total, without the resolution of the Board of Directors.

3.8.4 In the case of a person appointed as a Councillor under By-Law 3.11.1 to fill a vacancy, the period between the appointment of that person as a Councillor and the first meeting of the Division Council after the next General Meeting of the Division will not be counted as a Term or part of a Term and will not be included in determining whether the Councillor has served as a Councillor for three terms for the purposes of By-Law 3.8.3(b).

### **3.9 Annual Election of a Divisional Council**

3.9.1 Each Division Council shall hold an election for the positions of the Retiring Members of the Division Council (as determined under By-Laws 3.8.1 and 3.8.2) between July 1 and October 1 (or such later date approved by resolution of the Board of Directors) in each year.

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A reference to a member in By-Laws 3.9.2, 3.9.4(a) and 3.9.4(b) means a member of any membership class of the Institute (other than the class of Affiliate Member) and who has been a member of one or more such classes for a minimum of the last three consecutive years prior to the date of the notice calling for nominations.

- 3.9.2 Each Division Council will send notices to members of that Division calling for nominations from such members to fill the vacancies caused by the retirement of the Retiring Members of the relevant Division Council at least 14 days before the closing date for such nominations. Such notices may be sent by post, or to an electronic address if the member has so requested.
- 3.9.3 The notices will specify the number of vacancies to be filled on the relevant Division Council, the proposed date of the election, to be at least 28 days after the closing date for nominations, and such other information considered appropriate by the Division Council.
- 3.9.4 The election of members of the Division Council shall take place in the following manner:
- (a) Any two members of the Institute shall be at liberty to nominate any other member to serve as a member of a Division Council provided that no member may participate in the nomination of more than two members to serve on the relevant Division Council at any one election.
  - (b) Nominations, which shall be in writing and signed by the member and the member's nominators, shall be lodged with the Manager of the Division at least 28 days before the date on which the election is to take place.
  - (c) If the number of candidates duly nominated is equal to or less than the number of vacancies to be filled, such candidates shall be the new members of the Division Council with effect from 1 October in that year (or such later date approved by resolution of the Board of Directors) and the Division Council shall notify all members of the relevant Division that no ballot is to be conducted.
  - (d) If the number of candidates duly nominated is less than the number of vacancies to be filled, the Division Council, upon such candidates coming into office, may fill the remaining vacancy or vacancies in accordance with By-Law 3.11.1.
  - (e) If the number of duly nominated candidates exceeds the number of vacancies to be filled, a secret ballot will be conducted. The ballot may be conducted by post or by electronic means (such as email or online), or by any combination of these means, or any other means approved by the Division Council, however it must be conducted by such means, or combination of means, as to enable each member to participate.
    - (i) If the means of conducting the ballot include conducting the ballot by post, hard copy ballot papers must be prepared.
    - (ii) If the means of conducting the ballot include conducting the ballot by electronic means, electronic ballot papers must be prepared.
  - (f) The method of election of candidates in a ballot will be such that each member of a Division will have as many votes as there are vacancies to be filled on the relevant Division Council. A member may give one vote to each of as many candidates as the member wishes not exceeding the number of vacancies to be filled.
  - (g) If necessary, electronic and/or hard copy ballot papers shall be prepared (in accordance with the means of ballot selected under By-Law 3.9.4(e)), containing the names of the candidates and their brief details, and specifying the election date.
    - (i) Candidate names must be listed in the ballot paper either in alphabetical order, or in order by lot, at the discretion of the Division Council.

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- (ii) The Division Council may include with the ballot papers a statement recommending the re-appointment of one or more sitting Councillors, based on an assessment of their contribution or skills. The Division Council may only make such a recommendation in respect of a Councillor who has been duly nominated in accordance with this By-Law, and who is eligible for re-election in accordance with By-Law 3.8.3(b).
- (h) A list of candidates' names in alphabetical, or lot, order showing the respective nominators' names, a return envelope, and ballot papers shall be sent by post and/or a list of candidates' names in alphabetical, or lot, order showing the respective nominators' names, and ballot papers shall be sent or made available by electronic means, depending on the means of ballot which has been selected under By-Law 3.9.4(e), by the Division Council to all members of the Division as recorded in the register of members no later than 14 days before the date of the election.
- (i) To be valid, a ballot paper must be delivered by a member by post, to an electronic address, or provided online and the availability of the ballot paper notified to an electronic address, or otherwise delivered by any other means approved by the Division Council, depending on the means of conducting the ballot which has been selected under By-Law 3.9.4(e). Ballot papers, whether delivered in hard copy or by electronically, must be received by the Division Council no later than 5pm on the date one day prior to the election date. The ballot papers must contain a statement to that effect.
  - (i) The date on which the ballot papers are sent constitutes the start of the Voting Period.
  - (ii) The Voting Period will last for 14 days, or such longer period as the Division Council determines, provided the period does not exceed 21 days and the election date occurs between July 1 and October 1 (or such later date approved by resolution of the Board of Directors) each year.
- (j) Opening and counting of the ballot will be carried out at the office of the relevant Division Council on the election date or some other place or later date determined by the Division Council.
- (k) The Division Council shall appoint one Returning Officer to open and count the ballot.
- (l) The Returning Officer shall decide the admissibility of ballot papers.
  - (i) The Returning Officer shall discard any ballot paper received by post if it is received in any envelope other than the return envelope supplied by the Division Council or if it is contained in an envelope with another ballot paper or is marked with more than the correct number of votes.
  - (ii) The Returning Officer shall discard any ballot paper received electronically unless it has been lodged in accordance with any applicable administrative protocols for online or electronic lodgement for that election.
  - (iii) An otherwise properly marked ballot paper containing less than the correct number of votes will be admitted and the votes marked or selected electronically (as the case may be) on the ballot paper will be distributed as valid votes.
- (m) A candidate for election shall have the right to appoint a scrutineer who may attend the opening and counting of the ballot, inspect the ballot papers and count such forms or documents used and issued by the Returning Officer and to recount the ballot if such scrutineer for a candidate is dissatisfied with the duties performed by the Returning Officer appointed by the Division Council.

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- (n) The outcome of the ballot will be determined by the Returning Officer, on the basis that the candidate who receives the greatest number of votes will be appointed to fill the first vacancy, the candidate with the second highest number of votes will be appointed to fill the second vacancy, and so on, until all vacancies have been filled. The successful candidates shall be the new members of the Division Council with effect from 1 October in that year (or such later date approved by resolution of the Board of Directors).
- (o) At the conclusion of the opening and counting of the ballot, the Returning Officer will, subject to paragraph (m), issue a certificate to the Manager of the Division setting out the results of the ballot. Any dispute between a scrutineer appointed by a candidate and the Returning Officer will be conclusively resolved by the Board of Directors.
  - (i) The newly appointed Division Council must notify members of the outcome of the election by publishing the results online on the Institute's website within 14 days after the election date.
  - (ii) If, for any reason, the outcome of the election has not been finalised within 14 days after the election date the Returning Officer must notify members by publishing a statement to that effect online on the Institute's website.
- (p) If two or more candidates receive the same number of votes, and as a result there are more eligible candidates than remaining Councillor positions to be filled, the Returning Officer must determine by lot which of those candidates will be appointed to the Division Council.
- (q) The Returning Officer may decide on all matters in relation to the election not provided for in the By-Laws.

### **3.10 Electronic Communication**

- 3.10.1 If the Division Council holds a nominated electronic address for a member who has not indicated that they do not wish to receive communications electronically, that member is deemed to have requested that all communications, including those required to be sent under these By-Laws be sent to the member electronically.
- 3.10.2 A notice or other transmission sent by electronic means is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole notice or transmission was sent to the correct electronic address.
- 3.10.3 A member may provide a new electronic address for receipt of such information or amend their preference to receive such information electronically at any time. Where a member notifies the Division Council of a change in electronic address, or a change in preference to receive such information electronically, during the Voting Period, service of the ballot papers to the old electronic address constitutes valid service.

The Division Council will to the extent reasonably practicable also send the ballot papers to the new electronic or postal address provided by the member.
- 3.10.4 Procedural irregularities, such as the provision by a member to the Division Council of an inaccurate electronic address or failure by a member to submit an electronic vote due to human error or technological failure, will not invalidate the election process.

### **3.11 Appointment of Division Council Members**

- 3.11.1 A Division Council shall have the power at any time, and from time to time, to appoint any member of the Division to the Division Council, to fill a casual vacancy which arises when an elected Councillor's position is vacated, provided that:
  - (a) The total number of office-bearers or other members of the Division Council shall not at any time exceed the number provided for in By-Law 3.2.1; and



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- (b) Any office-bearer or other member of the Division Council so appointed shall hold office only from the date of his appointment until the next Retirement Date.
- 3.11.2 The Division Council shall have the power at any time, and from time to time, to appoint any member of the Division to the Division Council as an addition to the existing office-bearers or other members of the Division Council, as contemplated by By-Law 3.2.3(b), provided that:
- (a) The total number of office-bearers or other members of the Division Council shall not at any time exceed the number provided for in By-Law 3.2.1 or By-Law 3.2.3;
- (b) Such appointment may only be made by a majority vote of the members of the Division Council;
- (c) A Division Councillor so appointed shall serve for a term of not more than three years, as determined by the Divisional Council;
- (d) Subject to By-Law 3.11.3, any office-bearer or other member of the Division Council so appointed must retire on or before the conclusion of their term. Subject to By-Law 3.8.3(b) they may be eligible for reappointment under this By-Law, or election as a Councillor under By-Law 3.9; and
- (e) The Division Council retains the right to remove any office-bearer or other member of the Division Council appointed under this By-Law (other than the Division Director) at any time prior to the end of their term, by a majority vote of Councillors (not including the Councillor the subject of the relevant vote).
- 3.11.3 One of the positions on each Division Council referred to in By-Law 3.2.3(b) shall be permanently for the Division Director from that Division from time to time. Subject to By-Law 3.13.5 (Transitional Provisions):
- (a) Upon election or re-election by the Board the person elected as Division Director shall automatically commence a new term as a Division Councillor in the appointed position on the respective Division Council and for the same duration as their term of appointment to the Board;
- (b) If the Division Director was an elected Councillor at the time of their first election to the Board as Division Director, they will transfer to the appointed position on that date and a casual vacancy on the Council will then arise. If the Council does not appoint a person to fill that casual vacancy prior to the next following 30 September, for the purposes of By-Laws 3.8.1 and 3.8.2 the Council can count the person who was elected as Division Director towards determining the number of Retiring Members arising under By-Law 3.8.2(a);
- (c) Upon resignation, retirement or removal from the Board, the Division Director's then current term on the relevant Division Council shall cease and only the successor Division Director may take up the appointed position so vacated;
- (d) The provisions of By-Law 3.8.3 do not apply to a Councillor who is a Division Director whilst they serve on Council as the Division Director; and
- (e) A Division Director who retires or resigns from the Board may be eligible for reappointment as a Councillor under By-Law 3.11.2 or election as a Councillor under By-Law 3.9 subject always to the remaining provisions of these By-Laws including By-Law 3.8.3 as applicable to any period served by that person on Council whilst not a Division Director.

### **3.12 Validity of Councillor Actions**

- 3.12.1 If it is found that a person who has acted as a Councillor was not properly elected or appointed, the validity of the acts taken by that person as a Council member, and the decisions of

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meetings of the Council held, in which that person has participated, are not affected where those decisions were taken and those meetings were held prior to the date on which it was found that the person was not properly elected or appointed.

### 3.13 Transitional Provisions

- 3.13.1 Until 2 October 2015, By-Law 3 must be read subject to this By-Law 3.13 which will prevail to the extent of any inconsistency.
- 3.13.2 Subject to By-Law 3.13.4, the maximum number of Councillors who may be appointed by election to each Division Council pursuant to By-Law 3.9 is six.
- 3.13.3 At any Retirement Date which occurs on or before 30 September 2015, any Councillor:
- (a) Appointed pursuant to By-Law 3.11.2, who is required to retire in accordance with By-Law 3.11.2 at that Retirement Date, must retire on the date on which that Councillor is required to retire in accordance with that By-Law;
  - (b) Elected pursuant to By-Law 3.9, who is required to retire at that Retirement Date in accordance with By-Laws 3.8.1 and 3.8.2, must retire;
  - (c) Who is no longer eligible to serve as a Councillor pursuant to By-Law 3.8.3(a) must retire, but, subject to By-Law 3.8.3(b), may stand for re-election immediately upon retirement; and
  - (d) Who is no longer eligible to serve as a Councillor pursuant to By-Law 3.8.3(b) must retire.
- 3.13.4 Notwithstanding any other provision of this By-Law 3.13, at no time will a Division Council consist of more than ten members.
- 3.13.5 Notwithstanding any other provision of these By-Laws, including By-Laws 3.2 and 3.13.4:
- (a) With effect on 1 July 2017 By-Law 3.11.3 shall commence and:
    - (i) A Division Director who is an elected member of their respective Division Council shall become an appointed member of the relevant Division Council for the purposes of By-Laws 3.2.3(b) and 3.11.3. The relevant Division Council may either:
      - A. Treat the vacated position as a casual vacancy and appoint another person as Councillor under By-law 3.11.2 prior to 30 September 2017; or
      - B. Count the person towards the number of Retiring Members under By-Laws 3.8.1 and 3.8.2 although the person is not eligible for re-election during the 2017 Division Council elections. This paragraph (a)(i)B shall apply if no-one is appointed pursuant to paragraph (a)(i)A;
    - (ii) All current Division Directors, including any Division Director referred to in (a)(i) above, shall each have an appointed term on their respective Council which is taken to commence on 1 July 2017 and otherwise subject to the terms and conditions of their current Council position as modified by these By-Laws; and
  - (b) A Division Council which has five Councillors appointed under By-Law 3.11.2 prior to the commencement of By-Law 3.11.3 has until 30 September 2018 to reduce the number of appointed Councillors to five overall but without impacting the Division Director's appointed position as provided in By-Law 3.11.3.

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### Document History

Date	Description
11 May 2017	Fellow Class Criteria revised, Honorary Fellow Class introduced and consequential amendments.
13 June 2017	By-Law 3.11.3 introduced with consequential amendments, transitional provisions and other minor amendments. By-Laws 3.4 – 3.7 amended.
10 July 2017	By-Law 3.9 amended.
12 April 2018	By-Law 2.3.4.1 revised.
11 April 2019	By-Law 2.3.4.1(b)(A)(II) amended to reflect new course name.

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