



**CONSTITUTION**

**OF**

**SMSF ASSOCIATION LTD**  
**ACN 103 739 617**

*Approved Date: 21 November 2018*  
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## INDEX

1.	Definitions and interpretation .....	- 1 -
2.	Objects of the SMSF Association .....	- 4 -
3.	Powers .....	- 4 -
4.	Members and the SMSF Association.....	- 4 -
5.	Membership.....	- 5 -
6.	Application for Membership .....	- 6 -
7.	Change of Category of Membership .....	- 6 -
8.	Membership Fees.....	- 7 -
9.	Cessation of Membership .....	- 7 -
10.	Suspension or Cancellation of Membership.....	- 8 -
11.	General meetings .....	- 10 -
12.	Notices of general meetings .....	- 12 -
13.	Quorum for general meetings .....	- 12 -
14.	Conduct of general meetings.....	- 13 -
15.	Voting at general meetings .....	- 14 -
16.	Voting entitlement.....	- 15 -
17.	Proxies .....	- 15 -
18.	The Board .....	- 17 -
19.	Directors.....	- 18 -
20.	Resignation and removal of Directors .....	- 18 -
21.	Proceedings of the Board .....	- 19 -
22.	Powers of the Board.....	- 20 -
23.	Committees .....	- 21 -
24.	Secretary.....	- 22 -
25.	Executive Officers .....	- 23 -
26.	Chief Executive Officer .....	- 23 -
27.	Administrative matters.....	- 23 -
28.	Inspection of records .....	- 24 -
29.	Accounts .....	- 24 -
30.	Notices .....	- 25 -
31.	Indemnity and insurance .....	- 26 -
32.	Application of Income and Property.....	- 27 -
33.	Liability of Members.....	- 27 -
34.	Winding up .....	- 28 -
35.	Confidentiality.....	- 28 -
36.	Amendments to this Constitution .....	- 28 -
	SCHEDULE .....	29

**THE CORPORATIONS ACT 2001 (CTH)**  
**COMPANY LIMITED BY GUARANTEE**  
**CONSTITUTION**  
**of**  
**SMSF ASSOCIATION LTD**  
**ACN 103 739 617**

**PART A – INTRODUCTION**

**1. Definitions and interpretation**

1.1 Definitions

In this Constitution, unless a contrary intention appears:

- 1.1.1 **Act** means the *Corporations Act 2001 (Cth)* as amended, varied, re-enacted or substituted from time to time;
- 1.1.2 **ADI** means an authorised deposit taking institution as defined in section 5 of the *Banking Act 1959 (Cth)* for which an authority under section 9(3) of the *Banking Act 1959 (Cth)* is in force;
- 1.1.3 **Associate Member** means a Member classified as an ‘Associate Member’ under clause 5 who has not ceased to be so classified;
- 1.1.4 **Board** means the board of Directors of the SMSF Association for the time being;
- 1.1.5 **Board-Appointed Member** means a Member classified as a ‘Board-Appointed Member’ under clause 5 who has not ceased to be so classified;
- 1.1.6 **Business Day** means a day on which banks are open for retail banking business in South Australia, other than a Saturday or **Sunday**;
- 1.1.7 **Chairman** means the chairman of the SMSF Association for the time being appointed pursuant to clause 14.1;
- 1.1.8 **Chief Executive Officer** means the Chief Executive Officer of the SMSF Association for the time being appointed under clause 26;
- 1.1.9 **Constitution means** this Constitution as modified, varied or replaced from time to time;
- 1.1.10 **Director** means a Director of the SMSF Association for the time being and, where relevant, includes an alternate Director of a Director;
- 1.1.11 **Employee** means a full-time, part-time or casual employee of the SMSF Association and any other person resolved by the Board to be an employee of the SMSF Association for the purpose of this **Constitution**;

- 1.1.12 **Executive Officer** means an Executive Officer of the SMSF Association for the time being appointed under clause 25.1;
- 1.1.13 **General Member** means a Member classified as a 'General Member' under clause 5 who has not ceased to be so classified;
- 1.1.14 **Insolvency Event** means, in relation to a Member, that Member:
  - 1.1.14.1 committing any act of bankruptcy;
  - 1.1.14.2 calling or threatening to call any meeting with a view to entering into a compromise or arrangement with their creditors;
  - 1.1.14.3 being unable to pay their debts as and when they fall due or otherwise becoming incapable of managing their own affairs for any reason; or
  - 1.1.14.4 experiencing any analogous event.
- 1.1.15 **Life Member** means a Member classified as a 'Life Member' under clause 5 and who has not ceased to be so classified;
- 1.1.16 **Managing Director** means the Managing Director of the SMSF Association for the time being appointed under clause 26.2;
- 1.1.17 **Member** means any person who is entered in the SMSF Association's register of Members for the time being;
- 1.1.18 **Membership** means membership of the SMSF Association;
- 1.1.19 **Membership Fee** means any fee payable by a Member to the SMSF Association;
- 1.1.20 **Membership Year** means a year ending on 31 March or another period approved at the Board's discretion;
- 1.1.21 **Month** means a calendar month;
- 1.1.22 **Objects** means the objects of the SMSF Association set out in the Schedule;
- 1.1.23 **Officer** means a Director, Managing Director, agent, Secretary, Chairman, Vice Chairman, Chief Executive Officer, Executive Officer or, where the context permits, other officer as defined in section 9 of the Act for the time being of the SMSF Association;
- 1.1.24 **Other Rules** means any rule, code, condition or obligation imposed by the SMSF Association in connection with a person's Membership or category of Membership;
- 1.1.25 **Related Body Corporate** has the meaning given to that term in the Act;

- 1.1.26 **Schedule** means the schedule attached to and forming part of this Constitution;
- 1.1.27 **Secretary** means the secretary of the SMSF Association for the time being as appointed under clause 24.1;
- 1.1.28 **SMSF Association** means SMSF Association Limited ACN 103 739 617, the company constituted by this Constitution;
- 1.1.29 **Specialist Member** means a Member classified as a 'Specialist Member' under clause 5 who has not ceased to be so classified;
- 1.1.30 **Special Resolution** has the meaning set out in the Act;
- 1.1.31 **Vice Chairman** means the Vice Chairman of the SMSF Association for the time being appointed pursuant to clause 14.2;
- 1.1.32 **Voting Member**; means a Member classified as a 'Specialist Member' or 'Associate Member' under clause 5 of this Constitution who has not ceased to be so classified; and
- 1.1.33 **Year** means twelve (12) months.

## 1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a gender includes the other genders;
- 1.2.3 headings are used for convenience only and do not affect the interpretation of the Constitution;
- 1.2.4 a reference to "a document" includes that document as modified from time to time and any document replacing it;
- 1.2.5 if something is to be done on a day which is not a Business Day, then that thing must be done on the next or following Business Day;
- 1.2.6 a reference to a "person" includes a natural person and any body or entity, whether incorporated or not;
- 1.2.7 a reference to "in writing" or "written" includes any communication sent by letter, fax or e-mail;
- 1.2.8 a reference to a specific clause is a reference to a specific clause of this Constitution;
- 1.2.9 a reference to any statute, proclamation, rule, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, regulation or ordinance replacing it;

- 1.2.10 a reference to a specified section, clause, paragraph, schedule or item of any statute, proclamation, rule, regulation or ordinance is a reference to the equivalent section of the statute, proclamation, rule, regulation or ordinance which is for the time being in force;
- 1.2.11 including and similar expressions are not words of limitation;
- 1.2.12 monetary amounts are taken to be in Australian currency;
- 1.2.13 a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (“**defunct body**”), means the agency or body which performs most closely the functions of the defunct body; and
- 1.2.14 subject to the Act, a reference to the SMSF Association’s financial year is to the period from 1 July (inclusive) of one year to 30 June (inclusive) of the next year.

### 1.3 **Replaceable Rules**

The replaceable rules are displaced by this Constitution under section 135(2) of the Act and will not apply to the SMSF Association.

### 1.4 **Previous Constitution**

This Constitution replaces all previous Constitutions previously adopted by the SMSF Association on and from the date the Constitution is adopted.

## 2. **Objects of the SMSF Association**

The SMSF Association has been incorporated by its Member(s) to pursue the Objects.

## 3. **Powers**

### 3.1 **Powers**

The SMSF Association can:

- 3.1.1 do any thing which it considers will help achieve the Objects; and
- 3.1.2 do any thing ancillary, incidental or consistent with the Objects.

## 4. **Members and the SMSF Association**

### 4.1 **Association**

The Members agree to associate with each other as Members of the SMSF Association and on the terms and conditions of this Constitution and Other Rules. The Members agree that the rights of Membership in the SMSF Association are not transferrable.

#### 4.2 **Relationship**

Each Member must at all times use reasonable endeavours to aid the SMSF Association in achieving the Objects.

#### 4.3 **Exercise of rights**

Each Member agrees with all other Members that they will exercise all voting rights and powers of control available to them in relation to the SMSF Association so as to give full effect to this Constitution.

### **PART B - MEMBERS AND MEMBERSHIP**

#### 5. **Membership**

##### 5.1 **Membership categories**

The Membership of the SMSF Association is divided into the following categories which may be varied, replaced, added to or removed without replacement at any time by the Board as it determines in its sole discretion:

- 5.1.1 General Members;
- 5.1.2 Specialist Members;
- 5.1.3 Life Members;
- 5.1.4 Associate Members;
- 5.1.5 Board-appointed Members; and
- 5.1.6 such additional or alternative categories as are determined by the Board from time to time.

##### 5.2 **Eligibility for Membership**

- 5.2.1 A natural person is eligible for a particular category of Membership if that person can demonstrate, to the satisfaction of the Board, that he or she:
  - 5.2.1.1 meets the eligibility criteria for that particular category of Membership;
  - 5.2.1.2 is committed to the Objects;
  - 5.2.1.3 is not in breach of the Constitution or Other Rules; and
  - 5.2.1.4 has the ability and capacity to make a meaningful and constructive contribution to the SMSF Association.
- 5.2.2 The eligibility criteria for Membership in any one or more categories of Membership detailed in clause 5.1 are as prescribed by the Board from time to time, including any criteria set out in the Other Rules. The Board has the discretion to amend or waive any part of the eligibility criteria at any time in relation to the membership category and in relation to any applicant for a particular category of Membership.

### 5.3 **Change in Status**

A Member must promptly notify the SMSF Association in writing of any change in the circumstances of that Member which could reasonably affect that Member's eligibility to belong to a certain category of Membership.

### 5.4 **Rights of Members**

5.4.1 Only Voting Members have the right to vote at general meetings of the SMSF Association.

5.4.2 All Members have the right to attend general meetings of the SMSF Association.

## 6. **Application for Membership**

### 6.1 **Application**

Each person eligible for a particular category of Membership under clause 5.2 can apply for Membership on the condition that they:

6.1.1 agree in writing to observe and perform the provisions of this Constitution and Other Rules relevant to their category of Membership;

6.1.2 complete an application form prescribed by the Board to the satisfaction of the Board;

6.1.3 pay a joining fee to the SMSF Association in the amount as determined by the Board from time to time; and

6.1.4 agree in writing to provide a guarantee not exceeding ten dollars (\$10.00) to defray liabilities and expenses of the SMSF Association upon its winding up or dissolution.

### 6.2 **Register**

Upon acceptance of an application by an eligible person for Membership or a particular category of Membership, the Board will authorise that person's name to be entered on the register of Members and the Member be classified into the particular category of Membership.

### 6.3 **Rejection of application**

The Board can reject any application for Membership in its discretion without giving reasons for its decision.

## 7. **Change of Category of Membership**

A Member can apply to the Board, at any time, to have his or her Membership category altered. The Member's application will be considered by the Board or a committee or secretariat which has been delegated such powers by the Board. If a Member's application under this clause 7 is approved, the SMSF Association will amend the register of Members accordingly. The Board may in its discretion determine to alter a Member's category of Membership if it determines that a Member no longer satisfies the eligibility criteria for that category of Membership under clause 5.2.



## **8. Membership Fees**

### **8.1 Liability for Membership Fees**

Subject to clause 8.2 below, all Members are liable to pay Membership Fees to the SMSF Association.

### **8.2 Waiver and reduction of Membership Fees**

The Board may, for a particular Membership Year:

8.2.1 waive the payment of Membership Fees by a Member;

8.2.2 reduce the Membership Fees payable by a Member; or

8.2.3 elect whether or not to provide a refund of any Membership Fees paid or owing by a Member.

### **8.3 Different rates of Membership Fees**

Membership Fees may be set at different rates for each category of Membership as determined by the SMSF Association in its sole discretion.

### **8.4 Payment of Membership Fees**

Members must pay their Membership Fees annually in advance on the date determined by the Board or by such other means determined by the Board.

### **8.5 Additional Fees and Levies**

8.5.1 The Board can determine from time to time the amount and frequency of any fees or levies (in addition to Membership Fees and the joining fee) which are payable by Members.

8.5.2 All Members will pay additional fees and levies determined under clause 8.5.1 in accordance with the Board's direction.

## **9. Cessation of Membership**

### **9.1 Withdrawal**

9.1.1 A Member's Membership can be cancelled by the Member by notice in writing, the notice to take effect on the date one (1) month from its receipt at the SMSF Association's registered office. In this event, that Member will be removed from the register of Members.

9.1.2 A Member whose Membership is withdrawn in accordance with clause 9.1.1 must pay to the SMSF Association all fees and levies accrued (if any) at the date of the notice.

### **9.2 Death**

A Member's Membership will be cancelled upon the death of that Member. In this event, that Member will be removed from the register of Members from the date of the death of the Member.

### 9.3 Cancellation of Membership

A Member ceases to be a Member if that Member's Membership is cancelled under clause 10. In this event, that Member will be removed from the register of Members and must pay to the SMSF Association all fees and levies accrued (if any) at the date of cancellation.

## 10. Suspension or Cancellation of Membership

### 10.1 Suspension of Membership

10.1.1 The Membership (in all categories) of a Member is suspended with immediate effect if:

10.1.1.1 the Member has failed to pay his or her Membership Fees for a period of three (3) months from the due date for payment;

10.1.1.2 the Member no longer satisfies any one or more of the conditions of Membership under clause 5.2;

10.1.1.3 the Member has supplied false or misleading information to the SMSF Association (including by omission) in connection with their Membership;

10.1.1.4 the Member suffers from an Insolvency Event;

10.1.1.5 the Member is subject to an investigation by the Australian Securities and Investments Commission (ASIC) in respect of conduct that may (in the opinion of the Board in its absolute discretion) give rise to the Member being banned from providing financial services or being disqualified from managing a corporation or like penalty;

10.1.1.6 the Member is charged with an offence involving theft, fraud, deception, forgery, evasion or dishonesty or any other similar offence;

10.1.1.7 a recognised professional body or industry body with whom the Member has held membership acts to suspend or cancel that membership in connection with the alleged misconduct of the Member; or

10.1.1.8 the Board forms a view that the conduct (including alleged conduct) of the Member or of the Member's employer or of an associate of the Member might be prejudicial to the interests, Objects or reputation of the SMSF Association.

10.1.2 During any period of suspension of Membership all rights associated with Membership shall cease to be available to the Member and the Member must not represent himself or herself to be a Member of the SMSF Association for the duration of the suspension.

- 10.1.3 The Board may upon application from a Member determine in its absolute discretion to lift a suspension on a Member's Membership if in all of the circumstances it determines it is appropriate to do so.

## 10.2 Cancellation of Membership

- 10.2.1 The Membership (in all categories) of a Member is cancelled if:
- 10.2.1.1 the Member has failed to pay his or her Membership Fees for a period of six (6) months from the due date for payment (or such period as the Board may determine in its sole discretion);
  - 10.2.1.2 the Member is declared bankrupt;
  - 10.2.1.3 ASIC bans the Member from providing financial services or the Member is otherwise disqualified or banned from providing financial services or from managing a corporation or is subjected to a like penalty;
  - 10.2.1.4 the Member is convicted of an offence involving theft, fraud, deception, forgery, evasion or dishonesty or any other similar offence;
  - 10.2.1.5 following suspension of the Member the Board determines in all of the circumstances it is appropriate to cancel the Membership of the Member; or
  - 10.2.1.6 the Member's Membership has been suspended for a period of twelve (12) months or such longer period as the Board may determine in its sole discretion and the Board has not determined to lift the suspension pursuant to clause 10.1.3.
- 10.2.2 Prior to the Board determining to cancel a Member's Membership under clause 10.2.1.5 the Board shall notify the Member of the proposal to cancel the Member's Membership and provide the Member with a reasonable opportunity to provide information to the Board in connection with the proposed cancellation of his or her Membership.
- 10.2.3 The Board may upon application from a person who has had their membership cancelled under clause 10.2.1 determine in its absolute discretion to reinstate the person's membership if in all of the circumstances it determines it is appropriate to do so. Such application must be made to the Board within six (6) months of the cancellation of membership, or such longer period as the Board may determine in its sole discretion.

## 10.3 Requirements for notice

The notice referred to in clause 10.2.2 must:

- 10.3.1 contain particulars of what is alleged against the Member; and

10.3.2 inform the Member of his or her right to appear before the Board or secretariat (to whom the Board has delegated its power to hear or review a Member's explanation or defence) to give any explanation or defence the Member thinks fit, either orally or in writing, before the intended cancellation of the Member's Membership.

**10.4 Notice of suspension or cancellation**

If a Membership is suspended or cancelled under this clause 10, the SMSF Association must inform the Member in writing within thirty (30) days from the date that the SMSF Association determines the suspension or cancellation of that Membership.

**10.5 Penalty**

The SMSF Association is entitled to impose a fine upon a Member in lieu of suspending that Member's Membership, provided that the Member consents to payment of the fine and makes payment of the fine when due and payable (as stipulated by the SMSF Association and notified to the Member).

**10.6 Fines**

An agreement by the SMSF Association to impose a fine in lieu of suspension will not limit the SMSF Association's rights to impose a suspension where for whatever reason the Member does not fully comply with the payment terms of the fine.

**PART C - MEETINGS OF MEMBERS**

**11. General meetings**

**11.1 Annual general meetings**

The SMSF Association must hold an annual general meeting once in each calendar year, and no later than five (5) months after the end of the SMSF Association's financial year.

**11.2 Venue of annual general meeting**

An annual general meeting may be held at such place as the Board sets for the meeting.

**11.3 Business of annual general meeting**

The business of the annual general meeting must include the following matters:

11.3.1 considering the SMSF Association's annual financial report, directors' report and auditor's report;

11.3.2 the election of Directors; and

11.3.3 the appointment of the SMSF Association's auditor (if applicable).

#### 11.4 **General meetings**

All general meetings other than annual general meetings are referred to as general meetings.

#### 11.5 **Convening general meetings**

A general meeting can be convened by;

11.5.1 a resolution of the Board whenever it thinks fit at any place it thinks fit; or -

11.5.2 requisition made in writing to the Board by 50 Voting Members specifying the object of the meeting.

#### 11.6 **Requisition of members**

11.6.1 Subject to clause 11.6.2, if the general meeting is requisitioned by the Voting Members under clause 11.5.2, the Board must call the general meeting in accordance with this Constitution within 21 days after the request is given to the Board. The meeting shall only be convened for the purposes specified in the requisition, and cannot be held by the Company any later than 2 months after the request was given to the Board. The general meeting held in response to a requisition by the Voting Members is subject to the terms of this Constitution.

11.6.2 Notwithstanding clause 11.6.1, the Board is not required to call a general meeting requisitioned by the Voting Members under clause 11.5.2 if the Board determines, in its absolute discretion, that the general meeting was requisitioned by the Voting Members for an unlawful or improper purpose, or otherwise contemplates resolutions that are beyond the powers of the Voting Members.

11.6.3 For the avoidance of doubt, any resolutions proposed by the Voting Members that are determined to be unlawful, improper or beyond power under clause 11.6.2 may be omitted by the Board from the notice of general meeting but do not otherwise affect any of the other resolutions proposed by the Voting Members (if any).

#### 11.7 **Amount of notice**

The Board, in convening a general meeting, must give not less than twenty one (21) days' written notice of the meeting, or such lesser period of time as may be allowed under the Act.

#### 11.8 **Use of technology**

The SMSF Association can hold a meeting of its Members at two (2) or more venues, using any technology that gives the Members as a whole a reasonable opportunity to participate.

## 12. Notices of general meetings

### 12.1 Contents of notice

A notice of a general meeting must:

- 12.1.1 be in writing;
- 12.1.2 set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this);
- 12.1.3 state the general nature of the business to be conducted at the meeting;
- 12.1.4 if a Special Resolution is to be proposed at the meeting, set out an intention to propose a Special Resolution and state the Special Resolution; and
- 12.1.5 contain a statement setting out that a Voting Member has the right to appoint a proxy.

### 12.2 Sending notice of meeting

- 12.2.1 A notice of general meeting must be given to each Member, the Directors and the auditor for the SMSF Association.
- 12.2.2 The notice of general meeting sent to Voting Members must also contain a statement in relation to a proxy and provide a written form of proxy that complies with clause 17.2.

### 12.3 Failure of notice

Inadvertent or accidental failure to give a notice of a general meeting to one (1) or more Members, or non-receipt of a notice of a meeting by one (1) or more Members, does not invalidate the notice or the meeting.

## 13. Quorum for general meetings

### 13.1 Requirement for quorum

No business is to be conducted at a general meeting unless a quorum of Members is at the meeting when it proceeds to business.

### 13.2 Quorum

A quorum of Members is eight (8) Members.

**13.3 Absence of quorum**

If a quorum is not present within thirty (30) minutes after the time for the meeting set out in the notice of meeting, the meeting is dissolved.

**13.4 Adjourned meeting**

Notwithstanding clause 13.3, if a quorum is not present for a general meeting within thirty (30) minutes after the time for the meeting set out in the notice of meeting, the meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify, the meeting is adjourned to the same day in the next week and at the same place and time. If, at the adjourned meeting, a quorum is not present within thirty (30) minutes after the time appointed for the meeting, 50% of Members present in person or by their representative or proxy will constitute a quorum. If this reduced quorum is not present at the adjourned meeting, the meeting is dissolved.

**14. Conduct of general meetings**

**14.1 Chairman**

14.1.1 The Board must select and appoint one of its number as Chairman for such term as the Board determines.

14.1.2 Notwithstanding clause 14.1.1, the Board may remove or replace the Chairman at any time as it determines in its sole discretion.

**14.2 Vice Chairman**

14.2.1 The Board may select and appoint one of its number as Vice Chairman for such term as the Board determines.

14.2.2 Notwithstanding clause 14.2.1, the Board may remove or replace the Vice Chairman at any time as it determines in its sole discretion.

**14.3 General meetings**

The Chairman will serve as Chairman at general meetings and the Vice Chairman will act as Vice Chairman.

**14.4 Alternative Chairman**

At a general meeting where the Chairman is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, the Vice Chairman (if any) must act as Chairman of the meeting. If there is no such person or that person is absent or unable or unwilling to act, the Directors involved must elect one of their number to be the alternative Chairman of the meeting.

#### **14.5 Adjournment of general meeting**

The Chairman of a general meeting can adjourn the meeting (and must do so if directed by a resolution of the Members at a general meeting) provided that:

- 14.5.1 no business is to be done at an adjourned meeting except business left unfinished at the meeting from which the adjournment took place;
- 14.5.2 when a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given as for an original meeting as set out in clause 12; and
- 14.5.3 except as provided in this clause 14.5, it is not necessary to give notice of an adjournment or of the business to be done at an adjourned meeting.

#### **15. Voting at general meetings**

##### **15.1 Member voting**

Unless the law requires or this Constitution provides otherwise, all resolutions put to Members require approval by ordinary resolution.

##### **15.2 Resolution by show of hands unless poll demanded**

At a general meeting, a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is demanded (before or on the declaration of the results of the show of hands) by:

- 15.2.1 the Chairman of the meeting; or
- 15.2.2 at least three (3) Members present in person or by representative or proxy and entitled to vote on the resolution; or
- 15.2.3 a Member or Members present in person or representative or proxy with at least 5% of the votes that can be cast on the resolution.

##### **15.3 Withdrawal of demand for poll**

A demand for a poll can be withdrawn.

##### **15.4 Passing a resolution**

On a show of hands, a declaration by the Chairman of the meeting is conclusive evidence of the result.

##### **15.5 Time for poll**

If a poll is duly demanded, it must be taken in such manner, either at once or after an interval or adjournment or otherwise, as the Chairman of the meeting directs. However, a poll demanded on the election of the Chairman of the meeting or on a question of adjournment must be taken immediately.



**15.6 Equality of Votes**

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting has a casting vote in addition to any vote the Chairman of the meeting may have in his or her capacity as a Voting Member and/or Board Director.

**15.7 Result of poll**

The result of a poll will be the resolution of the meeting at which the poll was demanded.

**16. Voting entitlement**

**16.1 Voting entitlement on a show of hands**

At a general meeting, on a show of hands or on a poll, every Voting Member and every Board Director who is not a Voting Member has one (1) vote.

**16.2 Inability to vote**

A Voting Member cannot vote at a general meeting unless all money then payable by the Voting Member to the SMSF Association (including Membership Fees) has been paid as at the date of the notice of the general meeting.

**16.3 Objections to vote**

16.3.1 An objection can be made to a voter's qualification only at the meeting or adjourned meeting at which the vote of the voter whose qualification is objected to is given or tendered.

16.3.2 An objection so made will be referred to and determined by the Chairman of the meeting, whose decision is final.

16.3.3 A vote objected to, but not disallowed, is valid for all purposes.

**17. Proxies**

**17.1 Entitlement to appoint a proxy**

17.1.1 A Voting Member can appoint, by written instrument, the Chairman, Director, Chief Executive Officer, or any other person as the appointing Voting Member's proxy to vote on the appointing Voting Member's behalf at a general meeting.

17.1.2 For the proxy to be valid, it must comply with the requirements set out in clause 17.1.1 and clause 17.2. A proxy is invalid, and no proxy will be taken to be in effect, where these requirements are not complied with.

**17.2 Form of proxy**

17.2.1 An instrument appointing a proxy must be in writing and contain the following information:

- 17.2.1.1 the name and address of the person appointed as proxy;
  - 17.2.1.2 the name and address of a person to be appointed as substitute proxy in the appointed proxy's absence;
  - 17.2.1.3 the name of the Voting Member appointing the proxy; and
  - 17.2.1.4 the date of the relevant SMSF Association annual general meeting or general meeting.
- 17.2.2 An instrument appointing a proxy may also contain the following information:
- 17.2.2.1 each proposed resolution and/or Special Resolution to be considered at the relevant annual general meeting or general meeting; and
  - 17.2.2.2 directions as to how the proxy is required to vote on each proposed resolution and/or Special Resolution.

### **17.3 Lodgement of proxy**

An instrument appointing a proxy is invalid unless it is received at the registered office of the SMSF Association (by way of hand delivery, prepaid post, electronic mail or facsimile) not less than twenty four (24) hours before the time set for the meeting or adjourned meeting at which the proxy is appointed to vote.

### **17.4 Directions on how to vote**

An instrument appointing a proxy can direct how the proxy is to vote on a particular matter, question or motion. If the instrument does direct how the proxy is to vote:

- 17.4.1 the proxy is not entitled to vote except as specified in the instrument;
- 17.4.2 the proxy need not vote on a show of hands but, if the proxy does, the proxy must vote as directed;
- 17.4.3 and if the proxy has two (2) or more appointments that specify different ways to vote on a resolution, the proxy must not vote on a show of hands;
- 17.4.4 and if the proxy is the Chairman of the meeting, the proxy must vote on a poll and must vote as directed; and
- 17.4.5 if the proxy is not the Chairman of the meeting, the proxy need not vote on a poll but, if the proxy does, must vote as directed.

#### **17.5 Voting of proxy**

A vote made under an instrument appointing a proxy is valid even if the instrument is revoked, if no written notice of its revocation is received by the SMSF Association at its registered office or by the Chairman of the meeting before the commencement of the meeting or adjourned meeting at which the instrument is used.

#### **17.6 Rights of proxy**

A proxy at a general meeting can speak, vote and join in a demand for a poll. The Chairman, in his or her discretion, may table all votes made under each instrument appointing a proxy and notify the meeting of the details of those votes before the relevant resolution is put to the meeting.

### **PART D - THE BOARD**

#### **18. The Board**

##### **18.1 Transitional Provision regarding the Board**

The Directors holding office at the date of adoption of this Constitution will continue to hold office from the date of adoption of this Constitution, subject to retirement and re-election in accordance with this Part D of this Constitution.

##### **18.2 Composition of Board**

The Board will comprise not less than five (5) natural persons.

##### **18.3 Term of appointment – general**

18.3.1 Subject to clause 20, each Director will hold office for a term of three (3) years and will automatically retire as Director prior to the first annual general meeting immediately following the third anniversary of that Director's appointment.

18.3.2 Each Director is eligible for re-election for another 3 years, limited to a maximum of three (3) terms. The Director is only eligible to be re-elected at an annual general meeting where both:

18.3.2.1 a written nomination of the person by a Voting Member;  
and

18.3.2.2 a consent to nomination signed by the Director eligible for re-election,

are received at the registered office of the SMSF Association at least twenty eight (28) days before the annual general meeting at which the nomination is to be considered.

##### **18.4 Observers**

The Board can permit any person to attend and observe Board meetings and, where it does so, will be entitled to specify the conditions and procedures which are to apply in relation to such attendance.

## 19. **Directors**

### 19.1 **Directors appointed by Directors**

The Directors will have the power to:

19.1.1 appoint a new Director to fill any casual vacancy; and

19.1.2 appoint additional Directors,

provided that the total number of Directors does not exceed the maximum of nine (9). The appointment of any Director under this clause 19.1 must be confirmed by resolution at the SMSF Association's next annual general meeting. If the appointment is not confirmed the person ceases to be a Director at the end of the annual general meeting.

### 19.2 **Directors' duties**

The Directors must always act in good faith in the best interests of the SMSF Association and in compliance with their obligations under the Act.

### 19.3 **Patron and Vice Patrons**

The Board can, at its absolute discretion appoint a Patron or a number of Vice Patrons.

### 19.4 **Alternate Directors**

19.4.1 Subject to ratification by the Board, a Director can appoint a person (who is a Member) to be an alternate Director in his or her place for a period the Director thinks fit. If the Board refuses to ratify the appointment, the Director may, subject to ratification by the Board, appoint another Member as an alternate Director in his or her place. If the Board has ratified the appointment of an alternate Director, the appointor Director may nevertheless terminate the appointment at any time.

19.4.2 The appointment and termination of appointment of an alternate Director must be in writing.

19.4.3 An alternate Director can exercise any powers that the appointor Director can exercise. The exercise of any such power by the alternate Director will be deemed to be an exercise of that power by the appointor Director.

## 20. **Resignation and removal of Directors**

### 20.1 **Resignation of Directors**

A Director can resign as a Director of the SMSF Association at its registered office by way of hand delivery, prepaid post, electronic mail or facsimile. Resignation will take effect on the date stated in the notice or, if there is no date, on the date the notice is received at the registered office. The notice of resignation need not be formally accepted and may not be rejected by the SMSF Association.

## **20.2 Removal of Directors**

- 20.2.1 A Director can be removed as a Director of the SMSF Association by a Special Resolution passed at a General Meeting.
- 20.2.2 The SMSF Association must give the Director a copy of the notice of intention to move the Special Resolution at least fourteen (14) days before the notice of general meeting is given in accordance with clause 12.
- 20.2.3 The Director is entitled to put his or her case to the Members by giving the SMSF Association a written statement for circulation to Members and by speaking to the Special Resolution at the general meeting.
- 20.2.4 The written statement prepared by the Director must be distributed by the SMSF Association with the notice of general meeting and, if there is no time to comply with this requirement, the statement must be distributed to Members at the annual general meeting.
- 20.2.5 A new Director may be appointed to fill the vacancy left by any Director removed under this clause 20.2 in accordance with clause 19.1 of this Constitution.

## **21. Proceedings of the Board**

### **21.1 Meetings of Board**

The Board will meet for the dispatch of business, adjourn and otherwise regulate their meetings as it thinks fit. For the purposes of the Act, each Director on becoming a Director consents to the use of the following technology to hold any Board meeting:

- 21.1.1 video conferencing;
- 21.1.2 telephone conferencing;
- 21.1.3 any other technology which permits each Director to communicate with each other Director; and
- 21.1.4 any combination of the technologies described in the above paragraphs of this clause 21.1.

### **21.2 Convening meetings of Board**

Any two Directors can request a meeting of the Board at any time.

### **21.3 Chairman**

The Chairman will preside as Chairman at meetings of the Board.

#### **21.4 Absence of Chairman**

At a meeting where the Chairman is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Vice Chairman (if any) must act as Chairman of the meeting. If there is no such person or that person is absent or unable or unwilling to act, the Directors present must elect one of their numbers to be Chairman of the meeting.

#### **21.5 Decisions**

21.5.1 Unless provided otherwise in this Constitution, all questions arising at a meeting of the Board will be decided by ordinary resolution.

21.5.2 In the case of an equality of votes, the Chairman of the meeting will have a casting vote in addition to the Chairman's vote as a Director.

#### **21.6 Quorum**

The quorum for any meeting of the Board is four (4) Directors or such other number as determined by the Directors from time to time.

#### **21.7 Resolution by document**

If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the Board held on the date on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors have signed the document on different days, on the day on which and at the time at which the document was last signed by a Director. Two (2) or more separate documents containing statements in identical terms, each of which is signed by one (1) or more Directors, are together deemed to constitute one (1) document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

#### **21.8 Validity of acts of the Board**

All acts done by any meeting of the Board or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or that a person so appointed was disqualified, are valid as if the person had been duly appointed and was qualified to be a Director.

### **PART E - POWERS OF THE BOARD**

#### **22. Powers of the Board**

##### **22.1 General powers**

Subject to the Act and this Constitution, the affairs of the SMSF Association are managed by the Board, who can exercise all powers of the SMSF Association which are not, by the Act or this Constitution, required to be exercised by the SMSF Association in general meeting.

## 22.2 **Specific Powers**

- 22.2.1 The Directors have the power to do all things necessary to implement the Objects.
- 22.2.2 Without limiting the generality of clause 22.2.1, the Directors have the power to determine and prescribe:
  - 22.2.2.1 rules and conditions concerning applications for Membership;
  - 22.2.2.2 eligibility criteria for the different categories of Membership;
  - 22.2.2.3 the ethics, behaviour and conduct required of Members; and
  - 22.2.2.4 any other matter which the Board believes is suitable or necessary relating to Membership.

## 22.3 **Remuneration of Directors**

- 22.3.1 Unless otherwise resolved by the Members at an Annual General Meeting, the Directors may be paid remuneration in respect of their role as a Director of the SMSF Association as determined by the Board. Nothing in this clause prevents a Director from being separately remunerated for his or her role as an employee of the SMSF Association.
- 22.3.2 At the absolute discretion of the Board, a Director may be paid for any service rendered to the SMSF Association in a professional or technical capacity, provided that the Board has given prior approval to the service and the amount of payment.

## 22.4 **Expenses of Directors**

- 22.4.1 Subject to clause 22.4.2, the Directors will be reimbursed for all travelling and other expenses properly and reasonably incurred by them in attending, participating in and returning from meetings of the Directors, any committee of the Directors, general meetings of the SMSF Association or otherwise in connection with the business of the SMSF Association.
- 22.4.2 No Director will be reimbursed for any expense under clause 22.4.1 without the approval of the Board.

## 23. **Committees**

### 23.1 **Establishment of committees**

The Board can delegate any of their powers (other than powers required by law to be dealt with by the Board) to a committee or committees consisting of such persons as they think fit.

## **23.2 Powers of committees**

A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the SMSF Association. That power so exercised will be deemed to have been exercised by the SMSF Association. Unless explicitly agreed by the SMSF Association, committee members cannot represent the SMSF Association or the committee of which they are a member in a public forum.

## **23.3 Meetings of committees**

23.3.1 A committee can meet and adjourn as it thinks fit.

23.3.2 Where the Chairman of a committee is not appointed by the Board, the members of such a committee can elect one (1) of their number as Chairman of their meetings.

23.3.3 Questions arising at a meeting of a committee are to be determined by a majority vote of the members involved and voting. In the event of there being an equality of votes, the Chairman of the committee (if applicable) will have a casting vote.

## **24. Secretary**

### **24.1 Appointment of Secretary**

The Board may appoint a Secretary for such period and on such terms and conditions as it sees fit.

### **24.2 Qualifications of the Secretary**

The Secretary can be:

24.2.1 a Director or a non-Director; or

24.2.2 a Member or a non-Member,

as the Board sees fit.

### **24.3 Powers and duties of the Secretary**

The Board can vest in a Secretary such powers, duties and authorities as they determine from time to time. A Secretary must exercise all such powers and authorities subject at all times to the control of the Board.

### **24.4 Secretary to attend meetings**

A Secretary is entitled to participate in all meetings of the Board and all general meetings of the SMSF Association and is entitled to be heard on any matter.



**24.5 Termination**

The Board can terminate the appointment of the Secretary at any time and, if the Secretary is a Director, the Secretary will not be entitled to vote on such resolution.

**24.6 Secretary may be Chief Executive Officer and/or Managing Director**

The Secretary can hold such other role or office in the SMSF Association (including the role of Chief Executive Officer and /or Managing Director) as the Board sees fit.

**24.7 Secretary's terms of engagement**

The terms of engagement of the Secretary will be set by the Board.

**25. Executive Officers**

**25.1 Appointment of Executive Officers**

The Board may appoint one or more Executive Officers for such period and on such terms and conditions as it sees fit. Executive Officers' powers, responsibilities and remuneration will be determined by the Board. The Executive Officers are permitted to be Directors.

**26. Chief Executive Officer**

**26.1 Appointment of Chief Executive Officer**

The Board may appoint an Executive Officer as the Chief Executive Officer for such term and with such powers, responsibilities and remuneration to be determined by the Board from time to time. The Board may remove the Chief Executive Officer. The Chief Executive Officer may also hold the positions of Secretary, Director and Managing Director.

**26.2 Managing Director**

The Chief Executive Officer can also be a Director, in which case the Chief Executive Officer can also use the additional title of Managing Director for the period in which the Chief Executive Officer is also a Director.

**PART F - GENERAL MATTERS**

**27. Administrative matters**

**27.1 Principal place of business and registered office**

The SMSF Association's principal place of business and registered office will be such place as approved by the Board.

## **27.2 Banking**

The ADI or ADIs to be used by the SMSF Association will be as determined by the Board, or a relevant committee to which the Board has delegated its power to determine the ADI or ADIs used by the SMSF Association, from time to time.

## **28. Inspection of records**

### **28.1 Board to determine access to records**

Subject to the Act, the Directors will determine whether, to what extent, at what time and places and under what conditions the accounting records and other SMSF Association documents will be open to the inspection of Members who are not Directors. A Member who is not a Director does not have any right to inspect any SMSF Association record or document unless the law provides or the Board authorises otherwise.

### **28.2 Access to registers**

The SMSF Association must allow a Member to inspect its register of Members without charge. On request, the SMSF Association must provide a copy of the register of Members within seven (7) days. The SMSF Association is entitled to charge a Member for this copy the amount that is permitted by the Australian Securities & Investments Commission from time to time.

## **29. Accounts**

### **29.1 Financial records**

The SMSF Association must keep written (in hard or electronic format) financial records that:

- 29.1.1 correctly record and explain its transactions and financial position and performance; and
- 29.1.2 would enable true and fair financial statements to be prepared and audited.

These financial records must be retained for seven (7) years after the transactions covered by the records are completed or for other such period of time as required under the Act.

### **29.2 Preparation of financial reports and Directors' report**

The SMSF Association must prepare a financial report and Directors' report for each financial year in accordance with the Act.

### **29.3 Appointment of auditor**

The auditor's appointment, rights and duties will be regulated by the Act. The auditor's remuneration will be set by the Board.

**29.4 Financial reports must be audited**

The financial report prepared under clause 29.2 must be audited by the SMSF Association's appointed auditor in accordance with the provisions of the Act.

**29.5 Copy of reports to be sent to Members**

The audited financial report and Directors' report prepared under clause 29.2 must be sent at the same time as the notice of annual general meeting at which those reports will be considered (or on an earlier date if the Board so determines in its sole discretion).

**29.6 Automatic amendment**

If the reporting requirements of the SMSF Association under the Act are amended such as to increase or reduce the SMSF Association's reporting requirements, this clause 29 will be automatically amended to incorporate this change.

**30. Notices**

**30.1 Service of notices**

A notice (including a notice of general meeting given by the SMSF Association) required to be served pursuant to this Constitution can be:

- 30.1.1 delivered personally;
- 30.1.2 sent by pre-paid post to the address for the Member in the register of Members or any alternative address nominated by the Member and notified to the SMSF Association or, if to the SMSF Association, to the registered office of the SMSF Association; or
- 30.1.3 by sending it to the fax number or electronic mail (e-mail) address nominated by the Member as recorded in the register of Members and notified to the SMSF Association or, if to the SMSF Association, to the SMSF Association's fax number or e-mail address.

**30.2 Time of service of notices**

Any notice required to be given under this Constitution will be deemed sufficiently given:

- 30.2.1 in the case of personal service, on the date of delivery;
- 30.2.2 in the case of pre-paid post, two (2) Business Days after being sent;
- 30.2.3 in the case of fax, on receipt by the sender of a successful transmission answerback; or
- 30.2.4 in the case of e-mail, at the time of dispatch as defined in section 14 of the *Electronic Transactions Act 1999 (Cth)*, provided that the sender can give evidence of successful transmission.

### 30.3 Failure by Member to advise of address

A Member who fails to give his or her address for registration or who fails to provide the SMSF Association with updated contact details is not entitled to receive notices from the SMSF Association.

## 31. Indemnity and insurance

### 31.1 Indemnity

31.1.1 Subject to clause 31.1.2 every present and former Officer will be indemnified out of the assets of the SMSF Association, to the maximum extent permitted by law and without limiting the powers of the SMSF Association, against:

31.1.1.1 any liability incurred by that Officer in his or her capacity as an Officer of the SMSF Association to another person, and

31.1.1.2 any liability for costs and expenses incurred by that Officer:

(a) in defending proceedings, whether civil or criminal, in which judgement is given in favour of the Officer, or in which the Officer is acquitted; or

(b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the Officer under the provisions of the Act or other applicable law.

31.1.2 A present or former Officer is not entitled to be indemnified pursuant to clause 31.1.1 against a liability:

31.1.2.1 to the SMSF Association or a Related Body Corporate of the SMSF Association,

31.1.2.2 for any fine, pecuniary penalty, compensation order or an obligation to make any other payment for which the SMSF Association is not permitted by law to indemnify the Officer, or

31.1.2.3 which arises out of conduct which involves a lack of good faith, gross negligence and/or wilful misconduct on the part of the Officer.

31.1.3 Unless resolved otherwise by the Board, every present and former Employee will be indemnified out of the assets of the SMSF Association only to the extent of any indemnity provided in any contract insuring an Employee against liability incurred by that Employee in his or her capacity as an Employee of the SMSF Association.

## 31.2 Insurance

The SMSF Association may pay the premiums in respect of a contract insuring a present or former Officer or Employee against:

31.2.1 any liability incurred by the Officer or Employee, provided that such liability does not arise out of conduct involving:

31.2.1.1 a wilful breach of duty in relation to the SMSF Association on the part of the Officer or Employee; or

31.2.1.2 a contravention of the Act by the Officer or Employee; and

31.2.2 any liability for costs and expenses incurred by the Officer or Employee in defending proceedings, whether civil or criminal (and including proceedings alleging that the Officer or Employee was guilty of negligence, default, breach of trust or breach of duty in relation to the SMSF Association) and whatever the outcome of such proceedings.

## 32. Application of Income and Property

Subject to the terms of this Constitution, the following apply to the income and property of the SMSF Association:

32.1 the income and property of the SMSF Association will be applied solely towards promoting the Objects; and

32.2 no portion of the income or the property will be paid or transferred (either directly or indirectly) to Members,

provided that,

32.3 any capital or property contributed to the SMSF Association upon its incorporation by way of subscriptions to membership by the SMSF Association's founding Members, where such contributions are recorded in the SMSF Association's accounts as "Foundation Subscriptions", may be repaid to the relevant Members if so approved by the Board.

## 33. Liability of Members

### 33.1 Liability is limited

The liability of the Members is limited.

### 33.2 Extent of liability

Every Member of the SMSF Association undertakes to contribute to the property of the SMSF Association in the event of the SMSF Association being wound up while he or she is a Member, or within one (1) year after he or she ceases to be a Member, for payment of the debts and liabilities of the SMSF Association contracted before he or she ceases to be a Member, and of the cost, charges and expenses of winding up, such amounts as may be required not exceeding \$10.00.

**34. Winding up**

- 34.1 The SMSF Association can be dissolved by a Special Resolution of Voting Members at a general meeting.
- 34.2 If, upon the winding up or dissolution of the SMSF Association, there remains after the satisfaction of all its debts and liabilities, any property whatsoever (except for all documentation of the SMSF Association which will be governed by clause 35) the same will not be paid to or distributed among the Members of the SMSF Association but will be given or transferred to some other organisation having objects similar to the Objects and which also prohibits the distribution of its or of their income and property among its or their Members as is imposed on the SMSF Association under clause 32.

**35. Confidentiality**

- 35.1 The Members and the Directors must keep confidential all SMSF Association documents which are disclosed to them in confidence and must not use such information for any purpose unless approved by the Board or disclosure is otherwise required by law.
- 35.2 Upon winding-up of the SMSF Association, all SMSF Association documents will be stored together in a single place determined by the Board provided that any documents approved by the Board to be distributed to a person will be distributed to that person.
- 35.3 At all times, the Directors and Members (as the case may be) will ensure that they comply with any confidentiality policy contained within the document and communications policy (if any) adopted by the Board from time to time.

**36. Amendments to this Constitution**

This Constitution can only be modified, varied, replaced or repealed by Special Resolution.

## **SCHEDULE**

In this Schedule, “**Stakeholders**” includes, but is not limited to:

- (a) advisors to the self managed superannuation fund industry;
- (b) trustees of the self managed superannuation fund industry;
- (c) providers of services and/or products to the self managed superannuation fund industry;
- (d) consumers; and
- (e) regulators and government.

### **Objects**

1. To do all things that a natural person can and may do in relation to the self managed superannuation fund industry and for Stakeholders of the self managed superannuation fund industry. Without limiting the generality of the foregoing, the Objects of the SMSF Association are also:
  - (a) to do all things necessary to promote the advancement and integrity of the self managed superannuation fund industry and Stakeholders of the self managed superannuation fund industry;
  - (b) to provide a centre for the professional representation of Stakeholders of self managed superannuation funds;
  - (c) to assist in setting and maintaining a higher level of professional standards for Stakeholders of the self managed superannuation fund industry;
  - (d) to provide a forum for all professional advisors and relevant Stakeholders in the industry of self managed superannuation funds for:
    - (i) best practice and compliance, the exchange of information, education programs and issues affecting the integrity and operation of self managed superannuation funds;
    - (ii) the dissemination of changes in the law or in practice affecting self managed superannuation funds;
    - (iii) the collation and provision of information of interest or relevance to self managed superannuation funds, including matters connected with the provision in other countries of superannuation, provident, retirement, pension or similar benefits for members and beneficiaries (and their dependants) of self managed superannuation funds (including parliamentary and government departmental reports and official and other papers dealing with such information); and
    - (iv) the establishment, maintenance and conduct (or to provide assistance with the establishment, maintenance and conduct) of libraries for any of the purposes stated in these Objects;
  - (e) to assist in setting and maintaining a higher level of professional standards for all professional advisors to and all relevant other Stakeholders in the self managed superannuation fund industry;
  - (f) to establish accreditation procedures and programs for professionals and all other relevant Stakeholders in the self managed superannuation fund industry;

- (g) to liaise with and provide advice to relevant Stakeholders, including government and any regulatory authority, concerning policy, regulations, best practice, education, accreditation and all other like issues relating to self managed superannuation funds;
- (h) to create a networking forum for all professionals and all other relevant Stakeholders involved and concerned with self managed superannuation fund issues;
- (i) whether undertaken with or without other participants; to promote, organise, conduct and/or participate in meetings, lectures, seminars, study groups, conferences, education, training and counselling courses for the purposes of increasing and advancing the knowledge and understanding of all facets and issues affecting or related to self managed superannuation funds and relevant Stakeholders in the self managed superannuation fund industry; and
- (j) to establish and maintain a self-regulatory role for advisors and all other relevant Stakeholders in self managed superannuation funds and to foster high standards of competence in self managed superannuation fund advice.