

SUPREME COURT OF QUEENSLAND

REGISTRY:
NUMBER: 2246/20

Applicant: THE AUSTRALIAN INSTITUTE FOR
PROGRESS ACN Ltd 101 843 396
AND
Respondent: Electoral Commission of Queensland

AFFIDAVIT

GRAHAM YOUNG of 9 Lucy Street, Greenslopes, Executive Director, states on oath:

1. I am the Executive Director of the Australian Institute for Progress Ltd ACN 101 843 396 (**the Institute**).

The formation of the Institute

2. The Institute is a think tank based in Queensland. The Institute undertakes research and advocacy on both federal and state issues.
3. In or about September 13, 2013, I and former ALP MHR, Hon Gary Johns started to discuss the possibility of forming a centre-right think tank in Queensland based around the ideas of individual rights and responsibilities, which ultimately became the Institute.
4. We linked up with Dan Ryan, then a director of Hong Kong's Lion Rock Institute, a similar type of think tank, and Bob Tucker to achieve this through the vehicle of an existing not-for-profit company, limited by guarantee, The National Forum.

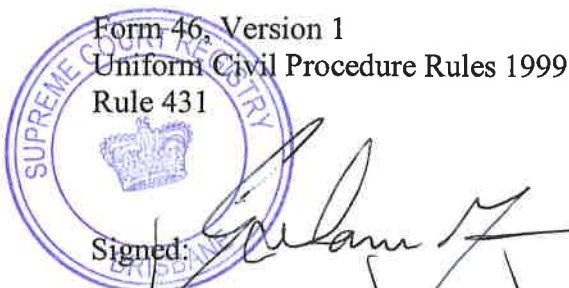
AFFIDAVIT
Filed on Behalf of the Applicant

Name: Graham Young
Address: 50 Logan Road,
Woolloongabba

Phone No: 0411 104 801

Email:
graham.young@aip.asn.au

Taken by:



[Signature]

5. In June 2014 it adopted a new constitution and a new name as the Australian Institute for Progress and we were elected directors.
6. A copy of the new constitution of the Institute as of June 26, 2014 is Exhibit GY-1 to this affidavit.

The activities of the Institute

7. Since then the Institute has published papers and run campaigns on various issues including taxation, housing, free speech and electricity generation.
8. The Institute also runs regular seminars, and an annual dinner called the McIlwraith Lecture, which has featured speakers such as John Wagner, a prominent Queensland business identity whose family developed a private airport in Toowoomba recently, and Sir Leo Hielscher AC, who served for many years as the Under Treasurer of Queensland under governments of both political persuasions.
9. The Institute also publishes On Line Opinion, an online journal which publishes material from all points of view, not just our centre-right perspective, and which was part of the pre-existing business of The National Forum.
10. The Institute also conducts qualitative polling, and these form the basis for analysis pieces in the major media, and have done so since 2001, under the umbrella of the Institute, both under its previous and current names. At one stage this polling was even funded under a Discovery Grant from the Australian Research Council.
11. I am a recognised pollster and commentator on current affairs. In the latter occupation I may occasionally express an opinion as to how someone should vote.
12. While most of the Institute's board has a connection with the LNP, many of its members do not and the Institute stands ready to cooperate with any political parties, or its members or supporters who are prepared to support good policy.

Signed:



Taken by:



13. For example, the Institute's McIlwraith Lecture with Sir Leo Hielscher involved a number of former Labor and Liberal politicians who had worked with him, including every treasurer during his period in office.
14. The Institute frequently criticises the policies of political parties and at the last federal election criticised both the ALP opposition and the Morrison government.
15. As the Institute takes an ideological, rather than a political view, and is ideologically centre-right, the Institute's criticisms tend to favour parties of the right of politics.

Funding of the Institute

16. As is typical of not for profit companies engaged in public issues, the Institute's funding sources are diverse, and therefore they do include some property developers who are prohibited donors for the purposes of the Electoral Act (Qld) (1992) (**Electoral Act**).
17. In particular the Institute shares office space with Brazil Enterprises, which is a donation in kind. Lyn and Bobbie Brazil are well-known philanthropists, and while they are principally farmers and investors, they have one property development on land that was inherited.

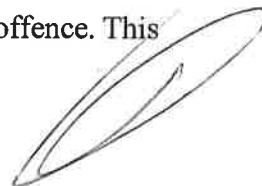
The position taken by the ECQ

18. It came to the Institute's attention in January, 2020 that the Electoral Commission of Queensland (**ECQ**) had asserted to the Property Council that it would be a breach of the Electoral Act and thereby illegal for the Property Council to give or receive donations from Prohibited Donors if it campaigned for or against a political party or parties.
19. The Institute's position has been that because the Institute is not a political party the Institute can receive funding from prohibited donors without breaching the Electoral Act, including if it recommended a vote for or against a particular political party or candidate for elected office.
20. If it is not the case then that means that any organisation that took money from a prohibited donor as a donation, and which subsequently campaigned against or for a political party or candidate, would commit a criminal offence. This

Signed:



Taken by:



could be anything from a football club lobbying for a new stadium to a church lobbying for a rise to the Newstart allowance or against abortion law reform.

21. On the basis of this reading the Institute has also had discussions with a number of prohibited donors to look at funding programs and advocacy on issues like land tax and stamp duty, as well as the impact of donation laws in that they advantage organisations like trade unions who have a disproportionate impact on government decisions, and where there is a clear conflict of interest, compared to say the property industry, with virtually all Labor members of the parliament being union members.
22. Given that the Institute's offices are provided by a prohibited donor, and its desire to properly resource research and advocacy, and the immediacy of the next state election campaign, during which such issues are likely to be of interest to voters, the Institute decided it should ascertain the ECQ's views.
23. I wrote to the ECQ to the effect that the Institute was intending to undertake activities which might include the following:
 - Research
 - Seminars and public meetings
 - Surveys and opinion polling
 - Media
 - Assessment of candidate and political party attitudes to specific issues
 - Advertising
 - Potentially recommend a vote for or against a particular candidate or party
24. I informed the ECQ that the Institute was also considering several Queensland issues and intended to conduct research and run advocacy campaigns during the course of this year, including during the election period.
25. I requested the ECQ to provide its attitude on whether it would be legal for the Institute to receive donations from prohibited donors if the Institute conducted these activities.
26. A copy of the Institute's letter to the ECQ dated February 7, 2020 is Exhibit GY-2 to this Affidavit.

Signed:



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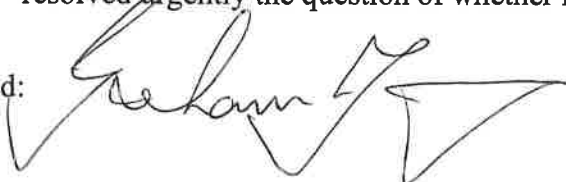


27. On 21 February 2020 the Institute received a letter from the ECQ dated 20 February 2020.
- (a) The ECQ has advised the Institute to the effect that the ECQ considers the Institute to be a “third party” for the purposes of the Electoral Act;
 - (b) that under the Prohibited Donors Scheme, gifts from a property developer, their close associates or industry representative organisations to a third party to incur electoral expenditure are prohibited; and
 - (c) that an entity would be likely to be commit an offence by accepting an unlawful donation and incurring electoral expenditure and the other entity would likely be committing an offence by making a gift.
28. A copy of the letter from the ECQ of 20 February 2020 is Exhibit GY-3 to this Affidavit.
29. The Institute has considered the matter and is of the view that the approach asserted by the ECQ is not consistent with the proper construction of the Electoral Act.

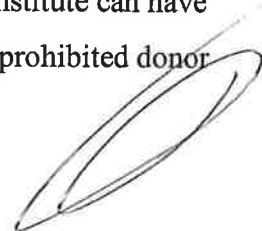
Circumstances of urgency

30. Consistent with the Institute’s purpose, and its activities since 2014, it wishes to have security of tenure in its current accommodation, and to raise funds from all legitimate, like-minded sources so that it can pursue those issues that are important to it and political debate in Queensland and Australia.
31. The attitude taken by the ECQ in its letter, in particular the intimation that it considers the Institute may have committed an offence by accepting an unlawful donation and incurring electoral expenditure and the ECQ may take action, including seeking to recover such donations as a debt to the State, jeopardises the operation of the Institute in its present form.
32. It does so both from the point of view of the risk to the office bearers of the Institute itself and the willingness of property developer donors to continue to donate to the Institute.
33. Of particular concern is the fact that there are local government elections in March and a State election in October this year. Unless the Institute can have resolved urgently the question of whether it is caught by the prohibited donor

Signed:



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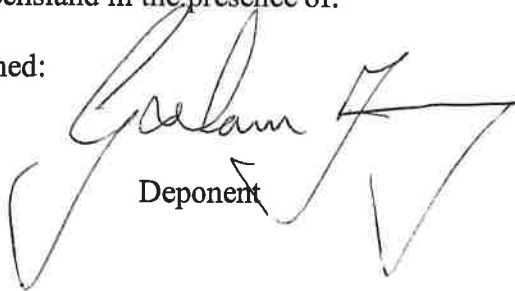


laws in the Electoral Act as asserted by the ECQ the Institute will be denied the opportunity to fully, and as meaningfully and effectively as it might, participate in those elections.

34. The Institute also considers that the position adopted by the ECQ raise serious issues of public policy.
35. A copy of an ASIC Search of the Institute is exhibit GY-4 to this affidavit.

Sworn by GRAHAM YOUNG on February 28, 2020 at Brisbane in the State of Queensland in the presence of:

Signed:


Deponent


Solicitor

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER:

Applicant:

**The Australian Institute for Progress Ltd
(ACN 101 843 396)**

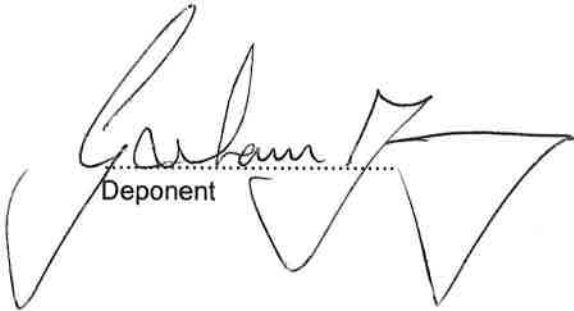
AND

Respondent:

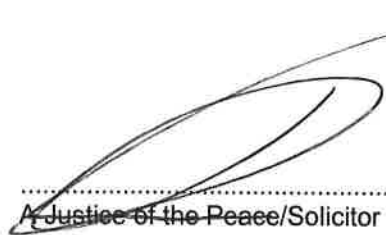
The Electoral Commission of Queensland

CERTIFICATE OF EXHIBIT

Bound and marked "GY1" are the Exhibits to the Affidavit of Graham Young sworn 28.02.2020



Deponent



A Justice of the Peace/Solicitor

CERTIFICATE OF EXHIBIT
Filed on behalf of the Applicant
Form 47 Rule 435

The Australian Institute for Progress Ltd
9 Lucy Street, Greenslopes Q 4120

Phone: 0411 104 801
Email graham.young@aip.asn.au

Ref: 1812387 - 20602984_1

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Constitution

Australian Institute for Progress ACN 101 843 396

Constitution

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Constitution

Constitution of Australian Institute for Progress

Preliminary

The name of the Company is Australian Institute for Progress.

The Company is a public company limited by guarantee.

The replaceable rules in the *Corporations Act 2001* (Cth) do not apply to the Company.

Interpretation

1. Interpretation

1.1 Definitions

In this Constitution unless the context requires otherwise:

Board means the Directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum.

Chairman means, for the purposes of general meetings, the person determined or appointed in accordance with Rule 15 and, for all other purposes, the person appointed in accordance with Rule 35.

Committee means a Committee to which the Board has delegated powers under Rule 37.

Company means Australian Institute for Progress.

Constitution means this Constitution as amended.

Director means a person appointed to the office of Director of the Company in accordance with this Constitution and where appropriate includes an alternate Director.

Founding Members means the founding members specified in the application to register the Company lodged under section 117 of the Law and who have consented to be Members.

Law means the *Corporations Act 2001* (Cth).

Managing Director means the managing director appointed by the Board under Rule 30.

Member means a member of the Company in accordance with the Law.

Members present means Members present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney.

Office means the registered office of the Company.

person and words importing persons include partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals.

Register means the register of Members of the Company.

Constitution

registered address means the address of which the Member notifies the Company as a place at which the Member is willing to accept service of notices.

Rules means these Rules, as amended.

Secretary means a person appointed as, or to perform the duties of, a Secretary of the Company.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

writing and **written** includes printing, typing, lithography, facsimile and other modes of reproducing words in a visible form.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A gender includes all genders.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (f) A reference to **dollars** and **\$** is to Australian currency.

Purposes

2. Purposes

The Company is incorporated as an independent, not-for-profit, public policy think tank and research institution, committed to economic and political freedom, civil society and promoting the understanding of public policy for the benefit of all Australians.

3. Application of income and property to purposes

The income and property of the Company must be applied solely towards the promotion of the purposes of the Company set out in Rule 2 and no part of it is to be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of distribution of profit to any Member except as bona fide compensation for services rendered to, or expenses incurred on behalf of, the Company.

4. Gift Fund

The Company must maintain a gift fund that complies with section 30-125 of the Tax Act.

Constitution

Membership

5. Qualification

The members of the Company are:

- (a) the Founding Members; and
- (b) any others admitted to membership in accordance with this Constitution.

6. Application for membership

- 6.1 An application for membership must be in the form that the Board prescribes from time to time.
- 6.2 The Board may accept or reject any membership application at its absolute discretion and without the need to give reasons.
- 6.3 On payment of any applicable entrance and subscription fees, the applicants accepted by the Board shall be registered in the Company's register of members.

7. Fees

- 7.1 The Board may levy entrance, annual subscription and other fees at its discretion.
- 7.2 The Board may determine that different fees are payable by different categories of members as defined by them.
- 7.3 Founding Members are not liable to pay entrance, annual subscription or other fees.
- 7.4 The annual subscription period shall be computed from 1 July in each year, and annual subscriptions shall be due and payable on 1 July in each year in advance. The Board may determine that any member admitted to membership between 1 January and 30 June in any year shall pay only one-half of the annual subscription until that member's next annual subscription falls due.

8. Cessation Of Membership

- 8.1 A member may at any time, by giving notice in writing to the secretary, resign as a member of the company. The resignation shall be effective from the date of receipt of the notice by the secretary. That member's name shall be removed from the register of members.
- 8.2 If the subscription of a member remains unpaid for a period of 30 days after it becomes due, the Board must direct the secretary to give notice to the member of that fact. If the subscription remains unpaid 21 days after the date of the notice, the member's membership shall cease.
- 8.3 If any member:
 - (a) is in breach of the provisions of this Constitution; or

Constitution

- (b) is guilty of any act or omission which, in the opinion of the Board, is unbecoming of a member or prejudicial to the interests of the Company,

the Board may expel the member from the Company and remove the member's name from the register of members.

- 8.4 The directors must not expel a member under Rule 8.3 unless at least 7 days' notice has been given to the member stating the date, time and place at which the question of expulsion is to be considered by the Board and the nature of the alleged misconduct and allowing the member an opportunity to be heard (personally or by written submission as the Board determines).

- 8.5 If the directors resolve to expel a member, the secretary must give notice of this to the member. The member then has the right, exercisable by notifying the secretary within 7 days after receipt of the notice (the "Notice Period"), to have the issue dealt with by the Company in general meeting. In that event, an extraordinary general meeting of the company must be called to consider a resolution that the member be expelled. If

- (a) a resolution to expel the member is passed at an extraordinary general meeting by a majority of those present and voting; or
- (b) the member does not notify the secretary on or before the expiration of the Notice Period that it wishes to have the issue dealt with by the company in general meeting,

the member shall cease to be a member and the member's name will be removed from the register of members.

- 8.6 A member's membership of the company shall automatically cease if :

- (a) a liquidator is appointed in connection with the winding-up of the member; or
- (b) an order is made by a court for the winding-up or deregistration of the member.

- 8.7 A person ceasing to be a member of the Company for any reason remains liable for:

- (a) all annual subscription fees or other amounts owing by that person to the company which are due and unpaid as at of cessation of membership; and
- (b) amounts which the person is or may become liable to pay the Company under Rule 50.

Register

9. Register of Members

The Register must be kept by the Secretary and must contain full names and addresses of the Members and such other particulars as the Board prescribes.

Constitution

10. Address of Members

Every Member must communicate any change in its address to the Company in writing and any such change of address must be entered in the Register. The latest address in the Register is deemed to be the Member's registered address.

General Meetings

11. General meetings

The Chairman or any 3 Directors may convene a general meeting of the Company whenever it or they think fit.

12. Notice of general meeting

A notice of a general meeting must specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by the Law. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.

13. Quorum

A quorum for a general meeting is one quarter of the Members from time to time or 5 Members, whichever is the lesser. No business may be transacted at any meeting, except the election of a Chairman and the adjournment of the meeting, unless a quorum is present at the commencement of the meeting.

14. Adjournment in absence of quorum

If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of meeting, the meeting is dissolved, unless the Board adjourns the meeting to a date, time and place determined by it. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

15. Chairman

15.1 The Chairman will chair every general meeting.

15.2 If at any general meeting:

- (a) a Chairman has not been elected as provided by Rule 35;
 - (b) the Chairman is not present at the specified time for the holding of the meeting; or
 - (c) the Chairman is present but is unwilling to chair the meeting,
- the Members present may choose another Member to chair the meeting.

Constitution

16. General conduct of meeting

- 16.1 The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chairman.
- 16.2 At any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chairman may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present.
- 16.3 The Chairman may require the adoption of any procedures which are in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.
- 16.4 Any determination by the Chairman in relation to matters of procedure or any other matter arising directly or indirectly from the business is fixed. Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the meeting and may be determined by the Chairman whose decision is final.
- 16.5 A Director or Secretary who is not a Member shall be entitled to be present and to speak at any general meeting. Any other person (whether a member or not) requested by the Directors to attend any general meeting shall be entitled to be present and, at the request of the chair, to speak at that general meeting.

17. Adjournment

During the course of the meeting the Chairman may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairman exercises a right of adjournment of a meeting under this Rule, the Chairman has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chairman exercises that discretion, the Members present in respect of the adjournment may take no vote. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

18. Voting

Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote, unless a poll is demanded. In the case of an equality of votes, the Chairman has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chairman may be entitled as a Member or as a proxy or duly appointed representative of a Member. Unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost is conclusive.

Constitution

19. When a poll may be demanded

A poll may be demanded by a Member in accordance with the Law (and not otherwise) or by the Chairman. Unless the Chairman otherwise determines, no poll may be demanded on the adjournment of a meeting. The demand for a poll may be withdrawn.

20. Taking a poll

- 20.1 If a poll is demanded as provided in Rule 19, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is the meeting's resolution of the motion on which the poll was demanded. Any challenge to the admission or rejection of a vote may only be made at the meeting and may be determined by the Chairman, whose decision is final.
- 20.2 A demand for a poll does not prevent the continuation of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

Votes of Members

21. Voting rights

Each Member has the right to one vote both on a show of hands and a poll. A Member may vote in person or by proxy.

22. Proxies

- 22.1 A Member who is entitled to attend and cast a vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the Member in accordance with the Law but not otherwise. A proxy appointed to attend and vote in accordance with the Law may exercise the rights of the Member on the basis of and subject to the restrictions provided in the Law but not otherwise.
- 22.2 A form of appointment of a proxy is valid if it is in accordance with the Law or in any form that the Board may prescribe or accept.
- 22.3 The Secretary must, if requested, send a valid form of proxy to a Member.
- 22.4 The Secretary on the authority of the Board may complete any appointment of a proxy under Rule 22.2 that is incomplete insofar as the name of the proxy has been omitted by the insertion of the name of any Director as the person in whose favour the proxy is given.

23. Validity of vote

- 23.1 The validity of any resolution is not affected by the failure of any proxy to vote in accordance with instructions (if any) of the appointing Member.

Constitution

- 23.2 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or mental incapacity of the appointing Member or revocation of the instrument of proxy, provided no notice in writing of the death, mental incapacity or revocation has been received at the Office before the meeting or any adjourned meeting.
- 23.3 A proxy is not revoked by the appointing Member attending and taking part in the meeting, unless the appointing Member actually votes at the meeting on the resolution for which the proxy is proposed to be used.

Directors

24. Number and qualifications of Directors

- 24.1 The number of Directors (not including alternate Directors) must not exceed 12.
- 24.2 Directors need not be Members.
- 24.3 The Members in general meeting may elect up to 6 directors.

25. Appointment of Directors

- 25.1 Notwithstanding Rule 24, the first Directors are the persons specified in the application to register the Company lodged under section 117 of the Law and who have consented to become Directors.
- 25.2 Subject to Rule 24, the Board may by resolution appoint any person to the office of Director, including a person to replace any Director elected by the Members who resigns, dies or becomes mentally incapacitated.

26. Term of appointment

Directors are appointed or elected (as the case may be) for 2 year terms and are eligible for reappointment or re-election. However, a Director appointed by the Board to replace a Director elected by the Members who has resigned, died or become mentally incapacitated is appointed only for the remainder of the term of the Director who they replaced (but is then eligible for election or reappointment).

27. Remuneration of Directors

No Director, other than the Chairman for as long as and subject to the conditions that the Board so determines from time to time, may be appointed to any salaried office of the Company or any office of the Company paid by fees. Nothing in this Rule prohibits the payment by the Company to a Director of:

- (a) out-of-pocket expenses incurred by a Director in the performance of any duty as a Director where the amount payable does not exceed an amount approved by the Board; or

Constitution

- (b) any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Board.

Alternate Directors

28. Alternate Directors

The Board may make such rules as it deems appropriate in relation to the appointment of alternate Directors.

Termination of Office of Director

29. Termination of office by Director

The office of a Director is terminated:

- (a) on the Director being absent from meetings of the Board during a period of three consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (b) on the Director resigning office by notice in writing to the Company;
- (c) in the case of the Managing Director, on the Director ceasing to be the Managing Director for whatever reason;
- (d) on the Director being removed from office under the Law;
- (e) on the Director being prohibited from being a Director by reason of the operation of the Law; or
- (f) on the expiration of the term of office of that Director under Rule 26.

Managing Director

30. Appointment of a Managing Director

- 30.1 The Board may appoint a person to the office of Managing Director for such period and on such terms as it thinks fit and at a remuneration which may be by way of salary or otherwise on terms determined by the Board.
- 30.2 The Managing Director will not, while holding that office, be subject to Rule 27.
- 30.3 The Board may confer on and withdraw from the Managing Director any of the powers exercisable under this Constitution by the Board as it thinks fit and on any condition it thinks expedient but the conferring of powers by the Board on the Managing Director does not exclude the exercise of those powers by the Board.

Constitution

Proceedings of Directors

31. Procedures relating to Directors' meetings

The Board may meet together, adjourn and otherwise regulate its meetings as it thinks fit. The Board may at any time, and the Secretary must, on the request of any two Directors, convene a meeting of the Board. Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery, facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by the Directors.

32. Quorum of meetings

Until otherwise determined by the Board, a quorum for meetings of the Board is one quarter of the Directors appointed from time to time or 3 Directors, whichever is the lesser.

33. Meetings by telephone or other means of communication

The Board may meet either in person, by telephone, on-line or by using any other technology consented to by all the Directors. A consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting. A meeting conducted by telephone or other means of communication is taken to be held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

34. Votes at meetings

Questions arising at any meeting of the Board are decided by a majority of votes. In the case of an equality of votes, the Chairman has a second or casting vote.

35. Chairman

- 35.1 The Board must elect one of its members as Chairman.
- 35.2 The Chairman is appointed for a 2 year term and is eligible for reappointment.
- 35.3 Subject to Rule 35.2, if the Chairman is not present at the time specified for holding any meeting, the Directors present may choose one of their number to be Chairman of the meeting.

36. Powers of meetings

A meeting of the Board at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

Constitution

37. Committees

- 37.1 The Board may delegate any of its powers to Committees consisting of a Director or Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board.
- 37.2 The meetings and proceedings of any Committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under Rule 37.1.
- 37.3 No power delegated to any Committee under this Rule may be sub-delegated unless authorised by the terms of the delegation.

38. Validity of acts

- 38.1 All actions at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee.
- 38.2 If the number of Directors is reduced below the number fixed under this Constitution the continuing Directors may act only for the purpose of increasing the number of Directors to the number fixed under this Constitution or of calling a general meeting of the Company. In any case the continuing Directors must act to increase the number of Directors as soon as is practicable.

39. Material personal interests

- (a) A Director is not disqualified by the Director's office from contracting with the Company or any related body corporate of the Company in any capacity by reason of holding of the office of Director.
- (b) In relation to a contract or arrangement in which a Director has a material personal interest:
- (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) a contract or arrangement made by the Company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.

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- (c) Subject to paragraph (d), a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest.
- (d) A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
 - (i) if all of the following conditions are met:
 - (A) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
 - (B) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
 - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
 - (ii) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Law and that standing notice is still effective in relation to the interest; or
 - (iii) as otherwise permitted under the Law.
- (e) Notices of material personal interest given by Directors must:
 - (i) give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company;
 - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter; and
 - (iii) be recorded in the minutes of the Directors' meeting at which the notice is given.
- (f) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:
 - (i) if the material personal interest is a matter that is not required to be disclosed under this Clause or under the Law; or
 - (ii) if the Directors who do not have a material personal interest in the matter have passed a resolution that:
 - (A) identified the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of the Company; and
 - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or
 - (iii) as otherwise permitted under the Law.
- (g) Nothing in this Clause affects the duty of a Director:

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- (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict; or
- (ii) to comply with the Law.

40. Resolution in writing

A resolution in writing signed by all the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) is a valid resolution of the Board. The resolution may consist of several documents in the same form, each signed by one or more of the Directors. For the purposes of this Rule the references to **Directors** include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but do not include any other alternate Director. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered to be a document in writing signed by the Director. For clarification, nothing in this Rule permits the making of any resolution unless proper notice of the proposed resolution is given to (or receipt of proper notice is waived by) all Directors entitled to vote on the resolution.

Powers of the Board

41. General powers of the Board

The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on it by this Constitution) may exercise all powers and do all things as are within the power of the Company and are not by this Constitution or by law required to be exercised or done by the Company in general meeting.

42. Power to borrow, guarantee and give security

Without limiting the generality of Rule 41, the Board may from time to time, on behalf of the Company, borrow such amounts as it considers necessary for the purposes of the Company at such rate of interest and upon such terms as it considers proper and may execute mortgages, loan agreements or other securities in respect of such moneys and charge any property of the Company and may execute, create and issue such mortgages, loan agreements or securities as it considers appropriate.

43. Power to appoint patrons, friends and supporters

The Board may from time to time appoint any person as a patron, friend or supporter (or such description as the Board determines) of the Company on such terms as the Board

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sees fit and any such category of persons may (but not need be) Members of the Company. The Board may make by-laws that prescribe, vary or cancel the qualifications, rights, privileges and obligations of any category of persons appointed.

Seal

44. Seal

The Company may have a common seal and a duplicate common seal. If the Company has a common seal, the seal may be used only as determined by the Board.

Notices

45. Service of notices

A notice may be given by the Company to any Member personally, by leaving it at the Member's registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's registered address or, in any other case, by other electronic means determined by the Board. If the notice is signed, the signature may be original or printed.

46. When notice taken to be served

Any notice sent by post is taken to have been served at the expiration of two business days after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's registered address is taken to have been served when delivered. Any notice served on a Member by facsimile transmission is taken to have been served on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error.

47. Member not known at registered address

Where a Member does not have a registered address or where the Company has a reason in good faith to believe that a Member is not known at the Member's registered address, all future notices are taken to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is taken to be duly served at the commencement of that period) unless and until the Member informs the Company of a registered place of address.

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48. Calculation of period of notice

Where a given number of days' notice or notice extending over any other period is required to be given the day of service is not to be counted in the number of days or other period.

Liability of Members

49. Limited Liability

The liability of the Members of the Company is limited.

50. Members' liability on winding up

Each member of the Company undertakes to contribute to the assets of the Company in the event of it being wound up while he, she is a Member or within one year after he, she or it ceases to be a member for payment of the debts and liabilities of the Company (contracted before he, she or it ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required not exceeding \$20.00.

Winding up

51. Winding Up

If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever (including any property in the fund established under Rule 4), the property must not be paid to or distributed amongst the Members but must be given or transferred to some other organisation or organisations:

- (a) having purposes similar to the purposes of the Company set out in Rule 2;
- (b) which by its constitution is required to apply its profits (if any) or other income in promoting its purposes and is prohibited from paying any dividend to its members; and
- (c) eligible for tax deductibility of donations under subdivision 30-B, section 30-100 of the Tax Act,

such organisation or organisations to be determined by the Members or at before the time of dissolution or in default thereof by application to the Supreme Court of Queensland for determination.

52. Amalgamation

Whether it furthers the purposes of the Company to amalgamate with any one or more other organisations having similar purposes to the purposes of the Company, the other organisation or organisations must:

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- (a) have rules prohibiting the distribution of its or their assets and income to members; and
- (b) be eligible for tax deductibility of donations under subdivision 30-B, section 30-100 of the Tax Act.

Indemnity

53. Indemnity of officers, insurance and access

- 53.1 The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.
- 53.2 Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company.
- 53.3 Where the Board considers it appropriate, the Company may:
- (a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
 - (b) bind itself in any contract or deed with any officer of the Company to make the payments.
- 53.4 Where the Board considers it appropriate, the Company may:
- (a) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
 - (b) bind itself in any contract with a Director or former Director to give the access.
- 53.5 In this Rule:
- (a) **officer** means:
 - (i) a Director, Secretary, executive officer or employee; or
 - (ii) a person appointed as a trustee by, or acting as a trustee at the request of the Company,and includes a former officer.
 - (b) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment or nomination of an officer by the Company.
 - (c) to the relevant extent means:
 - (i) to the extent the Company is not precluded by law from so doing;

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- (ii) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under any insurance policy); and
 - (iii) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
- (c) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.



February 7, 2020

Mr Pat Vidgen PSM
Electoral Commissioner of Queensland
Electoral Commission of Queensland
GPO Box 1393
Brisbane Q 4001

Dear Mr Vidgen,

RE: Electoral Act and the Prohibited Donors Scheme

The Australian Institute for Progress is a think tank based in Queensland. We do research and advocacy on both federal and state issues.

We frequently criticise political party policies and in the last federal election criticised both the ALP opposition and the government. As we take an ideological, rather than a political view, and describe ourselves as centre-right, our criticisms tends to favour parties of the right.

We are considering several Queensland issues, and intend to conduct research and run advocacy campaigns during the course of this year, including during the election period. Our funding sources are diverse, but do include some prohibited donors.

Our legal advice is that we are not a political party and are able to do this without breaching the Electoral Act, but some of our donors are aware of advice that you have given the Property Council which suggests this is not the case.

The sorts of activities that we intend to undertake would include:

- Research
- Seminars and public meetings
- Surveys and opinion polling
- Media
- Assessment of candidate and political party attitudes to specific issues
- Advertising
- Potentially recommend a vote for or against a particular candidate or party

Could you please advise whether it is legal for prohibited donors to donate to us if we conduct these activities?

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Graham Young', with a stylized flourish at the end.

Graham Young
Executive Director

Unit 2B, 50 Logan Road
Woolloongabba Q 4102

P O Box 1365
Fortitude Valley Q 4006

www.aip.asn.au

The Australian Institute for Progress exists to advance the discussion, development and implementation of public policy for Australia's future, from its base in Brisbane. The future does not look after itself.



20 February 2020

Mr Graham Young
Executive Director
Australian Institute for Progress
PO Box 1365
FORTITUDE VALLEY QLD 4006
Email: graham.young@aip.asn.au

Dear Mr Young

Thank you for your letter dated 11 February 2020 seeking advice whether it is legal for "prohibited donors" to provide gifts to the Australian Institute for Progress (AIP).

Under the *Electoral Act 1992* and the *Local Government Electoral Act 2011*, an entity that participates in a state or local government election and incurs electoral expenditure is considered a third party. Electoral expenditure is expenditure incurred, whether during an election period or otherwise, on any of the following:

- broadcasting a political advertisement;
- publishing a political advertisement in a journal (e.g. newspaper, magazine or other periodical);
- publishing a political advertisement on the internet;
- displaying a political advertisement at a place of entertainment (e.g. a theatre);
- producing and distributing other material that advocates a vote for or against a candidate, group of candidates or registered political party, and is required to include an authorisation; or
- carrying out an opinion poll or other research relating to the election if the dominant purpose of the opinion poll or research is to, directly or indirectly –
 - promote or oppose the election of a candidate or group of candidates
 - promote or oppose a registered political party in relation to the election;
 - or
 - otherwise influence voting at the election.

You state in your letter that the AIP conducts research and runs advocacy campaigns, amongst other activities, and potentially recommends a vote for or against a particular candidate or party. On this basis, the ECQ considers the AIP to be a third party.

Under the Prohibited Donors Scheme (PDS), gifts from a property developer, their close associates or industry representative organisations to a third party to incur electoral expenditure are prohibited. As such, an entity would likely be committing an offence by accepting an unlawful donation and incurring electoral expenditure and the other entity would likely be committing an offence by making a gift.

You also state in your letter that the AIP receives funding from "some prohibited donors". To clarify this disclosure, could you please advise:

- when these gifts were made
- the name of the entities who provided the gifts
- the amount or value of the gifts?

The ECQ would appreciate a response in writing by **Monday, 2 March 2020** so that the ECQ can consider what action is appropriate, if any. Please note that appropriate action may include the ECQ recovering unlawful donations as a debt to the State.

For more information about third party disclosure obligations and the PDS, please refer to our website for fact sheets and guides for third parties in State and local government elections.

Should you require further information regarding this matter, please contact Ms Melanie Mundy, Director, Funding, Disclosure and Compliance, ECQ on 1300 881 665 or at fad@ecq.qld.gov.au.

Yours sincerely



Pat Vidgen PSM
Electoral Commissioner



ASIC

Australian Securities & Investments Commission

Current Company Extract

Name: AUSTRALIAN INSTITUTE FOR PROGRESS

ACN: 101 843 396

Date/Time: 28 February 2020 AEST 02:04:49 PM

This extract contains information derived from the Australian Securities and Investments Commission's (ASIC) database under section 1274A of the Corporations Act 2001.

Please advise ASIC of any error or omission which you may identify.

EXTRACT

Organisation Details	Document Number
Current Organisation Details	
Name: AUSTRALIAN INSTITUTE FOR PROGRESS	028929092
ACN: 101 843 396	
ABN: 67101843396	
Registered in: Queensland	
Registration date: 27/08/2002	
Next review date: 27/08/2020	
Name start date: 12/06/2014	
Status: Registered	
Company type: Australian Public Company	
Class: Limited By Guarantee	
Subclass: Entitled To Omit 'Limited' Under S.150	

Address Details	Document Number
Current	
Registered address: 50 Logan Road, WOOLLOONGABBA QLD 4102	7EAH94110
Start date: 29/01/2019	
Principal Place Of Business address: 50 Logan Road, WOOLLOONGABBA QLD 4102	7EAH94110
Start date: 22/01/2019	

Contact Address
Section 146A of the Corporations Act 2001 states 'A contact address is the address to which communications and notices are sent from ASIC to the company'.
Current
Address: GPO BOX 389, BRISBANE QLD 4001
Start date: 24/10/2007

Officeholders and Other Roles	Document Number
Director	
Name: ROBERT WALTER JOHN TUCKER	1F0509855
Address: Unit 131, 1 Newstead Terrace, NEWSTEAD QLD 4006	
Born: 12/07/1943, ROCKHAMPTON, QLD	
Appointment date: 19/05/2014	
Name: GRAHAM EDWARD YOUNG	3E7555084
Address: 9 Lucy Street, GREENSLOPES QLD 4120	
Born: 02/04/1958, VANCOUVER, CANADA	
Appointment date: 27/08/2002	
Name: DANIEL PATRICK RYAN	1F0509855
Address: 45 Atthow Avenue, ASHGROVE QLD 4060	
Born: 09/08/1976, BRISBANE, QLD	
Appointment date: 15/05/2014	
Name: GRAEME HAYCROFT	030192761

Address:	26 Tarwarri Crescent, MOOLOOLABA QLD 4557	
Born:	02/06/1948, WARRAGUL, VIC	
Appointment date:	07/01/2018	
Name:	RODERICK SCHNEIDER	7EAH85104
Address:	Level 1, 490 Adelaide Street, BRISBANE QLD 4000	
Born:	31/10/1981, HAMILTON, VIC	
Appointment date:	02/01/2019	
Name:	CAMPBELL KEVIN THOMAS NEWMAN	7EAH85104
Address:	24 Rupert Street, WINDSOR QLD 4030	
Born:	12/08/1963, CANBERRA, ACT	
Appointment date:	17/12/2018	
Name:	ROWENA CATHERINE MCNALLY	7EAH85104
Address:	'Yachting Tower', 16018 Macarthur Parade, MAIN BEACH QLD 4217	
Born:	16/02/1958, PORT MORSEBY, PAPUA NEW GUINEA, PAPUA NEW GUINEA	
Appointment date:	16/12/2018	
Secretary		
Name:	GRAHAM EDWARD YOUNG	3E7555084
Address:	9 Lucy Street, GREENSLOPES QLD 4120	
Born:	02/04/1958, VANCOUVER, CANADA	
Appointment date:	27/08/2002	
Appointed Auditor		
Name:	MOORE STEPHENS (BRISBANE) & PARTNERS	023613361
Address:	Level 25 71 Eagle Street BRISBANE QLD 4000	
Start date:	21/09/2002	

Financial Reports

Balance date	Report due date	AGM due date	Extended AGM due	AGM held date	Outstanding	Document number
30/06/2003	31/10/2003				no	019938140
30/06/2004	31/10/2004				no	020545589
30/06/2005	30/11/2005				no	022852745
30/06/2006	30/11/2006			01/10/2006	no	023613361
30/06/2007	31/10/2007				no	024640073
30/06/2008	31/10/2008				no	025435839
30/06/2009	31/10/2009				no	7E2650849

Documents

Note: Where no Date Processed is shown, the document in question has not been processed. In these instances care should be taken in using information that may be updated by the document when it is processed. Where the Date Processed is shown but there is a zero under No Pages, the document has been processed but a copy is not yet available.

Date received	Form type	Date processed	Number of pages	Effective date	Document number
18/09/2017	484A1 Change To Company Details Change Officeholder Name Or Address	18/09/2017	2	18/09/2017	3E7555084
21/02/2018	484E Change To Company Details Appointment Or Cessation Of A Company Officeholder	20/03/2018	3	21/02/2018	030192761
16/04/2018	370 Notification By Officeholder Of Resignation Or Retirement	23/04/2018	2	16/04/2018	030306002
14/01/2019	484E Change To Company Details Appointment Or Cessation Of A Company Officeholder	14/01/2019	2	14/01/2019	7EAH70354
20/01/2019	484E Change To Company Details Appointment Or Cessation Of A Company Officeholder	20/01/2019	3	20/01/2019	7EAH85104
22/01/2019	484 Change To Company Details 484B Change Of Registered Address 484C Change Of Principal Place Of Business (Address)	22/01/2019	2	22/01/2019	7EAH94110

End of Extract of 3 Pages