



DISCIPLINARY SCHEME

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1. OVERVIEW

- 1.1 This Scheme sets out the rules and procedures for the handling of Complaints and the consideration of Disciplinary Action against Members.
- 1.2 The purpose of this Scheme is to protect the public and public confidence in the profession by establishing a mechanism to maintain and enforce the standards expected of Members. In doing so, this Scheme also aims to protect the reputation of the profession, the Institute and Members.
- 1.3 The scheme operates in four stages, which are the Complaint Stage, Investigation Stage, Determination Stage and Appeal Stage.
 - (a) At the Complaint Stage, a Complaint or potential Complaint of Misconduct against a Member is lodged with the Institute. This Complaint or potential Complaint is referred to the Convenor of the Conduct Committee for initial assessment. Depending on the assessment, the Complaint can then be dismissed or it can be referred to a Sub-Committee of the Conduct Committee for investigation.
 - (b) At the Investigation Stage, the investigating Sub-Committee will seek information from the Complainant, the Respondent (being the Member against whom the Complaint has been made) and any other parties the Sub-Committee regards as relevant. If the Sub-Committee concludes that there is a prima facie case of Misconduct, the Sub-Committee will refer the Complaint to a Tribunal for determination.
 - (c) At the Determination Stage, a Tribunal is established specifically to deal with the Complaint at hand. The Tribunal is formed by the appointment of at least three people selected from a pre-existing Tribunal Panel, at least one lay participant and at least one legal professional. The Convenor of the Tribunal Panel appoints the members of each Tribunal.
 - (d) If a Tribunal determines that the Misconduct contained in a Complaint has been substantiated, it may order Disciplinary Action against the Member. This Disciplinary Action could be a letter of warning or concern at one end of the spectrum, through to a range of other actions and remedies such as undertakings by the Member, retraining, suspension and expulsion at the other end of the spectrum.
 - (e) The Appeal Stage exists to enable a party who is dissatisfied with any determination or order of the Tribunal to pursue an appeal. An Appeal Board is established specifically for hearing the appeal that has been lodged against a Tribunal determination or order. The Appeal Board is formed by the appointment of at least three people selected from a pre-existing Appeal Board Panel, at least one lay participant and at least one legal professional. The Convenor of the Appeal Board Panel appoints the members of each Appeal Board.
 - (f) An Appeal Board is expected to hold its own hearings and can affirm, amend or rescind any determination or order of the Tribunal.
 - (g) Usually, decisions about Complaints that go to a Tribunal or an Appeal Board will be made public on the Institute's website but in exceptional circumstances the Tribunal or the Appeal Board considering the case may decide against public disclosure.



- 1.4 A diagram outlining the standard process or steps in the application of this Scheme is contained at **Schedule 1**.
- 1.5 While this Scheme does not constitute a formal judicial process and the rules of evidence do not apply, it is the intention of the Institute that all matters will be dealt with as expediently as possible and in accordance with the principles of natural justice and procedural fairness.
- 1.6 This Scheme and information regarding the process for a Complaint to be made by any person will be readily available to the public, including by way of publication on the Institute's website.

2. INTERPRETATION

- 2.1 Words and terminology used in this Scheme are to be given their ordinary meaning and should be defined by reference to other applicable instruments or documents of the Institute (such as the Constitution).
- 2.2 Unless otherwise indicated by express words or the context otherwise requires:
 - '**Complainant**' means a person (irrespective of whether that person is a Member) who has lodged a Complaint in accordance with this Scheme.
 - '**Complaint**' means a statement in writing containing an allegation or representation to the effect that a Member has or may have engaged in Misconduct.
 - '**Disciplinary Action**' means potential orders, actions, penalties or initiatives that may be implemented if a Member is found to have engaged in Misconduct (relevantly including the matters detailed at clause 8.3(b)).
 - '**Institute**' means the Institute of Actuaries of Australia (ABN 69 000 423 656)
 - '**Member**' means a Fellow, Accredited, Associate, Affiliate, Student and any other class of member determined by Council.
 - '**Member Disclosure Matters**' is defined at clause 4.1.
 - '**Misconduct**' is defined at clause 3.2.
 - '**Respondent**' means a Member against whom a Complaint has been made.
 - '**Scheme**' means this disciplinary scheme.

3. MISCONDUCT

- 3.1 A Member may be subject to Disciplinary Action under this Scheme if the Member has engaged in Misconduct.
- 3.2 **Misconduct** is defined as any acts or omissions by a Member that do not meet the standards as reasonably determined and expected by the Institute. The standards and expectations of the Institute are explained within the Institute's Code of Conduct.
- 3.3 Examples of Misconduct may include (but are not limited to):
 - (a) acts or omissions that are contrary to the Institute's collective values, principles and objectives;
 - (b) acts or omissions that have the potential to bring into disrepute or damage the reputation of the profession, the Institute or Members;



- (c) aiding, abetting, counselling, procuring, inducing or attempting to induce another person to engage in Misconduct;
- (d) knowingly being involved in, or a party to, Misconduct engaged in by another person;
- (e) a failure to comply with requirements regarding a Member Disclosure Matter; or
- (f) non-compliance with the Constitution, Code of Conduct, a professional standard, requirements imposed by applicable legislation (including subordinate standards or rules) and any policies, procedures or guidelines of the Institute (as in force from time to time).

3.4 A Member may be found to have engaged in Misconduct due to acts or omissions that occur:

- (a) during his or her work as an actuary or in his or her capacity as a Member;
- (b) in other external contexts (such as a Member's personal life) where those acts or omissions can be considered to reflect or have a potential impact on the profession or the Institute; and
- (c) in any location.

4. MEMBER DISCLOSURE MATTERS

4.1 A **Member Disclosure Matter** is a matter where a Member:

- (a) is or has been convicted of a criminal offence;
- (b) has been found to have acted fraudulently or dishonestly by any court, tribunal or professional body;
- (c) has been found by any court or tribunal to have engaged in misleading or deceptive conduct;
- (d) has been the subject of an adverse determination by a regulatory body or professional association;
- (e) is, has been or has become bankrupt or insolvent; or
- (f) has breached a determination or failed to comply with any Disciplinary Action imposed by a Tribunal or Appeal Board of the Institute.

4.2 Upon applying to be a Member, a prospective Member must inform the Institute in writing of any Member Disclosure Matters.

4.3 A Member must disclose any Member Disclosure Matters to the Institute in writing:

- (a) if the event occurs after the commencement of this Scheme, within seven days after the occurrence of the event; or
- (b) if the event occurred before the commencement of this Scheme and has not previously been dealt with by the Institute, within 60 days of the date of commencement.



- 4.4 The fact of a Member Disclosure Matter may be given significant weight and considered persuasive as part of any process implemented in accordance with this Scheme. Specifically, a Member Disclosure Matter may be considered prima facie evidence of Misconduct.

5. CONDUCT COMMITTEE, TRIBUNAL AND APPEAL BOARD

5.1 Conduct Committee

- (a) A Conduct Committee shall be appointed consisting of:
- (i) at least seven Fellows, or such greater number of Fellows as the Council may determine from time to time, appointed by the Council and who during their terms of membership of the Conduct Committee shall not be Council members, members of the Tribunal Panel or members of the Appeal Board Panel;
 - (ii) at least one appropriately skilled and qualified lay participant who is not a Member (of the Institute) appointed by the Convenor of the Conduct Committee; and
 - (iii) at least one appropriately skilled and qualified legal professional who is not a Member (of the Institute) appointed by the Convenor of the Conduct Committee.
- (b) The Council shall appoint one Fellow that has been appointed as a member of the Conduct Committee to be the Convenor of the Conduct Committee.
- (c) Any member of the Conduct Committee may resign from his or her position by written notice to either:
- (i) the Council in relation to a Fellow that is a member of the Conduct Committee; or
 - (ii) the Convenor of the Conduct Committee in relation to a lay participant or legal professional that is a member of the Conduct Committee.
- (d) Any member of the Conduct Committee may be removed or replaced at the discretion of:
- (i) the Council in relation to a Fellow that is a member of the Conduct Committee; or
 - (ii) the Convenor of the Conduct Committee in relation to a lay participant or legal professional that is a member of the Conduct Committee.
- (e) Any vacancy in the membership of the Conduct Committee shall be filled by determination of:
- (i) the Council in relation to a Fellow that is a member of the Conduct Committee; or
 - (ii) the Convenor of the Conduct Committee in relation to a lay participant or legal professional that is a member of the Conduct Committee.



5.2 Tribunal Panel and Tribunal

- (a) The Council shall appoint seven Fellows, or such greater number of Fellows as the Council may determine from time to time, not being Council members, Conduct Committee members or members of the Appeal Board Panel, to be members of the Tribunal Panel from which they may be appointed to a Tribunal to determine a Complaint.
- (b) The Council shall appoint one member of the Tribunal Panel to be the Convenor of the Tribunal Panel.
- (c) Any member of the Tribunal Panel may resign from his or her position by written notice to the Council and may be removed or replaced at the discretion of the Council.
- (d) Any vacancy in the membership of the Tribunal Panel shall be filled by determination of the Council.
- (e) For the purposes of determining a Complaint, a Tribunal shall be appointed by the Convenor of the Tribunal Panel and shall include:
 - (i) at least one appropriately skilled and qualified lay participant who is not a Member (of the Institute);
 - (ii) at least one appropriately skilled and qualified legal professional who is not a Member (of the Institute); and
 - (iii) at least three members of the Tribunal Panel (who shall include the Convenor of the Tribunal Panel unless he or she is unable to serve by reason of conflict of interest or otherwise).
- (f) In the event that there are not at least three members of the Tribunal Panel available to constitute a Tribunal (as a result of conflict of interest or otherwise), the Council shall appoint additional Fellows to the Tribunal Panel (in accordance with the requirements prescribed in clause 5.2(a) to enable the Tribunal to include at least three members of the Tribunal Panel.
- (g) If the Convenor of the Tribunal Panel is a member of the Tribunal established to determine a particular Complaint, he or she shall be Chair of that Tribunal. If the Convenor of the Tribunal Panel is not appointed to the Tribunal, he or she shall appoint one of the other members of the Tribunal Panel to be Chair of that Tribunal.

5.3 Appeal Board Panel and Appeal Board

- (a) The Council shall appoint five Fellows, or such greater number of Fellows as the Council may determine from time to time, not being Council members, Conduct Committee members or members of the Tribunal Panel, to serve as members of the Appeal Board Panel from which they may be appointed to an Appeal Board.
- (b) The Council shall appoint one member of the Appeal Board Panel to be the Convenor of the Appeal Board Panel.



- (c) Any member of the Appeal Board Panel may resign from his or her position by written notice to the Council and may be removed or replaced at the discretion of the Council.
- (d) Any vacancy in the membership of the Appeal Board Panel shall be filled by determination of the Council.
- (e) For the purposes of determining an appeal, an Appeal Board shall be appointed by the Convenor of the Appeal Board Panel and shall include:
 - (i) at least one appropriately skilled and qualified lay participant who is not a Member (of the Institute);
 - (ii) at least one appropriately skilled and qualified legal professional who is not a Member (of the Institute); and
 - (iii) at least three members of the Appeal Board Panel (who shall include the Convenor of the Appeal Board Panel unless he or she is unable to serve by reason of conflict of interest or otherwise).
- (f) In the event that three members of the Appeal Board Panel are not available to constitute an Appeal Board (as a result of conflict of interest or otherwise), the Council shall appoint additional Fellows to the Appeal Board Panel (in accordance with the requirements prescribed in clause 5.3(a) to enable the Appeal Board to include at least three members of the Appeal Board Panel.
- (g) If the Convenor of the Appeal Board Panel is a member of the Appeal Board established to determine a particular appeal, he or she shall be Chair of that Appeal Board. If the Convenor of the Appeal Board Panel is not appointed to the Appeal Board, he or she shall appoint one of the other members of the Appeal Board Panel to be Chair of that Appeal Board.

5.4 General

- (a) Replacement of Sitting Members
 - (i) If, by reason of illness or absence for any other reason, a Conduct Committee member, a Tribunal member or an Appeal Board member is unable to serve in that respective capacity at any time, another person eligible to hold that position may be appointed to act in that capacity by:
 - (A) in the case of the Conduct Committee, the Convenor of the Conduct Committee;
 - (B) in the case of a Tribunal, the Convenor of the Tribunal Panel; and
 - (C) in the case of an Appeal Board, the Convenor of the Appeal Board Panel in consultation with the President.
- (b) Terms of Appointments
 - (i) A member of the Conduct Committee, Tribunal Panel or Appeal Board Panel will be appointed by the Council for a term not exceeding five years.



- (ii) A member of the Conduct Committee, Tribunal Panel or Appeal Board Panel cannot be appointed for more than two consecutive terms of up to five years each.
- (c) Quora
 - (i) Subject to the following sub-clause, the quorum for any proceeding conducted by a Tribunal or an Appeal Board shall be all the members of that body. In the event that such a proceeding is inquorate then it shall be adjourned and reconvened at such time and place as the Chair may determine or, at the discretion of the Chair, the proceeding shall be conducted by a new Tribunal or Appeal Board, respectively, appointed in accordance with this Scheme.
 - (ii) The quorum for any proceeding conducted by a Tribunal or an Appeal Board held for the purpose of dealing with preparatory, procedural or administrative matters preliminary to a final determination on a Complaint or appeal shall be the Chair of that Tribunal or Appeal Board, together with two other members of that Tribunal or Appeal Board. In the event that any such proceeding is inquorate then it shall be adjourned and reconvened at such time and place as the Chair may determine.
- (d) Voting
 - (i) Each member of a Tribunal or of an Appeal Board shall have one vote.
 - (ii) The Chair of a Tribunal or of an Appeal Board shall not have a casting vote.
 - (iii) A determination substantiating a Complaint may only be made with the majority of votes from members of a Tribunal or Appeal Board.
- (e) Specialist or Expert Advice and Assistance
 - (i) Subject to the approval and authorisation of the CEO, the Convenor of the Conduct Committee, the Chair of a Tribunal or the Chair of an Appeal Board may engage external specialists or experts (for example, legal representation) to obtain advice and assistance in relation to the discharge of functions under this Scheme or otherwise arising in connection with this Scheme.
- (f) Payment for Services
 - (i) The CEO may approve and authorise payment to any Conduct Committee member, member of a Tribunal, member of an Appeal Board or other person for services provided in relation to this Scheme.
- (g) Decisions of other bodies or fora
 - (i) Any decision or finding of a court, tribunal, regulatory body or professional association relating to a Complaint or a Respondent may be considered and given significant weight by the Conduct Committee, a Sub-Committee, a Tribunal or an Appeal Board as part of any process implemented in accordance with this Scheme.



6. THE COMPLAINT STAGE

- 6.1 Any person (whether a Member or not a Member) may lodge a Complaint. Being a member of Council, the chair of a committee or the chair of a taskforce of the Institute does not preclude such a person from lodging a Complaint in accordance with this Scheme.
- 6.2 When initially lodged, a Complaint or potential Complaint shall be referred to the Convenor of the Conduct Committee for assessment.
- 6.3 On the request of a person considering the lodgement of a Complaint, the Convenor of the Conduct Committee may arrange for reasonable assistance to the person in formulating his or her Complaint.
- 6.4 As soon as reasonably practicable after receiving a Complaint, the Convenor of the Conduct Committee shall conduct a preliminary assessment of the Complaint, based on the available information and having considered the interests of the public, of whether the Complaint should be the subject of investigation by a Sub-Committee.
- 6.5 If the preliminary assessment by the Convenor of the Conduct Committee is that:
- (a) the Complaint does not give rise to a prima facie case of Misconduct (including, but not limited to a conclusion by the Convenor of the Conduct Committee that the Complaint is spurious, vexatious, frivolous or contains unsupportable allegations), the Convenor of the Committee may dismiss the Complaint provided this view and proposed course of action has been discussed with and approved by the Convenor of the Tribunal Panel. If the decision is made to dismiss the Complaint, the Convenor of the Conduct Committee shall inform the Complainant and the Respondent of these circumstances in writing with brief reasons being provided regarding this decision. In the event that the Convenor of the Tribunal Panel does not agree with the proposed dismissal of the Complaint, it shall proceed as if the Complaint gives rise to a prima facie case of Misconduct (in accordance with clause 6.5(b), below).
 - (b) the Complaint gives rise to a prima facie case of Misconduct, then the Convenor of the Conduct Committee shall refer the Complaint to a Sub-Committee to investigate the Complaint in accordance with clause 7.

7. THE INVESTIGATION STAGE

7.1 Investigating Sub-Committee

- (a) Membership
 - (i) Where the Convenor of the Conduct Committee has concluded that a Complaint should be investigated, the Convenor of the Conduct Committee shall establish a Sub-Committee for the purpose of conducting the investigation.
 - (ii) A Sub-Committee must comprise at least two but not more than three persons appointed by the Convenor of the Conduct Committee from the members of the Conduct Committee.



- (iii) In appointing members to a Sub-Committee, the Convenor of the Conduct Committee must ensure that the Sub-Committee comprises at least:
 - (A) one appropriately skilled and qualified lay participant or appropriately skilled and qualified legal professional who is not a Member (of the Institute); and
 - (B) one Fellow.
- (b) If the Convenor of the Conduct Committee is a member of the relevant Sub-Committee, the Convenor of the Conduct Committee shall be Chair of the Sub-Committee. Otherwise, the Convenor of the Conduct Committee shall appoint one of the Sub-Committee members to be its Chair.
- (c) Powers of the Sub-Committee
 - (i) The Sub-Committee may seek and receive any information from a Complainant, a Respondent, a Member, the Council or any other third party as it thinks appropriate and necessary for the conduct of the investigation into a Complaint being undertaken by the Sub-Committee.
 - (ii) The Sub-Committee shall have the power:
 - (A) to require the production of originals or copies of any documents relevant to the investigation from any Member (whether or not such Member is the subject of the investigation);
 - (B) to require any further information from any Member relating to the subject matter of the investigation;
 - (C) to conduct interviews, request responses to questions or otherwise require any Member to appear before the Sub-Committee to give evidence as to any matter relevant to the investigation; and
 - (D) subject to the consent of the CEO and the Convenor of the Conduct Committee, to engage external specialists or experts (for example, legal representation) to obtain advice and assistance in relation to any issue relevant to the investigation.
 - (iii) A Respondent or any other Member involved in or required to participate in the conduct of an investigation pursuant to this Scheme is required to apply his or her best endeavours to comply with any reasonable request or exercise of power by the Sub-Committee.
 - (iv) If a Member hinders, misleads or obstructs a Sub-Committee in performing or exercising any functions under this Scheme, this may be considered Misconduct by that Member warranting Disciplinary Action.
- (d) Additional questions
 - (i) A Sub-Committee may refer potential issues or questions which were not included in the Complaint but relate to a Respondent to the Convenor of the Conduct Committee.



- (ii) If the issues or questions referred to the Convenor of the Conduct Committee relate to potential Misconduct, the Convenor of the Conduct Committee may:
 - (A) direct the Sub-Committee to investigate or deal with the issues or questions as part of its existing investigation; or
 - (B) refer the issues or questions to another Sub-Committee.
- (e) Rights of the Respondent
 - (i) If the Sub-Committee does not interview a Respondent during the investigation of the Complaint, then prior to completion of the investigation by the Sub-Committee, the Respondent is entitled to request that the Sub-Committee provide the Respondent with an opportunity to:
 - (A) be interviewed by the Sub-Committee; and
 - (B) lodge any documents or submissions as the Respondent considers relevant to the investigation.
 - (ii) A Respondent does not have a right to participate in investigative processes of the Sub-Committee directed to or involving other persons (for example, a Respondent is not entitled to attend any interview of another Member or a third party conducted by the Sub-Committee in relation to the Complaint). In the event that a Respondent seeks to attend or be involved in any such process, he or she must obtain permission from the Chair of the Sub-Committee and the grant of permission remains at the discretion of the Chair of the Sub-Committee.
- (f) Sub-Committee findings
 - (i) A Sub-Committee (acting by a majority of those present and voting) shall make findings confined to whether or not there is a prima facie case of Misconduct.
 - (ii) In making its findings, a Sub-Committee shall not make any comments or recommendations as to whether or not any potential orders for Disciplinary Action should be contemplated.
 - (iii) If a Sub-Committee finds that there is a prima facie case of Misconduct:
 - (A) the Sub-Committee shall report its findings to the Convenor of the Conduct Committee;
 - (B) the Convenor of the Conduct Committee shall refer the Complaint to the Convenor of the Tribunal Panel for referral to a Tribunal for hearing; and
 - (C) the Complainant and the Respondent shall be notified in writing of these circumstances.
 - (iv) If a Sub-Committee finds that the information obtained from the investigation does not establish a prima facie case of Misconduct:



- (A) The Convenor of the Conduct Committee shall inform the Complainant of the findings and invite the Complainant to provide any further written submission in support of the Complaint should he or she wish to do so. The Complainant will have 14 days from receiving notice from the Convenor of the Conduct Committee to provide any such written submission.
 - (B) Upon receipt of any further written submissions, the Sub-Committee shall consider whether this information alters the Sub-Committee's assessment of the Complaint.
 - (C) If the Sub-Committee's assessment is not altered, the findings shall be referred to both the Convenor of the Conduct Committee and the Convenor of the Tribunal Panel who shall together determine whether to confirm the Sub-Committee's findings.
 - (D) If the Convenor of the Conduct Committee and Convenor of the Tribunal Panel both accept that the information obtained from the investigation does not establish a prima facie case of Misconduct, the Complaint shall be dismissed and the Complainant and the Respondent shall be informed of this in writing.
 - (E) If either or both the Convenor of the Conduct Committee and the Convenor of the Tribunal Panel subsequently conclude that the information obtained from the investigation does establish a prima facie case of Misconduct, the Complaint shall be referred to a Tribunal for hearing.
- (v) Any findings of a Sub-Committee must be contained in a written report and include (as a minimum):
- (A) a summary of the information relied upon;
 - (B) a brief analysis of the information relied upon and reasons for the findings; and
 - (C) a clear statement as to the accepted factual circumstances and findings of the Sub-Committee.

8. THE DETERMINATION STAGE

8.1 Proceedings of a Tribunal

- (a) Where a Complaint has been referred to the Convenor of the Tribunal Panel for allocation for a hearing:
 - (i) the Convenor of the Tribunal Panel shall appoint a Tribunal; and
 - (ii) the Tribunal shall proceed to hold a hearing to determine the Complaint.



8.2 Hearings

- (a) A hearing before a Tribunal shall be convened by the Chair of the Tribunal to determine the Complaint. At least 28 days' notice of such hearing shall be given to the Convenor of the Conduct Committee, the Respondent and the Complainant.
- (b) A Tribunal shall conduct the hearing in any manner as it sees fit.
- (c) A party to a hearing before a Tribunal may request and may be granted permission to appear in person or by telephone, video conference or other electronic means.
- (d) A representative of the Sub-Committee shall present its report and shall be a party to the proceedings before a Tribunal.
- (e) Subject to any alternative requirement under this Scheme, a Tribunal may join any of the following persons to be parties to the proceedings before the Tribunal:
 - (i) the Complainant;
 - (ii) the Respondent; and
 - (iii) other interested third parties, including but not limited to any regulatory body or relevant professional association.
- (f) Subject to any directions or rules of the Tribunal to the contrary, parties to proceedings before a Tribunal shall be entitled to:
 - (i) present evidence and information;
 - (ii) call and question witnesses (excluding the Conduct Committee, a Sub-Committee, a Tribunal, an Appeal Board and/or the relevant members of these bodies); and
 - (iii) make submissions (written or oral).
- (g) In the absence of a direction by the Tribunal to the contrary, each party to proceedings before a Tribunal must give to the Chair of the Tribunal any documents upon which they intend to rely by no later than 14 days before the scheduled commencement of the hearing.
- (h) On the application of any party or on its own initiative, a Tribunal may require the disclosure of documents (or parts thereof) by one party to another if the Tribunal considers this appropriate and in the interests of fairness. However, the Tribunal shall not require the production of any document which is privileged.
- (i) If a party challenges the authenticity of any document or otherwise objects to any information put to a Tribunal, the Tribunal shall consider and rule on the issue raised and may give the information such weight as it thinks fit.
- (j) In a hearing before a Tribunal, the Tribunal may consider and give weight to any decision or finding of another court, tribunal, regulatory body or professional association. In the event that such a decision or finding relates to the same matter or matters that are the subject of the Complaint, this decision or finding may be given significant weight by the Tribunal.



- (k) A Tribunal may, at any time before or during a hearing, direct that a Complaint be amended, provided that:
 - (i) the Tribunal is satisfied that the Respondent will not be substantially prejudiced in the conduct of his or her defence by the making of such an amendment; and
 - (ii) the Tribunal shall, if so requested by the Respondent, adjourn the proceedings or hearing for such time as is reasonably necessary to enable the Respondent to consider and respond to the Complaint in its amended form.
- (l) A Tribunal may, acting on its own motion or upon the application of any party to proceedings before the Tribunal:
 - (i) adjourn the proceedings or hearing at any time upon such terms as the Tribunal sees fit; and/or
 - (ii) seek to inform itself by obtaining whatever additional and/or independent evidence deemed relevant to its consideration of the matter.
- (m) A Respondent may make an admission of Misconduct at or prior to a hearing before a Tribunal. Such admission prior to a hearing shall be made in writing by the Respondent:
 - (i) to the Chair of the Tribunal; or,
 - (ii) if a Tribunal has not been convened to consider the Complaint, to the Convenor of the Tribunal Panel.

8.3 Determinations and orders of a Tribunal

- (a) A Tribunal shall make a determination regarding the Complaint, on the balance of probabilities and by the majority of votes by members, as to whether or not the Respondent has engaged in Misconduct.
- (b) If a Tribunal has determined that the Respondent has engaged in Misconduct, the Tribunal may order one or more of the following forms of Disciplinary Action:
 - (i) a written warning or letter of concern directed to the Respondent;
 - (ii) a Reprimand (Level 1) for Misconduct considered to be at the low end of severity;
 - (iii) a Reprimand (Level 2) for Misconduct considered to be severe;
 - (iv) suspension from membership with the Institute for such a period as the Tribunal shall specify;
 - (v) a direction to undertake specific action including education, retraining or supervised practice as the Tribunal shall specify;
 - (vi) restrictions on engaging in particular professional activities, as determined by the Tribunal, for such a period as the Tribunal shall specify;
 - (vii) payment of a financial penalty to the Institute or other persons of an amount the Tribunal shall specify;
 - (viii) expulsion as a Member;



- (ix) a requirement for the Respondent to enter an enforceable undertaking with the Institute (for example, an undertaking not to practise in a specified area of professional practice for a particular period or to undergo training of a specified kind). If the Respondent breaches such an undertaking, this breach may constitute Misconduct and may result in further proceedings against the Respondent under this Scheme; or
 - (x) a contribution to the costs of the proceedings including (but not limited to) an order for the Respondent to make such contribution to the Institute's or the Complainant's costs of the proceedings.
- (c) If a Tribunal makes orders in the form of suspension or expulsion of a Member, then:
- (i) if a notice of appeal is lodged, the imposition of the order shall be stayed until that appeal is finalised;
 - (ii) if a notice of appeal is not lodged, the imposition of the order shall take effect from the expiration of the period within which a notice of appeal must be lodged (unless the Tribunal issues an interim suspension order).
- (d) Unless a notice of appeal is lodged, any costs ordered to be paid by the Respondent shall be paid within 28 days of the receipt of the Tribunal's determination and order by the Respondent. If the Respondent does not pay the costs ordered in such time, the Respondent may be declared by the Chair of the Tribunal to be a defaulter and after being so declared shall cease to be a Member (but may be reinstated upon such terms and conditions as the Chair of the Tribunal determines).
- (e) Any determination or order of a Tribunal on any of the above matters shall be made by a majority of members of the Tribunal.
- (f) Any determination or order of a Tribunal must be contained in a written report and include:
- (i) the names of the members of the Tribunal;
 - (ii) a summary of the information relied upon;
 - (iii) a brief analysis of the information relied upon and reasons for the determination;
 - (iv) a clear statement as to the factual findings, determination and any orders of the Tribunal; and
 - (v) a statement of whether the determination was unanimous and, in the event of a non-unanimous determination, the number (but not the names) of the Tribunal members voting in favour of the determination.

8.4 Communication of Tribunal Determinations and orders

- (a) A Tribunal shall communicate its determination and orders in any proceedings to the CEO by providing a copy of its written report signed by the Chair of the Tribunal.



- (b) Copies of the written report of the Tribunal shall also be provided to the Respondent, the Complainant and the Convenor of the Conduct Committee as soon as reasonably practicable (unless deemed inappropriate, unreasonable or undesirable by the Tribunal).
- (c) Subject to clause 11 of this Scheme, the written report of the Tribunal will be made publicly available (including but not limited to being published on the Institute's website) 28 days after the date it is provided to the CEO, the Respondent, the Complainant and the Convenor of the Conduct Committee unless the Tribunal considers there are exceptional circumstances that render it inappropriate, unreasonable or undesirable for the written report to be made publicly available (either in its entirety or in part).

9. THE APPEAL STAGE

9.1 Appeal by Respondent

- (a) The Respondent may appeal against a determination or order made by a Tribunal by lodging a notice of appeal.
- (b) A notice of appeal shall be provided in writing to the CEO, with a copy being provided to the Chair of the Tribunal, no later than 28 days after the Tribunal's written report of determination has been issued to the Respondent.

9.2 Appeal by the Complainant or Convenor of the Conduct Committee

- (a) If the Complainant or the Convenor of the Conduct Committee is dissatisfied with a determination or order made by a Tribunal, the Complainant or the Convenor of the Conduct Committee may lodge a notice of appeal against the determination.
- (b) A notice of appeal shall be provided in writing to the CEO, with a copy being provided to the Chair of the Tribunal, no later than 28 days after the Tribunal's determination has been issued to the relevant party seeking to appeal, being either the Complainant or Convenor of the Conduct Committee.

9.3 Form and Content of the Notice of Appeal

- (a) In the notice of appeal, the party making the appeal shall state the grounds for the appeal.
- (b) The party making the appeal may amend the grounds for the appeal with the permission of an Appeal Board. Such permission may be refused or may be given on conditions as the Appeal Board, in its discretion, determines.

9.4 Appeal Hearings

- (a) If a party lodges a notice of appeal in the manner specified above, a hearing before an Appeal Board constituted by the Convenor of the Appeal Board shall be held to facilitate the determination of the appeal. At least 28 days' notice shall be given to the Respondent, the Complainant, the Convenor of the Conduct Committee and any other party to the proceedings of any hearing listed before an Appeal Board.



- (b) In advance of any hearing before an Appeal Board and subject to any directions to the contrary by the Chair of the Appeal Board, the Respondent, the Complainant, the Convenor of the Conduct Committee and any other party to the proceedings, shall receive copies of:
 - (i) the notice of appeal;
 - (ii) the determination, orders and written report of the Tribunal; and
 - (iii) upon request, any transcript of the hearing before the Tribunal as well as any documentary evidence or written submission that was put before and considered by the Tribunal.
- (c) An Appeal Board shall conduct the hearing in such a manner as it sees fit and in accordance with the provisions of this Scheme.
- (d) A party to a hearing before an Appeal Board may request and may be granted permission to appear in person or by telephone, video conference or other electronic means.
- (e) A representative of the Sub-Committee shall be entitled to appear as a party to the proceedings before the Appeal Board.
- (f) Subject to any other requirement under this Scheme, an Appeal Board may also join any of the following persons to be parties to the proceedings before the Appeal Board:
 - (i) the Complainant;
 - (ii) the Respondent; and
 - (iii) other interested third parties including but not limited to a regulatory body or professional association.
- (g) Subject to any directions or rules of the Appeal Board to the contrary, each party to the proceedings before an Appeal Board shall be entitled to:
 - (i) present evidence and information;
 - (ii) call and question witnesses (excluding any Sub-Committee, Conduct Committee, Tribunal, Appeal Board and/or the relevant members of these bodies); and
 - (iii) make submissions (written or oral).
- (h) An Appeal Board shall be entitled to hear from any witness and review any information it so chooses. The Appeal Board shall also have the discretion to admit fresh evidence if it thinks it is appropriate, reasonable and in the interests of procedural fairness.

9.5 Determinations of an Appeal Board

- (a) An Appeal Board may affirm, amend, vary or rescind any determination or order of the Tribunal and shall have all the powers vested in a Tribunal under clause 8.3.



- (b) An Appeal Board shall apply the civil standard of proof, being the balance of probabilities, and the onus of proof shall rest with the party that has brought the appeal. A determination of an Appeal Board shall be made on a majority of votes of members.
- (c) The determination of an Appeal Board shall be final.
- (d) If a Respondent is ordered by an Appeal Board to pay costs, the Respondent shall pay these costs within 28 days of the Appeal Board's determination and order being issued to the Respondent. In the event the Respondent does not pay such costs within the specified period, the Respondent may be declared by the Chair of the Appeal Board to be a defaulter and after being so declared shall cease to be a Member (but may be reinstated upon such terms and conditions as the Chair of the Appeal Board determines).
- (e) Where an Appeal Board orders that a Respondent shall be suspended as a Member, and the Respondent has not already been suspended under clause 8.3, the suspension shall take effect from the date of communication of the Appeal Board's order to the Respondent.
- (f) Where the Appeal Board orders that a Respondent shall be expelled as a Member, the expulsion shall take effect on the date of communication of the Appeal Board's order to the Respondent.
- (g) Decisions of an Appeal Board on any of the above matters shall be made by a majority of members of the Appeal Board. In the event that the majority of the Appeal Board decides not to amend, vary or rescind the determination and orders of the Tribunal, then the determination and orders of the Tribunal shall be deemed to have been affirmed.
- (h) Any determination of an Appeal Board must be contained in a written report and include:
 - (i) the names of the members of the Appeal Board;
 - (ii) a summary of the information relied upon;
 - (iii) a brief analysis of the relevant information and reasons for the determination;
 - (iv) a clear statement as to the factual findings, determination and any orders of the Appeal Board; and
 - (v) whether the determination was unanimous and in the event of a non-unanimous determination, the number (but not the names) of the Appeal Board members voting in favour of the determination.

9.6 Communication of Appeal Board Determinations

- (a) An Appeal Board shall communicate its determination and orders in any proceedings to the CEO by providing a copy of its written report signed by the Chair of the Appeal Board.



- (b) Copies of the written report of the Appeal Board shall also be provided to the Respondent, the Complainant and the Convenor of the Conduct Committee as soon as reasonably practicable (unless deemed inappropriate, unreasonable or undesirable by the Appeal Board).
- (c) Subject to clause 11 of this Scheme, the written report of the Appeal Board will be made publicly available (including but not limited to being published on the Institute's website) 28 days after the date it is provided to the CEO, the Respondent, the Complainant and the Convenor of the Conduct Committee unless the Appeal Board considers there are exceptional circumstances that render it inappropriate, unreasonable or undesirable for the written report to be made publicly available (either in its entirety or in part).

10. CONFIDENTIALITY

10.1 General Principles

- (a) When a Complaint is made, the Convenor of the Conduct Committee, Chair of the Tribunal and/or Chair of the Appeal Board may in their discretion request that a party or person otherwise involved in any proceedings agree in writing to keep certain information regarding the Complaint and associated process confidential. If such a request is issued and a person refuses or does not provide such written agreement, the Convenor of the Conduct Committee, the Chair of the Tribunal and/or the Chair of the Appeal Board may elect to refrain from providing the person with certain information associated with the processes implemented in accordance with this Scheme.
- (b) So far as reasonably practicable, the identities of any third parties to a Complaint shall be kept confidential.
- (c) Unless the Chair of a Tribunal or the Chair of an Appeal Board decides to the contrary, any hearings conducted by a Tribunal or an Appeal Board are intended to be open, may be attended by any person and are not subject to confidentiality. However, it remains within the discretion of the Chair of the Tribunal or the Chair of the Appeal Board to restrict attendances at hearings or determine whether a hearing is subject to confidentiality.
- (d) Except as otherwise provided in this Scheme or directed by the Convenor of the Conduct Committee, Chair of a Tribunal or Chair of an Appeal Board, the deliberations of the Sub-Committee, the Conduct Committee, the Tribunal and the Appeal Board, including their records and minutes, shall be kept confidential. However, this requirement of confidentiality does not apply to the written reports which are to be produced by the Sub-Committee, the Tribunal and Appeal Board pursuant to this Scheme.
- (e) Any requirement for confidentiality detailed within this Scheme shall not preclude the Convenor of the Conduct Committee, the Chair of a Tribunal or the Chair of an Appeal Board from liaising with other regulatory bodies or professional associations as may be appropriate in pursuance of this Scheme.



10.2 Exchange of Information

- (a) With the agreement of the Convenor of the Conduct Committee, separate Sub-Committees may exchange information concerning Complaints.
- (b) In granting or approving any exchange of information, the Convenor of the Conduct Committee shall consider:
 - (i) any potential impact or issues with respect to procedural fairness;
 - (ii) whether any Respondent or Complainant should be informed of the exchange of such information; and
 - (iii) whether any exchange of information should be subject to any undertakings (such as with respect to confidentiality) or any other conditions that may be considered appropriate in the circumstances.

11. AVAILABILITY AND DISSEMINATION OF INFORMATION

11.1 As noted above at clauses 8.4(c) and 9.6(c), unless otherwise provided for under this Scheme or considered to be inappropriate, unreasonable or undesirable by a Tribunal or an Appeal Board, the written report of a Tribunal or Appeal Board shall:

- (a) be made publicly available 28 days after a copy of this written report has been provided to the CEO, the Respondent, the Complainant and the Convenor of the Conduct Committee; and
- (b) be published on the Institute's website and in any other locations as may be considered appropriate by the CEO.

11.2 A Complaint that does not proceed beyond the investigation stage of this Scheme and is not heard by a Tribunal shall not be made publicly available unless the Convenor of the Conduct Committee and the Convenor of the Tribunal Panel together determine that it is in the public interest for the Complaint to be made publicly available and disclosed.

11.3 The form and content of any publication or disclosure of information under this Scheme shall be determined by:

- (a) the Convenor of the Conduct Committee and the Convenor of the Tribunal Panel in relation to a Complaint that does not proceed beyond the investigation stage;
- (b) a Tribunal in relation to any Complaint or Determination before the Tribunal; and
- (c) an Appeal Board in relation to any Complaint or Determination before the Appeal Board.

11.4 As a minimum, any publication or disclosure of information should include the following (unless otherwise considered inappropriate or undesirable by the relevant body authorised under this clause):

- (a) the names of the Complainant and the Respondent;
- (b) the nature and circumstances of the Complaint; and



- (c) details of any determination, orders or outcomes (including, but not limited to, Disciplinary Action implemented).
- 11.5 Members shall have access to notices of hearings before a Tribunal or an Appeal Board.
- 11.6 Any member of the Council, the Respondent, the Complainant and the Convenor of the Conduct Committee may make an application requesting the non-publication (in whole or in part) of information that would ordinarily be made publicly available under this Scheme. Any application for non-publication should be made within 28 days of receipt of the relevant determination, orders or written report. Whether such an application for non-publication is granted is at the discretion of and is to be determined by:
 - (a) the Convenor of the Conduct Committee and the Convenor of the Tribunal Panel in relation to a Complaint that does not proceed beyond the investigation stage;
 - (b) the Chair of the Tribunal in relation to any Complaint or Determination before a Tribunal; and
 - (c) the Chair of the Appeal Board in relation to any Complaint or Determination before an Appeal Board.
- 11.7 Where a Complaint is being or has been investigated, the Convenor of the Conduct Committee, Tribunal Panel or Appeal Board Panel, as the case may be, may, in his or her



discretion, inform the CEO of the existence of the complaint and its status or outcome if he or she determines that in the circumstances it is appropriate to do so.

12. CONFLICT OF INTEREST

- 12.1 Conduct Committee, Tribunal and Appeal Board members must not participate in any matter in respect of which they have, or would reasonably be perceived to have a conflict of interest.
- 12.2 In the event that a Conduct Committee, Tribunal or Appeal Board member becomes aware of grounds that may warrant his or her removal or the removal of another member of such a body under this Scheme (whether from conflict of interest or otherwise), these potential circumstances must be reported to the Convenor of the Conduct Committee, Tribunal Panel or Appeal Board Panel (as applicable). The Convenor of the body in question shall have the requisite power to determine any such alleged issue in his or her discretion and to reconstitute the body, in accordance with this Scheme,
- 12.3 If the Convenor of the Conduct Committee, Tribunal Panel or Appeal Board Panel is in a position of actual or potential conflict, these circumstances must be reported to the Council. The Council shall have the requisite power to determine any such alleged issue in their discretion and to appoint another member, eligible to hold such a position under the provisions of this Scheme, to be acting Convenor of the relevant body for an interim period or for the conduct of a particular matter.
- 12.4 A party to proceedings before a Tribunal or an Appeal Board shall be notified by the Chair of the Tribunal or the Chair of the Appeal Board, respectively, of the composition of the relevant Tribunal or Appeal Board. A party may request the replacement of a member of the Tribunal or the Appeal Board on the grounds of a conflict of interest between the said member and a party, or on the grounds of bias by a member of the Tribunal or the Appeal Board against a party. Any such request shall be determined by the Convenor of the Tribunal Panel or the Appeal Board Panel, respectively, who has the requisite power to determine the alleged issue in his or her discretion and may reconstitute the relevant body, in accordance with this Scheme, should this be considered appropriate.

13. GENERAL PROVISIONS

- 13.1 Transitional
- (a) Unless the Respondent otherwise agrees, any Complaint made prior to the commencement of this Scheme and any appeal pending as at that date shall continue to be governed by the provisions of the former scheme in force immediately prior to the commencement of this Scheme.
- 13.2 Regulations



- (a) The Council may, from time to time, make or vary such regulations, policies and/or procedures (not being inconsistent with the provisions of this Scheme) as it may consider necessary for the implementation of this Scheme and for the performance by the Conduct Committee, the Sub-Committee, a Tribunal and an Appeal Board of their respective functions under this Scheme.

13.3 Proceedings in general

- (a) Subject to this Scheme, the Conduct Committee, a Sub-Committee, a Tribunal or an Appeal Board (as the case may be) may give such directions and make rules with regard to the conduct of proceedings before it as it considers most suitable for the clarification, exploration and resolution of the issues and generally for the just handling of the matter.
- (b) For the avoidance of doubt, proceedings are not required to be conducted with excessive formality or with regard to the rules of evidence.

13.4 Training

- (a) Prior to being appointed to any role under this Scheme, the Institute shall ensure any Conduct Committee member, Sub-Committee member, Tribunal member or Appeal Board member (as the case may be) has been provided with appropriate training on:
 - (i) the work and professional circumstances of Members generally;
 - (ii) how to perform the role to which he or she is to be appointed; and
 - (iii) making decisions with sufficient skill, diligence and independence in compliance with this Scheme.



13.5 Withdrawal of Complaint(s)

- (a) Once a Complaint is received by the Convenor of the Conduct Committee, it remains subject to this Scheme irrespective of whether the Complainant subsequently conveys a desire to withdraw or discontinue the Complaint.
- (b) For the avoidance of doubt, the Complaint may continue to be dealt with pursuant to the processes detailed in this Scheme irrespective of the preference or desire of the Complainant. However, the preference or desire of the Complainant should be considered in determining how the Complaint is to be managed.

13.6 Custody of records

- (a) The CEO shall arrange appropriate custody of the records of the Conduct Committee, Tribunals and Appeal Boards (including the past records).
- (b) The CEO shall maintain a confidential register containing summary details of finalised Complaints with the object of promoting consistent outcomes in relation to Complaints. The register shall be made available to a Tribunal or an Appeal Board upon request.

13.7 Representation

- (a) A Respondent or other party to proceedings under this Scheme may seek to be represented by a lawyer or other person at any hearing of a Tribunal or an Appeal Board. However:
 - (i) there is no automatic right to be represented;
 - (ii) it is a matter for the discretion of the presiding body; and
 - (iii) it is generally expected that a party will appear in person during any process implemented pursuant to this Scheme.
- (b) If a party seeks to be represented in any process pursuant to this Scheme, the party shall provide notice of this intention in writing to the presiding body at least seven days before the scheduled hearing and/or meeting. The presiding body will subsequently reach a decision as to whether or not permission is granted with respect to representation.

13.8 Former Members

- (a) For the purposes of this Scheme, references to a Respondent shall include a former Member who has ceased to be a Member since the time of the conduct in respect of which a Complaint is made. Any such former Member shall remain bound to supply such information and explanations as may be required by the Sub-Committee, a Tribunal or an Appeal Board regarding that person's conduct and shall remain bound by any determinations of the Tribunal or Appeal Board in respect of any Misconduct committed while that person was a Member notwithstanding that that person's membership has ceased.



13.9 Delegation of Functions

- (a) A reference to a particular role or position in this Scheme includes any authorised delegate that is empowered to exercise these delegated functions pursuant to the Constitution or this Scheme.

13.10 Review

- (a) The Scheme will be reviewed five years from the Commencement Date.



SCHEDULE 1 – SIMPLIFIED OVERVIEW OF THE SCHEME AND KEY STEPS

