



SCHEDULE 1

DISCIPLINARY SCHEME

1. OBJECTIVES

- 1.1 In the interest of the Members and the public, this Scheme sets out the rules and procedures governing professional discipline of Members and the handling of complaints about the professional conduct of Members.
- 1.2 The conduct of disciplinary proceedings under this Scheme is not a judicial process and the rules of evidence do not apply. However, the objective is that the proceedings will be conducted in accordance with the rules of natural justice so as to achieve procedural fairness.
- 1.3 Proceedings under the Scheme shall be conducted as expeditiously as possible, with the aim of completing the investigation stage within two months, any Tribunal hearing within four months and any Appeal within seven months of the filing of the Complaint, subject to the complexity of the Complaint and the need to ensure that procedural fairness is provided to the Respondent.

2. INTERPRETATION

- 2.1 In this Scheme, unless the context otherwise requires:

'Actionable Conduct' has the meaning given to that term in Rule 3.2(a).

'Actuary' means a Fellow or Accredited Member of the Institute.

'Appeal Board' means the Appeal Board established under Rule 4.3(c) to determine a particular appeal.

'Appeal Board Panel' means the panel established under Rule 4.3(a).

'Chair of the Appeal Board' means the person appointed as the Chair of the Appeal Board under Rule 4.3(c)(i).

'Chair of the Tribunal' means the person appointed as the Chair of the Tribunal under Rule 4.2(f).

'Charge' means a formal allegation that a Member has been guilty of Actionable Conduct contained in a report prepared by the Sub-Committee under Rule 6.1.



'Commencement Date' means the date of the resolution of Members by which this Scheme, in this form, was incorporated in the Constitution.

'Committee' means the Professional Conduct Committee established under Rule 4.1(a).

'Complainant' means a person 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 committed or been engaged in Actionable Conduct.

'Constitution' means the Constitution of the Institute in force from time to time.

'Convenor of the Committee' means the person appointed by the Council pursuant to Rule 4.1 herein and includes an acting Convenor of the Committee nominated under Rule 10.1.

'Convenor of Tribunal Panel' means the person appointed by the Council pursuant to Rule 4.2 herein.

'Council' means the Council of the Institute constituted pursuant to the provisions of the Constitution.

'Member' means a Fellow, Accredited, Associate or Affiliate (including student) Member of the Institute.

'President' means the President of the Institute.

'Professional Service' means a service provided by a Member in a professional capacity, including actuarial advice provided by an Actuary. A Professional Service includes such a service provided on a pro bono basis.

'Professional Standard' means a standard that has been prepared in accordance with the Institute's Policy for Drafting Professional Standards and has been issued by the Institute.

'Regulatory Body' means a government tribunal, agency or body including but not limited to the Australian Securities and Investment Commission and the Australian Prudential Regulation Authority.

'Respondent' means a Member against whom a Complaint or Charge has been made.



'Rule' refers to a numbered provision of this schedule.

'Scheme' means this disciplinary scheme, being a schedule to the Constitution of the Institute.

'Secretary' means the person nominated by the Council of the Institute.

'Senior Vice President' means the Senior Vice President of the Institute.

'Sub-Committee' means an Investigating Sub-Committee appointed under Rule 5.1(a).

'Tribunal' means the Professional Conduct Tribunal established under Rule 4.2(d) to determine a particular Complaint.

'Tribunal Panel' means the panel established under Rule 4.2(a).

'Vice President' means the Vice President of the Institute.

'Voting Member' has the meaning given to that term in the Constitution.

3. ACTIONABLE CONDUCT

3.1 A Member may be subject to disciplinary action under this Scheme if the Member has committed or been engaged in Actionable Conduct.

3.2 For the purposes of this Scheme:

(a) 'Actionable Conduct' means conduct (whether by act or omission) constituting:

(i) professional misconduct; or

(ii) unsatisfactory professional conduct; or

(iii) conduct likely to bring discredit upon the Institute or the profession of Actuary,

and includes:

(iv) aiding, abetting, counselling, procuring, inducing or attempting to induce another person to engage in or commit conduct described in (i), (ii) or (iii) herein; or

(v) knowingly being concerned in, or a party to, conduct described in (i), (ii) or (iii) herein engaged in or committed by another person.



- (b) 'professional misconduct' includes:
 - (i) conduct occurring in connection with the provision of Professional Services that involves a substantial or persistent failure to reach or maintain a reasonable standard of competence or diligence;
 - (ii) conduct that would (if established) justify a finding that a Member is not a fit and proper person to engage in the provision of Professional Services and includes, but is not limited to, dishonesty or misleading or deceptive professional conduct; and
 - (iii) knowingly breaching, subverting or avoiding a mandatory requirement of any or all of the Constitution, Code of Professional Conduct, a Professional Standard or relevant requirements imposed under legislation including subordinate standards and rules.
- (c) 'unsatisfactory professional conduct' includes:
 - (i) conduct in connection with the provision of Professional Services that falls short of the standard of competence and diligence that a member of the public is entitled reasonably to expect of a Member or an Actuary as the case may be; and
 - (ii) a breach or breaches of or non-compliance with any or all of the Constitution, Code of Professional Conduct, a Professional Standard or standards imposed by relevant requirements under legislation including subordinate standards and rules, and which is either negligent and substantial, or negligent and persistent.
- (d) The fact that a Member, whilst a Member:
 - (i) is or has been convicted of an indictable criminal offence;
 - (ii) has been found to have acted fraudulently or dishonestly by any court of competent jurisdiction or tribunal or equivalent professional body to the Institute in Australia or elsewhere;
 - (iii) has been found by any court of competent jurisdiction or tribunal to have engaged in misleading or deceptive conduct in civil proceedings;



- (iv) has been the subject of an adverse determination by a Regulatory Body or equivalent professional body to the Institute in Australia or elsewhere;
- (v) is or has become 'insolvent under administration' as defined in the *Corporations Act 2001* (Cth); or
- (vi) has breached a determination of a Tribunal or Appeal Board of this Scheme (including but not limited to an enforceable undertaking),

is *prima facie* evidence of Actionable Conduct by that Member.

- (e) The fact that a Member failed to disclose in the application process when applying to become a Member of the Institute that he or she:
 - (i) had been convicted of an indictable criminal offence;
 - (ii) had been found to have acted fraudulently or dishonestly by any court of competent jurisdiction or tribunal or equivalent professional body to the Institute in Australia or elsewhere;
 - (iii) had been found by any court of competent jurisdiction or tribunal to have engaged in misleading or deceptive conduct in civil proceedings;
 - (iv) had been the subject of an adverse determination by a Regulatory Body or equivalent professional body to the Institute in Australia or elsewhere; or
 - (v) had become 'insolvent under administration' as defined in the *Corporations Act 2001* (Cth)

is *prima facie* evidence of Actionable Conduct by that Member.

3.3 A Member to whom paragraph 3.2(d) applies must notify the Institute of any event referred to:

- (a) if the event occurs after the Commencement Date – within seven days after the occurrence of the event; or
- (b) if the event occurred within the period of three years before the Commencement Date – within 60 days after the Commencement Date.



4. COMMITTEE; INVESTIGATING SUBCOMMITTEES; TRIBUNAL PANEL; APPEAL BOARD PANEL

4.1 *Professional Conduct Committee*

- (a) The Council shall establish a Professional Conduct Committee consisting of seven (7) Voting Members, or such greater number of Voting Members as the Council may determine from time to time, appointed by the Council and who during their term of membership of the Professional Conduct Committee shall not be members of the Council, the Tribunal Panel or the Appeal Board Panel.
- (b) The Council shall appoint one (1) of the members of the Committee to be the Convenor of the Committee.
- (c) Any member of the Committee, or the Convenor of the Committee, may resign from such office by written notice to the Institute and may be removed or replaced by the Council, and any vacancy in the membership of the Committee or the office of Convenor of the Committee shall be filled by the Council as it thinks fit.

4.2 *Tribunal Panel*

Membership

- (a) The Council shall appoint seven (7) Voting Members, or such greater number of Voting Members as the Council may determine from time to time, not being members of the Council, the Committee or the Appeal Board Panel, to serve as a panel from which Voting Members will be appointed to the Tribunal in accordance with Rule 4.2(d).
- (b) The Council shall appoint one of the members of the Tribunal Panel to be the Convenor of the Tribunal Panel.
- (c) Any member of the Tribunal Panel, or the Convenor of the Tribunal Panel, may resign from such office by written notice to the Institute and may be removed from such office by the Council. Any vacancy in the membership of the Tribunal Panel or office of Convenor of the Tribunal Panel shall be filled by the Council in accordance with Rule 4.2(a) or Rule 4.2(b).



- (d) For the purposes of determining a Complaint, a Tribunal of five (5) members shall be appointed by the Convenor of the Tribunal Panel and shall include:
 - (i) at least three (3) Voting Members (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) from members of the Tribunal Panel; and
 - (ii) at least one (1) independent person, not being a Member, being a relevant professional.
- (e) In the event that there are not at least three (3) members of the Tribunal Panel available to be members of a Tribunal in accordance with Rule 4.2(d), as a result of conflict of interest or otherwise, the Council shall appoint additional Voting Members, not being members of the Council, the Committee or the Appeal Board Panel, to the Tribunal Panel to enable the Tribunal to include at least three (3) Voting Members.
- (f) 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 who is a Voting Member to be Chair of that Tribunal.

4.3 ***Appeal Board Panel***

Membership

- (a) The Council shall appoint five (5) Voting Members, or such greater number of Voting Members as the Council may determine from time to time, not being members of the Council, the Committee or the Tribunal Panel, to serve as a member of the Appeal Board Panel from which Voting Members will be appointed to the Appeal Board in accordance with Rule 4.3(c).
- (b) Any member of the Appeal Board Panel may resign from such office by written notice to the Institute, and may be removed from such office by the Council. Any vacancy in the membership of the Appeal Board Panel shall be filled by the Council in accordance with Rule 4.3(a).
- (c) For the purposes of determining an appeal under Rule 7.1(a) or Rule 7.3(a), an Appeal Board of five (5) members shall be established consisting of:



- (i) a person who is not a Member, with qualifications and experience appropriate to the particular case, to be the Chair of the Appeal Board, appointed by the President, subject to Rule 11.7;
 - (ii) a practising barrister of at least five (5) years' standing or a retired judge, who is not a Member, nominated by the Chair of the Appeal Board in consultation with the President, subject to Rule 11.7; and
 - (iii) three (3) Voting Members appointed from members of the Appeal Board Panel by the Chair of the Appeal Board in consultation with the President, subject to Rule 11.7.
- (d) In the event that there are not three (3) Members of the Appeal Board Panel available to be members of an Appeal Board in accordance with Rule 4.3(c)(iii), as a result of conflict of interest or otherwise, the Council shall appoint additional Voting Members, not being members of the Council, the Committee or the Tribunal Panel, to the Appeal Board Panel to enable the Appeal Board to include three (3) Voting Members.

4.4 **General**

Replacement of Sitting Members

- (a) If, by reason of illness or absence or for any other reason (including a declaration under Rule 10.3) a member of a Sub-Committee, a Tribunal, or an Appeal Board is unable to serve in that respective capacity at any time, another member of the Committee, the Tribunal Panel or the Appeal Board Panel, as the case may be, shall be appointed to act in that respective member's place by:
 - (i) in the case of a Sub-Committee, the Convenor of the Committee;
 - (ii) in the case of the Tribunal, the Chair of the Tribunal;
 - (iii) in the case of the Appeal Board, the Chair of the Appeal Board in consultation with the President, subject to Rule 11.7 herein.

Quorums

- (b) Except where Rule 4.4(c) applies, the quorum for a meeting or hearing conducted by a Tribunal or an Appeal Board shall be all



the members of that body. In the event that such a meeting or hearing is inquorate then it shall be adjourned and shall be reconvened at such time and place as the Chair may determine or, at the discretion of the Chair, the meeting or hearing shall be conducted by a new Tribunal or Appeal Board, respectively, appointed in accordance with this Scheme.

- (c) The quorum for a meeting of a Tribunal or an Appeal Board held for the purpose of dealing with preparatory, procedural or administrative matters preliminary to a hearing shall be the nominated Chair of such body, together with two other members. An inquorate meeting shall be adjourned until reconvened at such time and place as the Chair determines.

Voting

- (d) Each member of a Tribunal or Appeal Board shall have one vote. A Chair of either body shall not have a casting vote.

Legal Advice

- (e) Subject to the consent of the Secretary, the Convenor of the Committee, the Chair of the Tribunal or the Chair of the Appeal Board may, in relation to the operation of an appointed Tribunal or Appeal Board, obtain legal advice to ensure that the requirements of procedural fairness are met.

Payment for Services

- (f) The Secretary shall have the discretion to pay any member of the Committee, a Tribunal Panel, an Appeal Board Panel or other person for services in relation to the conduct of this Scheme.

5. THE INVESTIGATION STAGE

5.1 *Investigating Sub-Committee*

Membership

- (a) Where it has been determined that there is or may be a *prima facie* case of Actionable Conduct in accordance with Rule 5.2, a Sub-Committee shall be established comprising not less than two (2) and not more than three (3) persons appointed by the Convenor of the Committee from the members of the Committee for the purposes of investigating a particular Complaint.



- (b) If the Convenor of the Committee is a member of the Sub-Committee, the Convenor of the Committee shall be Chair of the Sub-Committee. Otherwise, the Convenor of the Committee shall appoint one of the members of the Sub-Committee to be its Chair.

Powers of the Sub-Committee

- (c) The Sub-Committee may require and receive from the Respondent or any other Member, and may seek and receive from the Complainant or any other person, such information or documents as it thinks appropriate and necessary for the work of the Sub-Committee. Unless agreed by the Sub-Committee, neither the Respondent nor the representatives of the Respondent shall be present during any interview or meeting arranged with any other person for the purpose of such enquiries.

- (d) Sub-Committees appointed under Rule 5.1(a) shall have power:
- (i) to require originals or copies of any documents relevant to the investigation from any Member (whether or not such Member is the subject of the investigation);
 - (ii) to require any further information from any Member relating to the subject matter of the investigation;
 - (iii) to require any Member to appear before the Sub-Committee to give evidence as to any matter relevant to the subject matter of the investigation; and
 - (iv) subject to the consent of the Secretary, to obtain any legal or other expert advice and assistance as to any matter relevant to the subject matter of the investigation

save that no Member shall be required to produce any document or information which is the subject of legal professional privilege.

- (e) A Respondent shall apply his or her best endeavours and any Member shall apply his or her reasonable endeavours to comply with the obligations imposed by Rule 5.1(d). If a Member hinders, misleads or frustrates the Sub-Committee in its functions such conduct shall be *prima facie* Actionable Conduct.



Additional questions

- (f) A Sub-Committee may refer conduct or questions relating to the Respondent which were not included in the Complaint to the Convenor of the Committee who may direct the Sub-Committee to investigate or deal with such conduct or questions as part of its existing investigation or may refer the same to another Sub-Committee of the Committee.

Rights of the Respondent

- (g) If the Sub-Committee does not interview the Respondent during the investigation of the Complaint, then prior to completion of the investigation by the Sub-Committee, the Respondent can require the Sub-Committee to:
 - (i) provide the Respondent with an opportunity to be interviewed by the Sub-Committee; and
 - (ii) provide the Respondent with an opportunity to lodge such documents and/or written submissions as the Respondent desires.

Sub-Committee determinations

- (h) A Sub-Committee (acting by a simple majority of those present and voting) shall make a determination which shall be confined to whether or not there is a *prima facie* case of Actionable Conduct having been committed by the Respondent.
- (i) In making its determination a Sub-Committee shall not make any comments or recommendations as to penalty.

5.2 **Complaints**

- (a) Subject to Rule 5.2(e), any Complaint shall in the first instance be referred to the Convenor of the Committee for assessment.
- (b) On the request of a person considering lodging a Complaint, the Convenor of the Committee shall provide reasonable assistance to the person in formulating the Complaint.
- (c) If the Convenor of the Committee determines that the Complaint is not frivolous, then the Convenor shall refer the Complaint to an Investigating Sub-Committee (Sub-Committee).
 - (i) If the Sub-Committee determines with respect to the Complaint that there is a *prima facie* case of Actionable



Conduct having been committed by the Respondent, then the Sub-Committee shall so report to the Convenor of the Committee, who shall refer the Complaint to the Convenor of the Tribunal Panel for referral to a Tribunal for hearing.

- (ii) If the Sub-Committee determines that the Complaint is frivolous or there is no *prima facie* case of Actionable Conduct having been committed, then the Sub-Committee shall so report to the Convenor of the Committee who shall refer the Complaint to the Convenor of the Tribunal Panel for confirmation of the Sub-Committee's determination, provided that prior to making such a referral, the Convenor of the Committee shall inform the Complainant of the right to provide to the Convenor of the Tribunal Panel a written submission on the Complaint. The Complainant shall have fourteen (14) days from receiving notice from the Convenor of the Committee to provide such written submission.

Subsequent to any response being received by the Convenor of the Committee from the Complainant:

- (A) if the convenor of the Tribunal Panel also determines that there is no *prima facie* case of Actionable Conduct having been committed by the Respondent, then the Complaint shall be dismissed and the Complainant and the Respondent shall be so informed in writing.
- (B) if the Convenor of the Tribunal Panel determines that there may be a *prima facie* case of Actionable Conduct having been committed by the Respondent then the Complaint shall be referred to a Tribunal for hearing and the Complainant and the Respondent shall be so informed in writing.
- (d) (i) If the Convenor of the Committee determines that the Complaint is frivolous, or that there is no *prima facie* case or that the Complaint is obviously without grounds as to Actionable Conduct having been committed by a Member, then the Convenor of the Committee shall refer the matter to the Convenor of the Tribunal Panel for confirmation of the Convenor's determination, provided that prior to making such a referral the Convenor of the Committee shall inform the Complainant of the right to provide the Convenor of the Tribunal Panel a written



submission on the Complaint. The Complainant shall have fourteen (14) days from the date of receiving such notice to provide such written submission.

- (ii) If the Convenor of the Tribunal Panel also determines that the Complaint is frivolous or that there is no *prima facie* case of Actionable Conduct, then the Complaint shall be dismissed and the Convenor of the Committee shall so inform the Complainant and the Respondent in writing.
 - (iii) If the Convenor of the Tribunal Panel determines that the Complaint is not frivolous or that there may be a *prima facie* case of Actionable Conduct, then the Complaint shall be referred back to the Convenor of the Committee who shall refer the Complaint to a Sub-Committee and the Complainant and the Respondent shall be so informed in writing.
 - (iv) If the Sub-Committee then determines with respect to the Complaint that there is a *prima facie* case of Actionable Conduct having been committed by the Respondent, then the Sub-Committee shall so report to the Convenor of the Committee, who shall refer the Complaint to the Convenor of the Tribunal Panel for referral to a Tribunal for hearing.
 - (v) If the Sub-Committee determines that the Complaint is frivolous or that there is no *prima facie* case of Actionable Conduct having been committed, then the Complaint shall be dismissed and the Convenor of the Committee shall so inform the Complainant and the Respondent in writing.
- (e) Where, having regard to the interests of the public and the profession of actuary, the Council, the chair of a committee or taskforce of the Institute (other than the Committee) considers it appropriate that a matter relating to the conduct of a Member should be investigated, the Council, or the chair of a committee or taskforce of the Institute (as the case may be) shall lodge a Complaint with respect to the matter. In the case of a Complaint by the Council, the chair of a committee or taskforce of the Institute, the Complaint shall be lodged with the Convenor of the Committee.



6. THE TRIBUNAL STAGE

6.1 *Sub-Committee's Report*

- (a) In the event that the Sub-Committee or the Convenor of the Tribunal Panel makes a determination under Rule 5.2(c) or (d) that there is or may be a *prima facie* case of Actionable Conduct having been committed by the Respondent then, the Sub-Committee shall prepare a report for the Tribunal, and a copy of such report shall be sent by the Convenor of the Committee to the Convenor of the Tribunal Panel, the Respondent and, subject to Rule 8.1, the Complainant. The report shall include:
- (i) a statement of the Charge or Charges, supported where necessary by concise particulars of each Charge;
 - (ii) a statement of all the relevant facts that the Sub-Committee regards as material; and
 - (iii) a summary of the relevant information obtained by the Sub-Committee in the course of its investigations.
- (b) In the event that a Sub-Committee has made a report under Rule 6.1(a) and prior to a Tribunal hearing, there is a determination against the Respondent by a Regulatory Body, then the determination shall constitute *prima facie* evidence of Actionable Conduct pursuant to Rule 3.2(d)(iv) by the Respondent and shall form part of the Charge to be considered by the Tribunal.

6.2 *Proceedings of the Tribunal*

Where the Sub-Committee has prepared a report pursuant to Rule 6.1(a), a Tribunal established under Rule 4.2(d) shall proceed to determine the matter in accordance with the following provisions of this Scheme.

6.3 *Hearings*

- (a) A hearing before the Tribunal shall be convened by the Chair of the Tribunal to determine the Charge. Not less than twenty-eight (28) days' notice of such hearing shall be given to the Convenor of the Committee, the Respondent and, if the Complainant is invited to be a party under Rule 6.3(b), the Complainant.
- (b) Subject to this Scheme and the rules of procedural fairness, the Tribunal shall conduct the hearing in such manner as it sees fit,



including by video conferencing or other electronic means. A representative of the Sub-Committee shall present its report under Rule 6.1(a) and shall be a party to the proceedings before the Tribunal. Subject to Rule 8.1, the Tribunal may invite the Complainant to become a party to the proceedings before the Tribunal. The Respondent shall be entitled to be a party to the proceedings before the Tribunal. Each party to the proceedings shall be entitled to call and question witnesses (but not any member of a Sub-Committee, the Committee, the Tribunal Panel, a Tribunal, the Appeal Board Panel, or an Appeal Board), present evidence and information, and make submissions subject to any directions or rules of the Tribunal.

- (c) Hearings of the Tribunal shall be held in private.
- (d) The Tribunal may, acting on its own motion or upon the application of any party to the proceedings before the Tribunal, adjourn the hearing at any time upon such terms as the Tribunal sees fit.
- (e) At the hearing, the Respondent shall be entitled, subject to Rule 11.5, to be represented by a lawyer or by a Member. In the event that the Respondent is legally represented, the Convenor of the Committee may decide that the Sub-Committee should also be legally represented.
- (f) In the absence of a directive by the Tribunal to the contrary, each party must give to the Chair of the Tribunal no later than fourteen (14) days before the scheduled commencement of the hearing the documents upon which that party intends to rely. On the application of any party, the Tribunal may require the disclosure to that party of all or any documents disclosed by the other party if the Tribunal considers that they or any of them are relevant and that it is fair in all the circumstances that the document(s) should be so disclosed. The Tribunal shall not require the production of any document which is the subject of legal professional privilege.
- (g) If a party challenges the authenticity of any document put before the Tribunal, the Tribunal shall consider and rule on the objections raised by such party (and any evidence raised in rebuttal), and may, on the basis of such representations, give the evidence contained in such documents such weight as it thinks fit.
- (h) In a hearing before the Tribunal that involves the decision of a court or tribunal that relates to the Respondent:



- (i) the fact that the Respondent has been convicted of an indictable criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence;
- (ii) the finding and sentence of any tribunal exercising a professional disciplinary jurisdiction may be proved by producing a certified record of the finding and sentence; and
- (iii) the judgment of any civil court may be proved by producing a certified copy of the judgment.

In any case set out in this Rule, the findings of fact by the court or tribunal upon which the conviction, finding, sentence or judgment is based shall be admissible as conclusive evidence of that fact or those facts, unless otherwise determined by the Tribunal.

- (i) The Tribunal may at any time before or during the hearing direct that a Charge or any particulars of a Charge shall 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 for such time as is reasonably necessary to enable the Respondent to consider and respond to the Charge as so amended.
- (j) If prior to or during the hearing by the Tribunal, and prior to any decision of the Tribunal, there is a determination against the Respondent by a Regulatory Body, then the determination shall constitute *prima facie* evidence of Actionable Conduct by the Respondent pursuant to Rule 3.2(d)(iv) and will form part of the Charge to be considered by the Tribunal.
- (k) A Respondent may make an admission of Actionable Conduct at or prior to the hearing of the Tribunal. Such admission made prior to the hearing shall be made in writing by the Respondent to the Chair of the Tribunal or, if a Tribunal has not been convened to consider the Complaint, to the Convenor of the Tribunal Panel.



6.4 ***Determinations of the Tribunal***

- (a) The Tribunal shall be empowered to make a determination with respect to which the onus of proof shall rest with the Convenor of the Committee and the standard of proof shall be the civil standard as provided in section 140 of the *Evidence Act 1995* (Cth) as varied from time to time, that:
- (i) the Respondent has not committed or been engaged in Actionable Conduct;
 - (ii) the Respondent has not committed or been engaged in Actionable Conduct but that concern be expressed in relation to the conduct of the Respondent;
 - (iii) the Respondent has committed or been engaged in Actionable Conduct and that the Respondent be given a warning in relation to such conduct;
 - (iv) the Respondent has committed or been engaged in Actionable Conduct and that there shall be a penalty such that the Respondent
 - (A) be reprimanded;
 - (B) be suspended as a Member for such period as the Tribunal shall specify;
 - (C) be directed to undertake specific action including education, retraining, or supervised practice as the Tribunal shall specify; or
 - (D) be expelled as a Member
- or
- (v) In the event that the Tribunal, for any reason, does not make a determination the Complaint shall be dismissed.
- (b) The Tribunal shall be empowered to impose one or more penalties, as specified in Rule 6.4(a)(iv), in combination.
- (c) As a condition of any determination under Rule 6.4(a) the Tribunal may require the Respondent to enter into an enforceable undertaking (for example, an undertaking not to practise in a specified area of professional practice for such period as the Tribunal shall specify or an undertaking to undergo training of a specified kind). If the Respondent breaches such an



undertaking, the Respondent may be guilty of Actionable Conduct and further disciplinary proceedings may be commenced against the Respondent under this Scheme.

- (d) The Tribunal may order:
- (i) the Respondent to make such contribution to the Institute's or the Complainant's costs of the proceedings; or
 - (ii) the Institute to make such contribution to the Respondent's or the Complainant's costs of the proceedings

as it thinks fit.

- (e) If the determination of the Tribunal is that the Respondent be suspended as a Member under Rule 6.4(a)(iv)(B), or expelled from membership under Rule 6.4(a)(iv)(D) then unless a determination is made by that Tribunal under Rule 6.4(f):
- (i) if a notice of appeal is lodged, that determination shall be stayed until that appeal is finalised; or
 - (ii) if a notice of appeal is not lodged, that determination shall take effect from the expiration of the period within which a notice of appeal must be lodged.
- (f) If the determination of the Tribunal is that the Respondent be suspended as a Member under Rule 6.4(a)(iv)(B), or expelled from membership under Rule 6.4(a)(iv)(D) then the Tribunal may determine an interim suspension order. If such an order is made, the Member shall be suspended with effect from the date on which the Tribunal's determination is communicated to the Respondent and:
- (i) if a notice of appeal is lodged, the Member shall be and remain suspended until that appeal is finalised;
 - (ii) if a notice of appeal is not lodged, the Member shall be and remain suspended until the expiration of the period within which a notice of appeal must be lodged at which time the determination of the Tribunal that the Member be suspended as a member under Rule 6.4(a)(iv)(B), or expelled from membership under Rule 6.4(a)(iv)(D) shall take effect.



- (g) Unless notice of appeal is given, any costs ordered to be paid by the Respondent shall be paid within twenty-eight (28) days of the receipt of the Tribunal's determination by the Respondent. If the Respondent does not pay the costs ordered in such time, the Respondent may be declared by the Council 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 Council determines.
- (h) Decisions of the Tribunal on any of the above matters shall be made by a majority of four (4) of the five (5) members of the Tribunal.

6.5 ***Communication of Tribunal Determinations***

- (a) The Tribunal shall communicate its determination to the Secretary, with copies to the Respondent, the Convenor of the Committee and, subject to Rule 8.1, the Complainant, by notice in writing signed by the Chair of the Tribunal.
- (b) All such notices shall include the reasons for the determination, the names of the members of the Tribunal, whether the determination was unanimous and, in the event of a non-unanimous determination, the numbers (but not the names) of Tribunal members voting in favour of the determination. The Tribunal's notice to the Secretary shall include a recommendation as to the action which the Council should take under Rule 9.4 (if it applies) in relation to the matter.
- (c) In the absence of an appeal, the determination of the Tribunal and any penalty established under Rule 6.4(a) shall be communicated in writing to the Respondent by the President.

7. THE APPEAL BOARD STAGE

7.1 ***Appeal by Respondent***

- (a) The Respondent may by notice appeal against:
 - (i) a determination of the Tribunal under Rule 6.4(a)(ii) or Rule 6.4(a)(iii);
 - (ii) a determination of the Tribunal of a kind referred to in Rule 6.4(a)(iv)(A)-(D);
 - (iii) a condition of a determination referred to in paragraph (i) or (ii) of this Rule imposed under Rule 6.4(c); or



- (iv) an order under Rule 6.4(d)(i).

Such notice shall be given in writing to the Secretary, with a copy to the Chair of the Tribunal, no later than twenty-eight (28) days after the receipt by the Respondent of the Tribunal's determination.

- (b) In the notice of appeal, the Respondent shall state the grounds of appeal relied upon. The Respondent may amend the grounds of appeal with the consent of the Appeal Board. Such consent may be refused or may be given on such conditions as the Appeal Board, in its discretion, determines.

7.2 ***Appeal by Complainant or Convenor of the Committee***

- (a) Where the Complainant or the Convenor of the Committee have been notified under Rule 6.5(a) and either is dissatisfied with a determination under Rule 6.4, a condition of such a determination (including the absence of such a condition), or an order referred to in Rule 7.1(a)(iv) (including the absence of such an order), either the Complainant or the Convenor of the Committee may by notice in writing to the Secretary, with a copy to the Chair of the Tribunal, not later than twenty-eight (28) days after notice of the determination is received by the Complainant or the Convenor of the Committee, appeal against the determination, the condition (or the absence thereof) or the order (or the absence thereof).
- (b) In the notice of appeal, the party making the appeal shall state the grounds of appeal relied upon. The party making the appeal may amend the grounds of appeal with the consent of the Appeal Board. Such consent may be refused or may be given on conditions as the Appeal Board, in its discretion, determines.

7.3 ***Hearings***

- (a) If the Respondent gives notice of appeal under Rule 7.1(a) or the Complainant or the Convenor of the Committee gives notice of appeal under Rule 7.2(a), a hearing before an Appeal Board established under Rule 4.3(c) shall be convened by the Chair of the Appeal Board to determine the appeal. Not less than twenty-eight (28) days' notice of such hearing shall be given to the Respondent, the Complainant and the Convenor of the Committee.
- (b) In advance of the hearing before the Appeal Board, the Appeal Board, the Respondent, the Convenor of the Committee and, if



the Complainant is a party to the proceedings, the Complainant, shall receive copies of:

- (i) the determination of the Tribunal;
 - (ii) any transcript of the proceedings before it; and
 - (iii) the documentary evidence and any written submissions placed before it.
- (c) Subject to this Scheme and the rules of natural justice, the Appeal Board shall conduct the proceedings before it in such manner as it sees fit, including by video conferencing or other electronic means. The Convenor of the Committee and a representative of the Sub-Committee shall be entitled to be a party to the proceedings, and, subject to Rule 8.1, the Appeal Board may invite the Complainant to be a party to the proceedings before the Appeal Board and shall so invite the Complainant if the Complainant has given notice under Rule 7.2(a). The Respondent shall be entitled to be a party to the proceedings before the Appeal Board. Each party shall be entitled to call and question witnesses (but not any member of a Sub-Committee, the Committee, the Tribunal Panel, a Tribunal, the Appeal Board Panel, or an Appeal Board), present evidence and information, and make submissions subject to any directions or rules of the Appeal Board.
- (d) If prior to or during the hearing of an appeal by the Appeal Board, and prior to any decision of the Appeal Board, there is a determination against the Respondent by a Regulatory Body, then the determination shall constitute *prima facie* evidence of Actionable Conduct by the Respondent pursuant to Rule 3.2(d)(iv) and will form part of the Charge to be considered by the Appeal Board.
- (e) The Appeal Board shall be entitled to hear or re-hear any witness it so chooses. The Appeal Board shall have a discretion to admit fresh evidence if it thinks it is reasonable and in the interests of natural justice to do so. Subject to Rule 4.4(e), the Appeal Board may obtain such legal or other advice or opinions as it thinks fit.
- (f) Hearings of the Appeal Board shall be held in private.
- (g) At the hearing, the Respondent shall be entitled, subject to Rule 11.5, to be represented by a lawyer or by a Member. In the event that the Respondent is legally represented, the Convenor of the Committee and/or the Sub-Committee should also be legally represented.



7.4 ***Determinations of the Appeal Board***

- (a) The Appeal Board may affirm, amend, vary or rescind any determination of the Tribunal and for this purpose shall have all the powers vested in the Tribunal under Rule 6.4. In making a determination, the onus of proof shall rest with the Convenor of the Committee and the standard of proof to be applied by the Appeal Board shall be the civil standard as provided in section 140 of the *Evidence Act 1995* (Cth) as varied from time to time.
- (b) The determination of the Appeal Board shall be final.
- (c) If the Respondent is ordered by the Appeal Board to pay costs, they shall be paid by the Respondent within twenty-eight (28) days of the receipt of the Appeal Board's determination. In the event of non-payment of such costs within the specified period, the provisions of Rule 6.4(g) shall apply.
- (d) Where the Appeal Board determines that the Respondent shall be suspended as a Member, and the Respondent has not already been suspended under Rule 6.4, the suspension shall take effect from the date of communication of the Appeal Board's determination to the Respondent under Rule 7.5(a).
- (e) Where the Appeal Board determines that the Respondent shall be expelled as a Member, the expulsion shall take effect on the date of communication of the Appeal Board's determination to the Respondent under Rule 7.5(a).
- (f) Decisions of the Appeal Board on any of the above matters shall be made by a majority of four (4) of the five (5) members of the Appeal Board. In the event that no determination to amend, vary or rescind the determination of the Tribunal is made by the requisite majority of the Appeal Board then the determination of the Tribunal shall be deemed to have been affirmed.

7.5 ***Communication of Appeal Board Determinations***

- (a) The Appeal Board shall communicate its determination to the Secretary, with copies to the Respondent, the Convenor of the Committee, the Chair of the Tribunal and, subject to Rule 8.1, the Complainant, by notice in writing signed by the Chair of the Appeal Board.
- (b) All such notices shall include the reasons for the determination, the names of the members of the Appeal Board, whether the determination was unanimous and, in the event of a



non-unanimous determination, the numbers (but not the names) of Appeal Board members voting in favour of the determination. The Appeal Board's notice shall include a recommendation as to the action which the Council shall take under Rule 9.4 (if it applies) in relation to the matter.

- (c) Following the determination of the Appeal Board, such determination and any penalty shall be communicated in writing to the Respondent by the President.

8. CONFIDENTIALITY

- 8.1 When a Complaint is made, the Convenor of the Committee may in his or her discretion request that the Complainant agree in writing to keep confidential information provided to the Complainant concerning the application of the disciplinary process to the Respondent. If in such a case the Complainant fails to provide such written agreement, the Convenor of the Committee, the Chair of the Tribunal and the Chair of the Appeal Board may determine not to provide the Complainant with any confidential information concerning the application of the disciplinary process to the Respondent.
- 8.2 Except as provided in this Scheme, in particular, under Rules 9.1 to 9.5 inclusive:
 - (a) the deliberations of the Appeal Board, Tribunal, Committee and Sub-Committee, including their records and minutes, are confidential. Meetings of the Appeal Board, Tribunal, Committee and Sub-Committee may only be attended by their members and by any other person entitled under this Scheme or invited to attend; and
 - (b) all Members present at a meeting or hearing of the Appeal Board, Tribunal, Committee or Sub-Committee shall be personally bound to uphold the confidentiality of the deliberations and of any information obtained in connection with such a meeting, whether in oral or in written form, and whether obtained before, during or after such a meeting.
- 8.3 Notwithstanding the provisions of Rule 8.2, the Convenor of the Committee, the Chair of the Tribunal and the Chair of the Appeal Board may communicate any information concerning the activities of their respective bodies and the matters being considered by them to the Secretary and the President. The President may at his or her discretion communicate such information to the Council.



8.4 *Exchange of Information*

With the agreement of the Convenor of the Committee, separate Sub-Committees may exchange information concerning Complaints provided that such exchange does not affect the procedural fairness of any proceedings.

The Convenor of the Committee may, where there are concurrent Complaints against Respondents, authorise the exchange of information between Sub-Committees. Where such exchange takes place, the Respondent(s) shall be informed and shall be entitled to receive a copy of the information exchanged provided that, prior to a Respondent receiving the information, that Respondent has given undertakings of confidentiality acceptable to the Convenor of the Committee with respect to the information proposed to be exchanged.

9. **PUBLICITY**

- 9.1 The Council is responsible for the publication of any information to Members, government agencies or other parties in relation to disciplinary action against a Member under this Scheme.
- 9.2 Publicity shall occur at certain stages of the disciplinary process. There shall be no publicity in respect of Complaints that do not proceed to a Tribunal hearing. Publicity shall occur at the stage at which a Sub-Committee prepares a report pursuant to Rule 6.1(a) for the purposes of a Tribunal hearing. Publicity shall also occur at the stage at which a Tribunal has made a determination. Further publicity shall occur at the stage at which any appeal under this scheme has been lodged and also when it has been concluded.
- 9.3 The form of publicity shall be recommended by the Tribunal or the Appeal Board to the Council for decision, provided that, as a minimum, the information published shall include:
- (a) the names of the Complainant and the Respondent;
 - (b) the nature and circumstances of the Complaint; and
 - (c) following the decision of the Tribunal or the Appeal Board (as the case may be), details of the determination and any penalty imposed.
- 9.4 In exceptional circumstances, at the discretion of the Council, certain details in relation to the Complaint may be kept confidential.



- 9.5 Subject to Rule 9.2, the Council shall report annually to Members such information in relation to the activities of the Committee, and any proceedings before any Tribunal or Appeal Board during the year.

10. CONFLICT OF INTEREST

- 10.1 Members of the Committee must not participate in any matter in respect of which they are, would be or would reasonably be perceived to be in a position of conflict of interest. If the Convenor of the Committee is in such a position, the President shall nominate another member of the Committee to be acting Convenor of the Committee for the purposes of the particular matter.
- 10.2 The parties to proceedings before the Tribunal or the Appeal Board shall be notified by the Chair of the Tribunal, or the Chair of the Appeal Board, respectively, of the composition of the Tribunal or the Appeal Board, respectively. 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 in his or her discretion by the Chair of the Tribunal, or the Chair of the Appeal Board, respectively, who shall have the power to reconstitute the relevant body in accordance with this Scheme.
- 10.3 A member of a Tribunal or an Appeal Board who becomes aware of grounds for such member's own removal, whether from conflict of interest or otherwise, must so declare as soon as possible. The Chair of the Tribunal, or the Chair of the Appeal Board, respectively, shall have the power to reconstitute the relevant body in accordance with this Scheme in order that such member should be replaced.

11. GENERAL PROVISIONS

11.1 *Transitional*

Unless the Respondent otherwise agrees, any Complaint made prior to the Commencement Date and any appeal pending as at that date shall continue to be governed by the provisions of the Constitution in force immediately prior to the Commencement Date.

11.2 *Regulations*

The Council may from time to time make or vary such regulations (not being inconsistent with the provisions of the Constitution or this Scheme) as it may consider necessary for the implementation of this Scheme and



for the performance by the Committee, the Sub-Committee, the Tribunal and the Appeal Board of their respective functions under this Scheme.

11.3 *Proceedings in general*

Subject to this Scheme the 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 meetings or proceedings before it as it considers most suitable for the clarification of the issues and generally for the just handling of the meeting or proceedings. The Committee, Sub-Committee, Tribunal and Appeal Board shall not be bound by any enactment or rule of law relating to the admissibility of evidence in a court of law.

11.4 *Custody of records*

- (a) The Secretary shall arrange appropriate custody of the records of the Committee, Tribunals and Appeal Boards (including the past records).
- (b) The Secretary shall maintain a confidential Register containing summary details of finalised Complaints with the object of promoting consistent penalties in relation to established Complaints. The Register and a copy of the decision of any Tribunal or Appeal Board shall be made available to the Chairman of any Tribunal or Appeal Board or the President upon the request of that person. The Register shall not include the name of a Respondent unless the name of that Respondent has been made public pursuant to the provisions of this Scheme.

11.5 *Representation at Hearings*

If a Respondent wishes to be represented by a lawyer or a Member at the hearing of a Tribunal or an Appeal Board, that Respondent shall give notice of this desire to the Chair of the Tribunal, or the Chair of the Appeal Board, as the case may be, at least seven (7) days before the hearing, but the Chair of the Tribunal, or the Chair of the Appeal Board, as the case may be, may at that person's discretion permit the Respondent to be so represented, notwithstanding that such notice has not been given. If the Tribunal or the Appeal Board, as the case may be, is satisfied that a Member has had reasonable notice of a hearing, the proceedings at the hearing shall be valid and of full effect, notwithstanding that the Respondent does not attend or state his or her case in person or is not represented.



11.6 ***Former Members***

For the purposes of this Scheme, references to the 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 Actionable Conduct committed while that person was a Member notwithstanding that that person's membership has ceased.

11.7 ***References to "President" to include President, Senior Vice President, Vice President and President's nominee***

Unless the context indicates otherwise, wherever under a provision of this Scheme an act or thing is to be done by or in consultation with the President or the consent or approval is required of the President, the reference to President is:

- (a) a reference to the Senior Vice President, if the President is unable, by reason of absence or illness, or for any other reason including conflict of interest, to act as required by the provision;
- (b) a reference to the Vice President, if the President or the Senior Vice President is not able, by reason of absence or illness, or for any other reason including conflict of interest, to act as required by the provision; or
- (c) a reference to a person, not being a member of the Council, the Committee, the Tribunal Panel or the Appeal Board Panel, nominated by the President, if the President, the Senior Vice President or the Vice President is not able, by reason of absence or illness, or for any other reason including conflict of interest, to act as required by the provision.