



Institute of Actuaries of Australia

ACN 000 423 656

# CONSTITUTION

As at April 2008

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**CONSTITUTION**  
**OF**  
**THE INSTITUTE OF ACTUARIES OF AUSTRALIA**  
  
**A PUBLIC COMPANY LIMITED BY GUARANTEE**

**1. DEFINITIONS AND INTERPRETATION**

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1.1 In this Constitution, unless the contrary intention appears:

**'Annual General Meeting'** means an annual general meeting of Members.

**'Business Day'** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays.

**'Constitution'** means the constitution of the Institute as amended from time to time.

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

**'Disciplinary Scheme'** means the disciplinary scheme set out in Schedule 1 as amended from time to time.

**'Extraordinary General Meeting'** means a general meeting of Members other than an Annual General Meeting.

**'General Meeting'** means a general meeting of Members.

**'Independent Membership Review Panel'** means the independent membership review panel established in accordance with clause 5.

**'Institute'** means The Institute of Actuaries of Australia ABN 69 000 423 656.

**'Member'** means a member of the Institute.

**'Office'** means the registered office of the Institute.

**'Officer'** has the same meaning as in section 9 of the Corporations Act;

**'Register'** means the register of Members kept by the Institute in accordance with clause 6.7.

**'Secretary'** means the person appointed by the Council to perform the duties of secretary of the Institute.

**'Special Resolution'** has the meaning assigned to it by the Corporations Act.

**'Vacancy Pool'** has the meaning set out in clause 11.1.

**'Voting Member'** means a Member who is a Fellow of the Institute.

**'Written'** or **'in writing'** includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

- 1.2 In this Constitution, unless the contrary intention appears:
- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
  - (b) words importing natural persons include corporations;
  - (c) other grammatical forms of defined words or expressions have corresponding meanings;
  - (d) headings are for ease of reference only and do not affect the construction or interpretation of this Constitution;
  - (e) a reference to the Corporations Act is a reference to the Corporations Act 2001 (Cth) as modified, amended or replaced from time to time; and
  - (f) a reference to a clause or schedule is a reference to a clause or schedule of this Constitution.
- 1.3 Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.
- 1.4 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Institute.
- 1.5 Where a given number of days' notice, or notice extending over any other period, is required to be given, the day upon which the notice is

given and the day upon which the event or meeting takes place shall not be counted in such number of days or other period.

- 1.6 Where anything is required to be done within a given number of days after a meeting, the day upon which such meeting takes place shall not be counted in such number of days.

## **2. OBJECTS**

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- 2.1 The objects for which the Institute is established include, but are not limited to:

- (a) increasing the value to the community of the actuarial profession and fostering the development of actuarial science;
- (b) encouraging and assisting persons in the study of actuarial science and any other subjects of interest to the actuarial profession;
- (c) representing the actuarial profession in Australia;
- (d) promoting the general efficiency of the actuarial profession and encouraging and promoting good relationships between the members of the actuarial profession;
- (e) increasing public awareness of the actuarial profession and enhancing its reputation;
- (f) establishing and upholding standards of professional conduct by members of the actuarial profession for the protection of the public and in the public interest;
- (g) providing education, encouraging continuing professional development and promoting research in actuarial science;
- (h) holding and collaborating in the holding of conferences and meetings for the discussion of professional affairs, interests and duties, for the reading of papers and delivery of lectures and creating forums for discussion of contemporary and relevant issues;
- (i) discussing and commenting on the actuarial aspects of public, social and economic and financial questions which from time to time may be the subject of public interest;
- (j) considering the actuarial aspects of legislation and regulation existing and proposed and taking such action as is considered desirable in relation to such legislation and regulation;

- (k) providing a system of professional accreditation of actuaries (including mutual recognition) for the benefit and protection of the public and Members and arranging and conducting a system of examinations or other tests to determine the actuarial qualifications of those who submit themselves to them. [Provided that, except in the case of certificates issued in respect of the qualification of Fellow of the Institute, any certificate issued by the Institute shall, on the face of it, show that it is merely a certificate granted on an examination or test by the Institute or upon other qualifications prescribed by the Constitution for the time being in force and that it does not take effect under any statutory or public power];
  - (l) arranging for the compilation and publication of statistical data and of actuarial tables;
  - (m) undertaking and instituting any trusts the undertaking of which are in furtherance of the interests or for the benefit of the Institute or in furtherance of its objects;
  - (n) safeguarding the interests and welfare of Members to further their advancement and to promote whatever may lead to the improvement of their status;
  - (o) instituting, defending, appearing and joining in any proceedings or hearing before any court, tribunal or commission in Australia or elsewhere in which, in the opinion of the Council, the Members may have an interest and making submissions and giving evidence as the Council may consider desirable; and
  - (p) doing all such other lawful things as are incidental or conducive to the attainment of the above objects or any of them, but this shall not include anything which, if set forth as an object of this Constitution, would render the licence of the Institute in force under section 151 of the Corporations Act liable to be revoked.
- 2.2 The Institute may exercise the powers in section 124(1) of the Corporations Act to:
- (a) carry out the objects in this clause 2; and
  - (b) do all things incidental or convenient in relation to the exercise of power under clause 2.2(a).

### **3. INCOME AND PROPERTY OF THE INSTITUTE**

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- 3.1 The income and property of the Institute will only be applied in the promotion of the objects of the Institute as set out in clause 2.

- 3.2 No income or property of the Institute will be paid or transferred directly or indirectly by way of dividend, bonus or distribution of profit to any Member.
- 3.3 Subject to clauses 13.4 and 15(b), clause 3.2 does not prevent the payment in good faith of:
- (a) remuneration to Officers or employees of the Institute or to any Member in return for any services rendered or goods supplied to the Institute except services rendered by a member of the Council; or
  - (b) interest on moneys lent by a Member at a rate not exceeding current bank overdraft rates of interest.
- 3.4 Subject to clauses 13.4 and 15(b), no member of the Council shall be appointed to any salaried office of the Institute or any office of the Institute paid by fees and no fees, remuneration or other benefit in money or moneys worth shall be given by the Institute to any member of the Council as such a member, except payment of out of pocket expenses incurred by a member of the Council in the performance of any duty while a member of the Council where the amount payable does not exceed an amount previously approved by the Council.
- 3.5 Nothing in this clause 3 prevents or restricts the Institute making any payment permitted or contemplated to be made by the Institute under or in pursuance of clause 26.

#### **4. ADMISSION**

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- 4.1 The number of Members of the Institute is unlimited.
- 4.2 The Members of the Institute will be:
- (a) the persons who are Members at the date of adoption of this Constitution; and
  - (b) any persons who are admitted to membership in accordance with this Constitution.
- 4.3 Applications for membership of the Institute must be in writing, in a form prescribed by the Council and signed by the applicant.
- 4.4 An application must state the applicant's:
- (a) full name;
  - (b) date of birth;



- (c) residential address; and
  - (d) actuarial and other academic qualifications in detail.
- 4.5 An application must include a reference to the effect that the applicant is suitable for membership of a professional body and is a person who could be relied upon to maintain the standards of the Institute. The reference must be signed by two persons (or such greater number prescribed by the Council) each of whom must be a person over the age of 18 years who is not a member of the applicant's family and who has known the applicant for at least 12 months.
- 4.6 An application for membership shall be submitted to the Secretary and be accompanied by the entrance fee (if any) and annual subscription fee for the then current year.
- 4.7 The Council may, in its discretion, approve an application for membership if it is of the opinion that the applicant has the necessary qualifications for the class of Member for which he or she has applied. The Council may call on the applicant to supply any evidence of eligibility for membership that it considers reasonably necessary. The Council may reject an application for membership if the applicant is a person to whom any of the matters enumerated under sub-paragraphs (i)-(vi) of Rule 3.2(d) of the Disciplinary Scheme applies (other than the qualifying requirement for application of that rule).
- 4.8 As soon as practicable following the decision of the Council in respect of an application, the Secretary will send the applicant written notice of the Council's decision. The Secretary will inform the applicant that if he or she is dissatisfied with the decision of the Council, the applicant may request a review of the decision by an Independent Membership Review Panel.
- 4.9 The rights and privileges of every Member will be personal to each Member and will not be transferable by the Member's own act or by operation of law.
- 4.10 If a person who has ceased to be a Member makes a written application to the Council expressing his or her wish to be reinstated as a Member, the Council may reinstate that person as a Member upon such terms and conditions as it determines.

## **5. INDEPENDENT MEMBERSHIP REVIEW PANEL**

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- 5.1 Upon receipt by the Secretary of a written request by an applicant for membership for a review of the Council's decision in respect of the applicant's application, the Council shall establish an Independent

Membership Review Panel in accordance with clause 5.2 to review the decision of the Council in respect of that application for membership.

5.2 The membership of the Independent Membership Review Panel will be:

- (a) one Voting Member, not being a member of the Council; and
- (b) two persons who are not Members, one of whom is a practising barrister or solicitor and the other a practising accountant,

appointed by the Council.

5.3 The Independent Membership Review Panel established under clause 5.1 shall:

- (a) review the determination of the Council in relation to an admission or rejection of an applicant's membership; and
- (b) either confirm the decision of the Council or make a recommendation to the Council that its decision be varied or reversed, as the Panel may determine.

On receiving a recommendation from the Panel as referred to in paragraph (b), the Council must re-consider its decision taking into account the recommendation of the Panel and may either confirm, vary or reverse its previous decision as the Council may determine.

5.4 Subject to the Constitution, the Council may delegate such powers and make such by-laws and rules as may be necessary or convenient for the purposes of the conduct of the Independent Membership Review Panel and its proceedings.

5.5 The Council may revoke any delegation of power and revoke or vary any by-laws and rules with respect to the conduct and proceedings of the Independent Membership Review Panel.

## **6. CLASSES OF MEMBERS**

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6.1 Members shall be of four classes, namely:

- (a) Fellow;
- (b) Accredited Member;
- (c) Associate; and
- (d) Affiliate.

A Member shall be a member of the first named of these classes for which he or she is qualified and references in this Constitution to a Fellow, Accredited Member, Associate or Affiliate of the Institute are references to a Member who is a member of that class of Members.

6.2 Subject to clause 6.6, a Member is qualified to be a Fellow if the Member:

- (a) was classified as a Fellow pursuant to the constitution of the Institute in force immediately before adoption of this Constitution; or
- (b) has passed or been exempted from examinations of the Institute qualifying the Member as a Fellow and/or has the experience or other qualifications determined by the Council for the class of Fellow.

6.3 Subject to clause 6.6, a Member is qualified to be an Accredited Member if the Member:

- (a) was classified as an Accredited Member pursuant to the constitution of the Institute in force immediately before adoption of this Constitution; or
- (b) has the recognised experience or qualifications determined by the Council for the class of Accredited Member.

6.4 Subject to clause 6.6, a Member is qualified to be an Associate if the Member:

- (a) was classified as an Associate pursuant to the constitution of the Institute in force immediately before adoption of this Constitution; or
- (b) has passed or been exempted from the examinations of the Institute qualifying the Member as an Associate and/or has the experience or other qualifications determined by the Council for the class of Associate.

6.5 Subject to clause 6.6, a Member is qualified to be an Affiliate if the Member:

- (a) was classified as a Student or a Lay Member pursuant to the constitution of the Institute in force immediately before adoption of this Constitution; or
- (b) has applied to be an Affiliate of the Institute and meets the entry standards or other qualifications determined by the Council for the class of Affiliate.

- 6.6 The Council may at any time vary the qualifications for any class of Members as the Council may determine, provided that no such variation shall affect the entitlement of a Member to be a member of the class for which the Member is qualified immediately prior to the time of the variation.
- 6.7 The Institute shall maintain at the Office a register of Members showing for each Member his or her last known residential address, the class to which the Member belongs, whether the Member is a Voting Member and whether the Member is a Life Member.
- 6.8 Fellows and Associates of the Institute shall be entitled to use the post-nominals 'FIAA' and 'AIAA', respectively. Such letters may be substituted by another combination of letters approved by the Members by Special Resolution.

## **7. LIFE MEMBERS**

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The Council may recommend that any Voting Member be elected as a Life Member and, following such recommendation, the nomination shall be submitted at an Annual General Meeting of the Institute. A poll shall be taken thereon and if at least three-quarters of the votes cast are in favour of the Member's election as a Life Member, the Member shall be declared duly elected as such.

## **8. CONDITIONS OF MEMBERSHIP**

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- 8.1 It is a condition of membership of the Institute that:
- (a) an applicant who applies for membership; or
  - (b) a Member, in the case of renewal of membership of the Institute, is deemed to agree to be bound by:
    - (c) this Constitution; and
    - (d) any document:
      - (i) already in existence pursuant to a power under a constitution of the Institute and in force; or
      - (ii) brought into existence pursuant to a power granted under this Constitution,
- and:

- (iii) which is in force; and
  - (iv) in respect of which compliance is expressed to be a condition of membership of the Institute.
- 8.2 The Council has the power, consistent with the objects set out in clause 2, to determine, amend or repeal any condition of membership to the Institute.

## **9. TERMINATION AND SUSPENSION OF MEMBERSHIP**

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- 9.1 A person shall cease to be a Member if the person:
  - (a) resigns as a Member by notice in writing to the Institute;
  - (b) dies;
  - (c) is found to suffer mental illness or mental incapacity under legislation relating to mental health; or
  - (d) is terminated or expelled as a Member under a policy in force pursuant to the power of Council under clause 10.1(d)(i) or the Disciplinary Scheme.
- 9.2 A notice of resignation given under clause 9.1(a) shall not be effective if given whilst an investigation or hearing is proceeding under the Disciplinary Scheme, unless the Council in its discretion determines to accept such resignation (and, in that event, upon such terms and conditions as it may specify).
- 9.3 If a Member is suspended under the Disciplinary Scheme, he or she is not entitled to exercise any of the rights and privileges held by that Member in their capacity as a Member (including, where relevant, any voting rights):
  - (a) from the date of the suspension order being effective; and
  - (b) for the duration of time specified in the suspension order.

## **10. FEES AND SUBSCRIPTIONS**

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- 10.1 Subject to clause 10.2, the Council may determine, from time to time:
  - (a) the entrance fee, annual subscription fee and other fees payable by each Member or each class of Member;

- (b) that one or more classes of Member be divided into sub-classes or categories for the purposes of determining fees and subscriptions and may determine any such fees and subscriptions for such sub-classes or categories;
- (c) the due date for payment of fees and subscriptions; and
- (d) policies with respect to:
  - (i) non-payment of fees and subscriptions by a due date, including termination of a Member's membership for non-payment of fees and subscriptions by a due date;
  - (ii) the commutation of fees and subscriptions; and
  - (iii) disputes with respect to fees and subscriptions.

10.2 No subscriptions and fees shall be payable by Life Members.

## **11. THE COUNCIL**

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- 11.1 (a) The Council shall have a target number of 12 members.
- (b) The "Vacancy Pool" at any point in time is equal to the difference between the target number of members of the Council specified in clause 11.1(a) and the actual number of members of the Council anticipated to remain at the next Annual General Meeting after those members of the Council due to retire at that Annual General Meeting so retire.
- (c) For the purposes of clause 11.1(b), the actual number of members of the Council includes any *ex officio* members under clause 12.2 anticipated to remain members of the Council after the next Annual General Meeting and any casual vacancies on the Council that the Council resolves to fill prior to the next Annual General Meeting (any casual vacancies not so resolved to be filled are therefore excluded from the actual number of members of the Council and are added to the Vacancy Pool).
- 11.2 Subject to clause 11.10(b), the number of members equal to the Vacancy Pool shall be elected to the Council by Members at an election held in conjunction with each Annual General Meeting and shall hold office as from the conclusion of that Annual General Meeting.
- 11.3 Subject to clauses 11.13 and 12, a member of the Council must retire from office at the conclusion of the fourth Annual General Meeting after he or she was elected or deemed to have been elected as a member of the Council.

- 11.4 (a) Subject to clause 11.4(b), a retiring member of the Council shall not be eligible for re-election until the Annual General Meeting next following that at which he or she retired.
- (b) The provisions of clause 11.4(a) do not apply to a member of the Council who was appointed under clause 11.12 to fill a casual vacancy and who, at the date of expiration of his or her initial term, has served less than two (2) years on the Council.
- (c) A member of the Council who resigns from the Council prior to the expiration of their term shall not be eligible for re-election until the second Annual General Meeting next following the date of his or her resignation from the Council.
- 11.5 Only Voting Members shall be eligible to be members of the Council and to vote on the elections of members of the Council.
- 11.6 (a) The election of members of the Council shall be conducted by secret ballot using proportional representation.
- (b) The ballot shall close on such date within the 60 day period ending on the day preceding the Annual General Meeting as the Council shall determine.
- 11.7 The Council shall make and publish rules not inconsistent with the Constitution for the conduct of elections and shall have power to alter or repeal wholly or partly any such rules.
- 11.8 Each election shall be under the control of a returning officer appointed by the Council (not being a candidate for election).
- 11.9 (a) Subject to paragraph (b), a Member shall be nominated for election to Council in writing signed by three (3) Voting Members.
- (b) A nomination under paragraph (a) is valid if it is:
- (i) signed by the proposed nominee; and
- (ii) lodged with the Secretary at least 30 days before the closing date for the ballot determined under clause 11.6(b).
- (c) Each candidate shall, at the time of being nominated under paragraph (a), supply:
- (i) the candidate's actuarial qualifications (including the year of qualifying as a Fellow); and

- (ii) details of the candidate's current employment (and, if the candidate desires it, details of the candidate's past employment) and any other relevant experience and service,

and this information shall be supplied to Voting Members with the election ballot papers.

11.10 If the number of nominations for election as members of the Council is:

- (a) equal to the Vacancy Pool, the returning officer shall at the Annual General Meeting declare the persons nominated to be elected as members of the Council;
- (b) less than the Vacancy Pool, the returning officer shall declare the persons nominated to be elected as members of the Council at the Annual General Meeting and the Council in existence on the day following the ballot closing date determined by the Council under clause 11.6(b) may appoint such additional member or members as shall be necessary to fill any vacancy in the number to be elected and any person so appointed shall be deemed to have been elected as member of the Council at that same Annual General Meeting; or
- (c) more than the Vacancy Pool, the returning officer shall conduct a ballot in accordance with clause 11.6(a) and the rules then in force relating to the conduct of elections and shall at the Annual General Meeting declare the persons elected by the ballot to be elected as members of the Council.

11.11 A member of the Council shall cease to be a member of the Council if he or she:

- (a) becomes disqualified from managing corporations under or by virtue of section 206B, 206C, 206D, 206E or 206F of the Corporations Act; or
- (b) is found to suffer mental illness or mental incapacity under legislation relating to mental health; or
- (c) resigns as a member of the Council by notice in writing to the Institute; or
- (d) ceases to be a Member;
- (e) holds any office of profit under the Institute; or



- (f) is absent from meetings of the Council for five (5) of the previous eight (8) meetings of the Council without leave of absence from the Council.
- 11.12 The Council may appoint any Voting Member as a member of the Council to fill a casual vacancy in the office of member of the Council (other than in respect of an *ex officio* member). Any Voting Member appointed under this clause shall be deemed to have been elected at the Annual General Meeting at which the member of the Council whom he or she replaces was elected or was deemed to have been elected and shall hold such office in accordance with clause 11.3 accordingly.
- 11.13 Notwithstanding the provisions of clause 11.3, those persons holding office as members of the Council pursuant to the constitution of the Institute in force immediately before adoption of this Constitution shall continue to serve the term of office which was applicable at the date those persons were last elected or deemed to have been elected as a member of the Council. For the avoidance of doubt, if any of the persons referred to in this clause is re-elected, or deemed to have been re-elected, as a member of the Council after adoption of this Constitution, the term of office of such persons will be subject to the provisions of clause 11.3, as set out above.

## **12. PRESIDENT AND VICE PRESIDENTS**

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- 12.1 Subject to clause 12.6, and except where the Vice President has already been elected under clause 12.5 (and subject to clause 11.1), the Council shall, at a meeting to be held within three months prior to each Annual General Meeting, elect, from those of its members who have not served a full year's term as President of the Institute in the previous five (5) years, a person to serve as Vice President of the Institute as from the conclusion of the Annual General Meeting immediately following such election until the conclusion of the next Annual General Meeting. The Vice President shall then serve as Senior Vice President of the Institute until the conclusion of the next following Annual General Meeting, whereupon he or she shall become and serve as President of the Institute until the conclusion of the Annual General Meeting following his or her becoming President.
- 12.2 The President, Senior Vice President and Vice President shall, unless already members of the Council, be *ex officio* members of the Council and shall, whilst holding such office, not be subject to retirement under clause 11.3.
- 12.3 The President, Senior Vice President or Vice President may resign such office at any time by notice in writing to the Institute.

- 12.4 Subject to clause 12.6, if the office of President becomes vacant for any reason, the Council shall elect from its members a new President. Such President shall, subject to the Constitution, hold this office for the balance of the term for which the President whom he or she replaces was appointed unless, at the time of such election, he or she was the Senior Vice President, in which case he or she shall continue to serve as President until the conclusion of the Annual General Meeting next following the date on which such term concluded.
- 12.5 Subject to clause 12.6, if the office of Senior Vice President or Vice President becomes vacant for any reason:
- (a) the Council shall fill the vacancy by electing, from those of its members who have not served a full year's term as President in the previous five (5) years, a person as Vice President or Senior Vice President (as the case may be); and
  - (b) that person shall serve in such office from the date of his or her election until the conclusion of the term of office of the President at the date of the election referred to in clause 12.5(a); and
  - (c) thereafter, that person will be subject to the provisions of clause 12.1 as if he or she had been elected under that clause.
- 12.6 If circumstances are such that, in the reasonable opinion of the Council:
- (a) the provisions of clauses 12.1, 12.4 or 12.5 are prevented from operating as intended by this Constitution; or
  - (b) the best interests of the Institute would not be served by the application of the provisions of clauses 12.1, 12.4 or 12.5,
- the Council may, subject to clause 12.7, resolve to adopt an alternative procedure, arrangement or requirement in respect of the matter or matters dealt with under such clause or clauses.
- 12.7 The powers of the Council under clause 12.6 are subject to the following restrictions, namely that any such resolution by the Council:
- (a) must be passed by at least 75% of those members of the Council present at the meeting at which the relevant resolution is being considered; and
  - (b) is effective only in respect of the then instant case at issue under clause 12.6, so that any resolution purporting to apply in perpetuity or until otherwise repealed or replaced is void.

### **13. POWERS OF THE COUNCIL**

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- 13.1 The Council may exercise consistently with the objects in clause 2 all the powers of the Institute that the Constitution and the Corporations Act do not require to be exercised by the Members in general meeting.
- 13.2 Without limiting the generality of clause 13.1, the Council may make, publish, alter and repeal:
- (a) by-laws and rules for the regulation and management of the Institute;
  - (b) by-laws, rules, standards, guidance notes and codes of ethics for the professional conduct, guidance, development and education of Members and the admission of Members; and
  - (c) by-laws and rules for the establishment of a scheme for professional indemnity insurance for or in respect of Members or classes or categories of Members.
- 13.3 The management of all or any of the affairs of the Institute or the carrying out of all or any of its objects shall be vested in the Council.
- 13.4 Subject to clause 3, the Council may, in its absolute discretion, approve the payment by the Institute in whole or in part of expenses incurred by the Secretary or by a member of the Council in attending a meeting of the Council.
- 13.5 Subject to the Constitution, the Council may appoint committees of the Council and delegate such powers of the Council as may be necessary or convenient for the purposes for which the committees are appointed, and may fix the quorums and lay down rules for regulating their proceedings. Such committees may consist of or include persons who are not Members or not members of the Council.
- 13.6 The Council may at any time revoke or vary any delegation of power to a committee.

### **14. PROCEEDINGS OF THE COUNCIL**

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- 14.1 The ordinary meetings of the Council shall be held at such times and places as the Council from time to time determines.
- 14.2 Notice of ordinary meetings of the Council shall be sent by the Secretary to each member of the Council at each member's usual or last known address. It shall not be necessary in any case to prove that such notice has been delivered or sent, but the same shall be deemed to have been delivered or duly sent unless the contrary be shown and the non-receipt

of any notice by any member of the Council shall not invalidate the proceedings of any meeting of the Council. Such notice shall be as ample as the circumstances will permit, but shall in no case be less than eight (8) days.

- 14.3 At a meeting of the Council, the President, or in his or her absence the Senior Vice President, shall be Chairperson. In the absence of the President and the Senior Vice President, the Vice President shall be Chairperson. In the absence of all three, the Chairperson shall be elected from the members of the Council present.
- 14.4 Seven (7) members of the Council present in person or by proxy shall constitute a quorum for a meeting of the Council.
- 14.5 In the event of a difference of opinion at any meeting of the Council, the majority shall rule the minority unless otherwise required by the Constitution. In the case of an equality of votes arising in any manner at any meeting of the Council, the Chairperson of the meeting shall have a second or casting vote.
- 14.6 A member of the Council may be represented at any meeting of the Council by a proxy, provided that the proxy is a Voting Member who is not a member of the Council and who does not hold a proxy for any other member of the Council.
- If a member of the Council is so represented, his or her proxy shall have the right to join in all discussions and to vote in whatever manner a vote is taken. The provisions of clause 21 apply to the lodgment and validity of proxies under this clause.
- 14.7 Subject to the provisions of the Constitution, the Chairperson of any meeting of the Council may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.
- 14.8 Minutes shall be entered in proper books of all resolutions and proceedings of meetings of the Council and every minute signed by the Chairperson of the meeting to which it relates or by the Chairperson of a subsequent meeting shall be *prima facie* evidence of the facts therein stated.
- 14.9 All acts done at any meeting of the Council shall, notwithstanding that there was a vacancy in the number of members or some defect in the appointment of any member or members of the Council present at such meeting or that they or any of them were disqualified, be as valid as if there was no vacancy or every such person had been duly appointed and was qualified to be a member of the Council.
- 14.10 The continuing Directors may act notwithstanding any vacancy in the Council, but if and so long as their number is reduced below the quorum

required for a meeting of the Council under clause 14.4, the continuing Director or Directors must not act for any purpose except to:

- (a) increase the numbers of Directors to the quorum; or
- (b) call a General Meeting.

14.11 A resolution in writing signed by at least 75% of the members of the Council shall be as valid and effectual as if it had been passed at a meeting of the members of the Council duly called and constituted. Any such resolution may consist of several documents in like form, each signed by one or more members of the Council.

14.12 Without limiting the discretion of members of the Council to regulate their meetings, the members of the Council may meet or confer by telephone, video or other electronic means of audio, visual or audio visual communication by which they are able simultaneously to hear each other and participate in discussion. A resolution passed by such a meeting or conference will be deemed to have been passed at a meeting of members of the Council, notwithstanding that the members of the Council are not physically present together in one place at the time of the meeting. The provisions of the Constitution relating to proceedings of meetings of members of the Council apply so far as they are capable of application and, with the necessary changes, to such meetings and conferences.

## **15. APPOINTMENT AND REMUNERATION OF OFFICERS AND OTHERS**

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The Council may appoint and remove and may, subject to the Constitution, determine the duties and remuneration (if any) of the Chief Executive Officer, Secretary, tutors, coaches, lecturers, examiners, and other Officers, employees, consultants and contractors of or to the Institute, including any person to perform temporarily the duties of the above-mentioned Officers and employees or any of them, provided that:

- (a) the Council may, if it deems fit, appoint one person to perform the duties of more than one of the above-mentioned positions; and
- (b) a member of the Council shall only be entitled to receive remuneration for or in connection with the performance of any of the above-mentioned duties if performed whilst such a person is a member of the Council, if the prior approval of the Council is given and disclosure of such remuneration is made to the Members.

## **16. CHIEF EXECUTIVE OFFICER**

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- 16.1 The Council may, from time to time, appoint a Chief Executive Officer of the Institute, either for a fixed term or without any limitation as to the period for which he or she is to hold such office. Any such Chief Executive Officer so appointed shall be an Officer of the Institute.
- 16.2 The Chief Executive Officer is not required to be a Member.
- 16.3 The Chief Executive Officer shall report to, and be responsible only to, the Council.
- 16.4 The Chief Executive Officer shall exercise, subject to the directions of the Council, all authority and control over all employees of the Institute, in the same manner as if the Chief Executive Officer were their employer.
- 16.5 Subject to clause 13.3, the Chief Executive Officer, under the direction of the Council, shall manage the day-to-day affairs of the Institute in accordance with this Constitution and policies and procedures made thereunder.
- 16.6 The Council may, from time to time, delegate any of its powers (including the power to delegate) to the Chief Executive Officer and:
- (a) the Chief Executive Officer must exercise any powers delegated to him or her by the Council in accordance with any directions of the Council; and
  - (b) the exercise of a delegated power by the Chief Executive Officer is as effective as if the Council had exercised the power.
- 16.7 The Council may, at any time, revoke or vary any power delegated to the Chief Executive Officer.
- 16.8 A person immediately ceases to be the Chief Executive Officer if:
- (a) he or she is not permitted by the Corporations Act (or by an order made under that Act) to be an Officer of a company;
  - (b) he or she becomes disqualified from managing corporations under the Corporations Act and is not given permission or leave to manage the Institute under that Act;
  - (c) he or she is found to suffer mental illness or mental incapacity under legislation relating to mental health; or
  - (d) his or her employment as Chief Executive Officer terminates or is terminated.

16.9 The Council may:

- (a) subject to the terms of employment of a Chief Executive Officer, suspend, remove or dismiss the Chief Executive Officer from that office and appoint another in his or her place; and
- (b) appoint a temporary substitute for the Chief Executive Officer while the Chief Executive Officer is absent or unable to act.

16.10 For the avoidance of doubt, the Chief Executive Officer retains any rights that accrue to him or her under, or in relation to, his or her contract of employment with the Institute upon termination if the Council acts in accordance with its powers under clause 16.9(a).

## **17. SECRETARY**

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17.1 If required by the Corporations Act, there must be at least one secretary of the Institute appointed by the Council for a term and at remuneration and on conditions determined by it.

17.2 The Secretary, where possible, shall attend the meetings of the Council and the Institute and prepare the minutes of proceedings of such meetings. In his or her absence, the Chairperson of the meeting shall appoint a deputy secretary for the purposes of that meeting.

17.3 The Council may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

17.4 The Secretary is not required to be a Member.

## **18. FINANCIAL YEAR**

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Until otherwise determined by the Council, the financial year of the Institute shall commence on 1 October of each year and conclude on 30 September next following.

## **19. AUDIT AND ACCOUNTS**

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19.1 The Council must cause the Institute to keep written financial records in relation to the business of the Institute in accordance with the requirements of the Corporations Act.

19.2 The Council must cause the financial records of the Institute to be audited in accordance with the requirements of the Corporations Act.

19.3 The Council shall cause to be made out and laid before each Annual General Meeting of the Institute the reports required under section 317 of



the Corporations Act, made up to a date not more than three months before the date of the Annual General Meeting.

## **20. GENERAL MEETINGS OF THE INSTITUTE**

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- 20.1 Annual General Meetings shall be held each year in accordance with the Corporations Act at such time and place as the Council may determine. Subject to the provisions of the Corporations Act allowing annual general meetings to be held with shorter notice, at least twenty one (21) days' written notice must be given to Members of any Annual General Meeting.
- 20.2 At each Annual General Meeting the Council shall submit its report of the affairs of the Institute and the preceding year's transactions together with the financial statements as required by clause 19, duly verified and signed by the Auditor and the report of the Auditor.
- 20.3 At an Annual General Meeting the Chairperson shall allow a reasonable opportunity for the Members as a whole to ask questions about, or make comments on, the management of the Institute.
- 20.4 Only Voting Members shall be entitled to vote at any General Meeting or at any poll taken on any matter brought forward at a General Meeting. Where a Member is entitled to vote at a General Meeting, the Member must vote personally except on a poll, upon which the Member may vote either personally or by proxy. Each Voting Member whether voting personally or by proxy shall have one vote. The Council may at any time call an Extraordinary General Meeting and shall be bound to do so upon a requisition in writing signed by at least 20 Members specifying the purpose for which the Extraordinary General Meeting is to be called.
- 20.5 Twenty eight (28) days' notice shall be given by the Council to all Members of the time and place at which any Extraordinary General Meeting is to be held and of the business to be dealt with thereat and no business except that named in the notice shall be considered at such Extraordinary General Meeting.
- 20.6 At a General Meeting, the President of the Institute for the time being shall be Chairperson. In the absence of the President, the Senior Vice President, or in the absence of the President and the Senior Vice President, the Vice President, shall be the Chairperson. In the absence of all three, the Chairperson shall be a member of the Council chosen by the meeting and in the absence of all members of the Council, a Voting Member chosen by the meeting.



- 20.7 Notice of every General Meeting must be given to every Member. Subject to clause 20.8, no other person is entitled to receive notice of a General Meeting.
- 20.8 Notice of every Annual General Meeting must be given to the Institute's auditor.
- 20.9 Subject to the provisions of the Constitution, the Chairperson of any General Meeting may, with the consent of such General Meeting, adjourn such General Meeting from time to time and from place to place and no business shall be transacted at any such adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place. Unless otherwise directed in the resolution for adjournment, no notice need be given of an adjourned General Meeting of the Institute.
- 20.10 The non-receipt by any Member of notice of any General Meeting shall not invalidate the proceedings of the meeting to which such notice relates.
- 20.11 Subject to the provisions of the Constitution, every resolution proposed and seconded at a General Meeting shall be put to such General Meeting by the Chairperson of the meeting and decided upon by a show of hands of Voting Members and the Chairperson of the meeting shall declare the resolution has, on the show of hands, been carried or lost. On such declaration being made, a poll may be demanded by:
- (a) at least five (5) Members present in person or by proxy and entitled to vote upon the resolution at the General Meeting; or
  - (b) any smaller number of such Members provided they represent not less than one-tenth of the total number of Members entitled to vote upon the resolution at the General Meeting,
- but no poll shall be taken as to the election of a Chairperson or the adjournment of the meeting.
- 20.12 If a poll be duly demanded at a General Meeting, it shall be taken in such manner as the Chairperson of the meeting may direct. The Chairperson may direct that such poll be taken either forthwith or at any other time. Should he or she direct that a poll be taken on a date subsequent to that of the meeting, the meeting shall continue for the transaction of any business other than that on which the poll was demanded and shall then stand adjourned until the date of the poll.
- 20.13 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the General Meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

- 20.14 Twelve (12) Voting Members being personally present shall constitute a quorum for a General Meeting.
- 20.15 Minutes shall be entered in proper books of all resolutions and proceedings of General Meetings and every minute signed by the Chairperson of the meeting to which it relates or by the Chairperson of a subsequent meeting shall be *prima facie* evidence of the facts therein stated.

## **21. VOTING BY PROXY**

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- 21.1 An appointment of a proxy to attend and vote for a Member at a General Meeting is valid if it is signed by the Member making the appointment and contains the information required by sub-section 250A(1) of the Corporations Act. The Council may determine that an appointment of a proxy is valid even if it only contains some of the information required by sub-section 250A(1) of the Corporations Act.
- 21.2 For the purposes of clause 21.1, an appointment of a proxy received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Institute to the Member has been input into the appointment; or
  - (b) the appointment has been verified in another manner approved by the Council.
- 21.3 Any person may be appointed as a proxy to attend and vote for a Member at a General Meeting of the Institute.
- 21.4 A proxy's appointment is valid at an adjourned meeting.
- 21.5 A proxy may be appointed for all meetings or for any number of meetings or for a particular purpose.
- 21.6 A proxy appointed to attend and vote for a Member has the same rights as the Member to:
- (a) speak at the meeting;
  - (b) vote (but only to the extent allowed by the appointment); and
  - (c) join in a demand for a poll.
- 21.7 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the Chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Members or the Secretary.

- 21.8 The written appointment of a proxy and, if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority, must be received by the Institute at least 24 hours before:
- (a) the time for holding the meeting or adjourned meeting at which the appointee proposes to vote; or
  - (b) the taking of a poll on which the appointee proposes to vote,
- unless otherwise specified in the notice of meeting to which the proxy relates.
- 21.9 The Institute receives an appointment of a proxy and any other authority under which it was executed when they are received at:
- (a) the Office;
  - (b) a facsimile number at the Office; or
  - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.
- 21.10 A vote cast in accordance with an appointment of a proxy is valid even if before the vote was cast the appointor:
- (a) died;
  - (b) became mentally incapacitated; or
  - (c) revoked the proxy or authority under which the proxy was appointed,
- unless any written notification of the death, suffering of mental incapacity or revocation was received by the Institute before the relevant meeting or adjourned meeting.

## **22. COMMON SEAL AND EXECUTION OF DOCUMENTS**

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- 22.1 The Council must provide for the safe custody of the common seal of the Institute (the "Seal").
- 22.2 The Seal must not be used without the authority of the Council or a Council committee authorised to use the Seal.
- 22.3 The Institute may execute a document (including a deed) with the Seal by fixing the Seal to the document and having the fixing of the Seal witnessed by:

- (a) two (2) members of Council;
  - (b) one (1) member of Council and the Secretary; or
  - (c) one (1) member of Council and another person appointed by Council to countersign the document.
- 22.4 The Institute may execute a document (including a deed) without using the Seal if that document is signed by:
  - (a) two (2) members of Council;
  - (b) one (1) member of Council and the Secretary; or
  - (c) one (1) member of Council and another person appointed by Council to countersign the document.

## **23. INSPECTION OF RECORDS**

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- 23.1 Subject to the Corporations Act, the Council may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Institute or any of them will be open for inspection by Members other than members of the Council.
- 23.2 A Member other than a member of the Council does not have the right to inspect any financial records or other documents of the Institute unless the Member is authorised to do so by a court order or a resolution of the Council.

## **24. SERVICE OF NOTICES**

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- 24.1 A notice may be given by the Institute to any person who is entitled to or may be given notice under this Constitution by:
  - (a) delivering it by hand to the person; or
  - (b) sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Institute for sending notices to the person.
- 24.2 A notice may be given to the Institute by delivering it by hand or sending it by post, facsimile or electronic transmission to the Secretary at the Office.

- 24.3 A notice sent by post is taken to be given on the second Business Day after the day on which it was posted in a properly addressed and postage paid envelope containing the notice.
- 24.4 A notice sent by facsimile transmission or electronic notification is taken to be given when the sender's facsimile or electronic system generates a message confirming successful transmission or notification, unless within one Business Day after the transmission or notification, the recipient informs the sender that he or she has not received the entire notice.
- 24.5 A certificate in writing signed by a member of the Council, the Secretary or other Officer of the Institute that a notice or document given by the Institute or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 24.6 Subject to the Corporations Act, the signature to a written notice given by the Institute may be written or printed.
- 24.7 All notices sent by post outside Australia must be sent by prepaid airmail post.

## **25. WINDING UP**

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- 25.1 If the Institute is wound up:
- (a) each Member; and
  - (b) each person who has ceased to be a Member in the preceding year,
- undertakes to contribute to the property of the Institute for the:
- (i) payment of debts and liabilities of the Institute (in relation to clause 25.1(b), as contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
  - (ii) adjustment of the rights of the contributories amongst themselves,
- such amount as may be required, not exceeding \$20.
- 25.2 If any surplus remains following the winding up of the Institute, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another corporation or body which, by its constitution:
- (a) has objects similar to the objects of the Institute; and

- (b) is prohibited from making any distribution of its income and property to its members to an extent at least as great as is imposed on the Institute under clause 3,

such corporation or body to be determined by the Members at or before the dissolution of the Institute and, in default, by the Supreme Court of New South Wales.

- 25.3 To the extent that effect cannot be given to clause 25.2, any surplus should be given or transferred to some charitable object.

## **26. INDEMNITY AND INSURANCE**

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- 26.1 Subject to the restrictions in section 199A of the Corporations Act, the Institute indemnifies to the relevant extent every person who is or has been an Officer of the Institute against:

- (a) any liability (other than for legal costs); and
- (b) reasonable legal costs incurred in defending an action for a liability,

incurred by that person as such an Officer of the Institute (including such liability or legal costs (as relevant) incurred by the Officer as a director of a subsidiary of the Institute where the Institute requested the Officer to accept the appointment).

- 26.2 Subject to the restrictions in section 199B of the Corporations Act, the Institute may pay a premium for a contract insuring a person who is or has been an Officer of the Institute (or a subsidiary of the Institute) against a liability incurred by the person as such an Officer.

- 26.3 For the purposes of this clause 26:

- (a) 'Officer' also includes (for the avoidance of doubt):
  - (i) a member of the Council and of any committee or other body established by the Institute or the Council; and
  - (ii) the Chief Executive Officer;
- (b) 'to the relevant extent' means to the extent and for the amount to which the Officer is not otherwise indemnified and is actually indemnified.

## **27. EXAMINATIONS**

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- 27.1 Subject to clause 27.2, the Council may conduct and administer an examination system, draw up a syllabus, make by-laws providing for exemption from some or all of such examinations and for the conditions, general administration and conduct of such examinations (provided such by-laws are not inconsistent with the Constitution), appoint examiners, fix the fees for examiners, determine the time and place of such examinations and make all other arrangements as may be necessary for their conduct.
- 27.2 For the avoidance of doubt, nothing in clause 27.1 prohibits or restricts the Council entering into a form of arrangement with another party relating to the exercise of all or part of the powers granted to the Council under that clause.
- 27.3 The Council may determine the degree of success in the Institute's examinations and the experience or other qualifications which shall be required to qualify a person for a particular class of Members.

## **28. TUITION**

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- 28.1 Subject to clause 28.2, the Council may arrange for the establishment or maintenance of tutorial, coaching or correspondence courses and courses of lectures for Members or for any other persons interested in actuarial science and for the preparation and reproduction of any notes or other matter in connection therewith and may fix the fees to be charged for the same.
- 28.2 For the avoidance of doubt, nothing in clause 28.1 prohibits or restricts the Council entering into a form of arrangement with another party relating to the exercise of all or part of the powers granted to the Council under that clause.

## **29. LIBRARIES**

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The Council may from time to time:

- (a) appropriate funds for the establishment or maintenance of libraries of the Institute and make rules for the conduct of such libraries; and
- (b) arrange with other organisations for the establishment or maintenance of libraries for the benefit of Members and those of such organisations and may appropriate funds of the Institute for such purpose.

### **30. PUBLICATIONS**

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The Council shall decide upon the fitness for publication by the Institute of any material submitted to the Institute and may appropriate funds for the purpose of such publication.

### **31. PROFESSIONAL DISCIPLINE**

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- 31.1 Subject to the Disciplinary Scheme, the Council shall be empowered to do all things as it thinks necessary or appropriate for the purpose of upholding and enhancing the standards of professional conduct of the Members and of maintaining and promoting the good standing and reputation of the Institute and the profession of actuary in the interests of the Members and the public.
- 31.2 The provisions of the Disciplinary Scheme are incorporated in the Constitution and are binding on Members and shall be given effect by the Council in accordance with its terms.
- 31.3 The Council shall have the power, consistent with the object set out in clause 2.1(f), to:
- (a) enter into mutual discipline agreements with equivalent professional bodies to the Institute in Australia or elsewhere; and
  - (b) formulate, and amend, repeal or replace as necessary, policies with respect to the entering into, or implementation of, mutual discipline agreements under clause 31.3(a).

### **32. MUTUAL RECOGNITION AGREEMENTS**

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The Council shall have the power, consistent with the object set out in clause 2.1(k) to:

- (a) enter into mutual recognition agreements with equivalent professional bodies to the Institute in Australia or elsewhere; and
- (b) formulate, and amend, repeal or replace as necessary, policies with respect to the entering into, or implementation of, mutual recognition agreements under clause 32(a).



## SCHEDULE 1

### DISCIPLINARY SCHEME

#### 1. OBJECTIVES

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- 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

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- 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**

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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**

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##### **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**

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### **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**

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### **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**

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#### 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**

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- 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**

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- 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**

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- 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**

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### **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.