

Complaints Policy

1. Objectives

1.1 The objectives of this Policy are to provide:

- (a) a means of redress for complaints about Members of the Institute;
- (b) guidelines and procedures for the handling of complaints;
- (c) for the appointment a Compliance Manager to investigate complaints received by the Institute;
- (d) for the formation and operation of a Complaints Committee to hear charges laid by the Compliance Manager; and
- (e) for the formation and operation of an Appeals Tribunal to hear appeals from decisions of the Complaints Committee.

2. Professional Misconduct

2.1 A Member is guilty of Professional Misconduct if:

- (a) they commit a breach of any part of the Institute's Constitution, By-Laws, Regulations, or Code of Conduct;
- (b) they are found guilty by a court of law of a criminal offence which is punishable by imprisonment and the Board of the AIQS determines that their offence impacts, or has the potential to detrimentally impact on the good name and reputation of the AIQS;
- (c) they engage in conduct which is dishonest or fraudulent;
- (d) they engage in conduct which is prejudicial to the good name and reputation of the Institute; or
- (e) they obtained admission to the Institute by improper means.

3. Application of this Section to Former Members

3.1 This Policy applies to a former Member of the Institute in relation to conduct happening while the former Member was a Member in the same way as it applies to a current Member.

4. Confidentiality

4.1 This section 4 applies to:

- (a) a complainant;
- (b) a Member complained about under this Section;
- (c) the Compliance Manager;
- (d) the members of the Complaints Committee; and
- (e) the members of the Appeals Tribunal.

4.2 The persons to whom this section applies must not disclose information obtained relating to a complaint, except to any of the following—

- (a) any court, tribunal or other person acting judicially; a regulatory authority of any State or Territory;
- (b) any officer of, or Australian legal practitioner instructed by—
 - i. a regulatory authority of any State or Territory; or
 - ii. any State or Territory, or the Commonwealth; or

- iii. an authority of any State or Territory or the Commonwealth in relation to any proceeding, inquiry or other matter pending or contemplated arising out of the complaints procedure of the Institute;
- (c) a police officer of any State or Territory or the Commonwealth if the relevant person believes, on reasonable grounds, that the information relates to an offence that may have been committed by a Member;
- (d) a client or former client of the Member, if the information relates to that client or former client;
- (e) as otherwise permitted by the Institutes Constitution, By-Laws or Regulations;
- (f) any other person as permitted in writing by the Member complained about.

5. Keeping Complainants Informed

- 5.1 The Compliance Manager may keep the complainant informed of the progress of a complaint provided always that the Compliance Manager must not provide any information to a complainant in relation to the progress of the complaint where in the opinion of the Compliance Manager, to do so:
- (a) may expose the Compliance Manager or any Officer of the Institute to liability for civil damages;
 - (b) would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint; or
 - (c) would deny procedural fairness to the Member, the subject of the complaint.

6. Notification of Complaints

- 6.1 Members must promptly notify the Compliance Manager about every civil or criminal claim, complaint, accusation, charge, notification or settlement involving a Member and must keep the Compliance Manager informed about the outcome.

7. Making of Complaints

- 7.1 A person who is aggrieved by the conduct of a Member may complain to the Institute.
- 7.2 If considered necessary and in the interests of the AIQS, the Compliance Manager may, of its own initiative, commence an investigation into the conduct of a Member, in which circumstances the AIQS will be considered to be the complainant.
- 7.3 A complaint must be in writing and addressed to the Compliance Manager.
- 7.4 A complaint must:
- (a) include a full name, address and valid telephone number of the complainant; and
 - (b) identify the Member who is being complained about; and
 - (c) describe the alleged conduct the subject of the complaint.
- 7.5 The Compliance Manager may, by written notice given to the complainant, require the complainant to do either or both of the following within the reasonable period stated in the notice:
- (a) to give further information about the complaint;

(b) to verify the complaint, or any further information, by statutory declaration.

8. Summary Dismissal of Complaints

8.1 The Compliance Manager may dismiss a complaint without completing an investigation if:

- (a) the complainant fails to supply the further information requested by the Compliance Manager by the notice served pursuant to section 7.5 within the time required by that notice;
- (b) the complaint is vexatious, misconceived, frivolous or lacking in substance;
- (c) the complaint was made more than 3 years after the conduct complained of is alleged to have happened;
- (d) the conduct complained about has been the subject of a previous or current complaint to the Institute; or
- (e) the complainant does not agree, in writing, that their identity can be revealed to the Member complained about;
- (f) the complaint is about the fees charged by the member;
- (g) the complaint concerns a commercial matter between the member and their client, which is not Professional Misconduct.

8.2 The Compliance Manager must notify the complainant in writing if a complaint is dismissed pursuant to section 8.1.

8.3 The notice must be given as soon as practicable after the day that the decision to dismiss the complaint is made by the Compliance Manager.

8.4 The notice must specify the grounds upon which the complaint has been dismissed.

9. Record of Complaints

9.1 The Compliance Manager must make and keep a record of all of the complaints dealt with under this Policy and must keep a copy of all decisions of the Complaints Committee and the Appeals Tribunal.

9.2 The Compliance Manager shall have the discretion, subject to direction by the Board, to decide what is contained on the register in relation to each complaint.

9.3 The Compliance Manager may, upon request by the Board, publish the outcome of any decisions by the Complaints Committee or the Appeals Tribunal or any details contained in the register maintained by the Compliance Manager.

9.4 The Institute shall publish regular information about the outcome of complaints against Members including an annual overview of the operation of the Institute's complaints procedures.

10. Notice of Complaint

10.1 The Compliance Manager must give written notice to the Member about whom a complaint is made.

- 10.2 The notice must be given as soon as practicable after the day the complaint is received pursuant to section 7.
- 10.3 The notice must advise the Member about:
- (a) the nature of the complaint;
 - (b) the identity of the complainant;
 - (c) any action already taken by the Compliance Manager in relation to the complaint;
 - (d) the Member's right to make submissions to the Compliance Manager within the reasonable period stated in the notice, unless the Compliance Manager has told the Member that the complaint has been dismissed or is intended to be dismissed.
- 10.4 This section 10 does not require the Compliance Manager to give written notice to the Member about whom a complaint is made until the Compliance Manager has had time to consider the complaint, seek further information about the complaint from the complainant or otherwise undertake preliminary inquiries into the complaint and properly prepare the notice.
- 10.5 The Compliance Manager must give written notice of any complaint as required by a scheme registered under the Professional Standards legislation in a State or Territory

11. Withdrawal of Complaints

- 11.1 A complaint under this Section may, subject to this section, be withdrawn by the complainant.
- 11.2 Withdrawal of a complaint may be made by oral or written communication to the Compliance Manager.
- 11.3 If a complaint is withdrawn orally the Compliance Manager must:
- (a) make a written record of the withdrawal; and
 - (b) give the complainant a copy of the record or send a copy of it addressed to the complainant at the complainant's address.
- 11.4 A complaint may be withdrawn even though the Compliance Manager has started or finished an investigation of the complaint.
- 11.5 If a complaint is withdrawn, a further complaint about the matter that is the subject of the withdrawn complaint cannot be made to the Institute unless the Compliance Manager is satisfied that it is appropriate to make a further complaint in the circumstances.
- 11.6 If a complaint is properly withdrawn, no further action may be taken under this Policy in relation to the complaint, unless the Compliance Manager is satisfied that investigation or further investigation of the complaint is justified in the particular circumstances, as permitted under section 7.2, in which case a new complaint shall be brought by the AIQS pursuant to section 7.2.

12. Appointment of Compliance Manager

- 12.1 The Institute must appoint a suitably qualified person to carry out the role of Compliance Manager.

- 12.2 The role of the Compliance Manager is to:
- (a) assist members of the public with enquiries relating to the Institute's complaints procedure;
 - (b) issue notices to various persons relating to complaints made under this Policy;
 - (c) coordinate and investigate complaints made under this Policy;
 - (d) make summary determinations about complaints made under this Policy;
 - (e) present charges to the Complaints Committee for disciplinary action against a Member;
 - (f) assist the Complaints Committee in its consideration of complaints made under this Policy;
 - (g) assist the Appeals Tribunal in its consideration of appeals made under this Policy;
 - (h) keep a record of all complaints and notifications received by the Institute relating to a Member;
 - (i) report to various authorities as required by law; and
 - (j) such other roles as directed in writing by the Board from time to time.
- 12.3 The conduct of the Compliance Manager will be subject to the terms and conditions of his or her employment, as agreed in writing with the Chief Executive Officer from time to time.

13. Powers of Compliance Manager

- 13.1 The Compliance Manager may make any inquiry that he or she considers necessary or expedient for the purposes of carrying out its role, including -
- (a) investigating any complaint lodged pursuant to this Policy; and
 - (b) determining whether any other cause exists that might be considered a proper cause for disciplinary action.

14. Vacancy in the Position of Compliance Manager

- 14.1 If a casual vacancy occurs in the position of the Compliance Manager, the Board shall appoint an appropriate person to fill the vacancy until such time as a suitably qualified person is employed to carry out the role of Compliance Manager.

15. Investigation of Complaint

- 15.1 Subject to section 8, the Compliance Manager must investigate each complaint properly made to it.
- 15.2 The Compliance Manager must act independently based on information and evidence found during the investigation and use their own knowledge and expertise in their assessment of the complaint.
- 15.3 An investigator may, if it is reasonably necessary for the purposes of the investigation concerned, by written notice given to a person, request that person:
- (a) to attend before the Compliance Manager, at a reasonable time and place specified in the notice, and there and then answer any questions; and
 - (b) to produce to the Compliance Manager, at a reasonable time and place specified in the notice, a document or thing in the person's custody or under the person's control.

- 15.4 A Member or complainant who receives a notice pursuant to section 15.3 must comply with the notice in the time specified in the notice.
- 15.5 If the conduct complained about is subject to current proceedings before a Court or State licensing body, the Compliance Manager must suspend the investigation pending the outcome of those proceedings and any appeal of those proceedings.
- 15.6 At the completion of the investigation, the Compliance Manager must submit a report to the Complaints Committee.
- 15.7 The Compliance Manager is not required to provide a copy of the report to the complainant or the Member.

16. Complaints Committee

- 16.1 Where the Compliance Manager refers a complaint to the Complaints Committee, the Complaints Committee must conduct enquiries or cause enquiries to be conducted following which the Complaints Committee must make findings on whether, in the Complaints Committee's view, the conduct referred to the Complaints Committee comprises a breach of the AIQS Code of Conduct.
- 16.2 On receipt of the report from the Compliance Manager the Complaints Committee, appointed in accordance with section 17, must consider the report at a meeting convened pursuant to section 21, and:
 - (a) if the report indicates that no charge is to be laid because there is no prima facie case of Professional Misconduct; the Complaints Committee may:
 - i. dismiss the complaint; or
 - ii. direct the Compliance Manager to make further enquiries or investigation as it reasonably considers necessary to ensure that a proper investigation of the complaint has taken place.
 - (b) if the report indicates a charge should be laid against the member concerned because there is a prima facie case of Professional Misconduct, the Complaints Committee may:
 - i. lay a charge against the Member for Professional Misconduct and take such action as required by section 24;
 - ii. direct the Compliance Manager to make further enquiries or investigation as it reasonably considers necessary to ensure that a proper investigation of the complaint has taken place;
 - iii. take no further action and give the complainant the reason/s in writing, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith; or
 - iv. resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing; or
 - v. cause the Complaints Officer to engage another appropriately qualified person to make enquiries into the complaint; or

- vi. cause the cessation of enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this Policy, this will constitute finalisation of such matters and no further action is required.

16.3 If the Complaints Committee dismisses the complaint:

- (a) the Compliance Manager must notify the complainant and the Member in writing of the dismissal;
- (b) the notice must be given as soon as practicable after the day that the complaint is dismissed; and
- (c) the notice must include a brief statement of reasons upon which the complaint has been dismissed

16.4 If the Complaints Committee directs the Compliance Manager to make further enquiries or investigation, the Compliance Manager must undertake those further enquiries or investigation within a reasonable time and must submit a further report to the Complaints Committee about the complaint.

16.5 If the Complaints Committee lays a charge against a Member for Professional Misconduct pursuant to section 16.2(b)(i), the Compliance Manager must give written notice of the charge of Professional Misconduct to the Chief Executive Officer.

17. Appointment of a Complaints Committee

17.1 There shall be a committee established to be known as the Complaints Committee.

17.2 The Complaints Committee shall be appointed by the Board and shall report directly to the Board.

17.3 Chapters have the right, but are not obliged, to provide nominees, who are suitably experienced and qualified, to be members of the Complaints Committee.

17.5 When appointing Members to the Complaints Committee, the Board will endeavour to:

- (a) Appoint at least one representative from each Chapter who has made nominations, to be members of the Complaints Committee ("**Committee Members**");
- (b) be cognisant of achieving a representation of the various disciplines of Membership of the Institute; and
- (c) nominate one of those Committee Members as Chairman of the Complaints Committee and one as Deputy Chairman of the Complaints Committee.

17.6 A Committee Member shall be appointed to the Complaints Committee for a minimum of 2 years.

17.7 Subject to section 17.8, for each complaint to be considered by the Complaints Committee under this Policy, the Chairman of the Complaints Committee must appoint not less than 3 Committee Members to consider the complaint.

17.8 A Committee Member will not be eligible for appointment for a particular complaint where that Member has a conflict of interest.

- 17.9 For the purposes of section 17.8, a Committee Member will have a **conflict of interest** in any of the following circumstances –
- (a) the Member complained about is a member of the Chapter who nominated the Committee Member;
 - (b) the Committee Member is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;
 - (c) the Committee Member has or has had an existing commercial or personal relationship with the complainant or the Member accused; or
 - (d) the Committee Member is or has been in any way involved in the circumstances giving rise to the complaint.

17.10 Where a member of the Complaints Committee is the subject of a complaint, that Complaints Committee member's appointment will be suspended pending the outcome of the complaint.

18. Vacancy

18.1 The Board may terminate the appointment of a Committee Member for inability, inefficiency, or misbehaviour.

18.2 The office of a member of the Complaints Committee becomes vacant if —

- (a) his or her appointment is terminated pursuant to section 18.1; or
- (b) he or she is declared bankrupt or is a person whose affairs are administered under insolvency laws; or
- (c) he or she becomes permanently incapable of performing his or her duties as a member; or
- (d) he or she withdraws from his or her acceptance of the nomination by written notice addressed to the Chief Executive Officer; or
- (e) he or she ceases to hold any qualification required for his or her becoming or being a member of the Complaints Committee.

19. Validity of acts of Committee

19.1 No act, proceeding, or determination of the Complaints Committee shall be invalid on the ground only of any vacancy in the office of any member of the Complaints Committee or of any defect in the appointment of any member of the Complaints Committee.

20. Remuneration of members

20.1 The members of the Complaints Committee shall be paid such remuneration, allowances and expenses as may from time to time be approved by the Board, in their absolute discretion.

21. Meetings of the Committee

21.1 The Complaints Committee shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under these Rules and the Chief Executive Officer may at any time require the Chairman to convene a meeting of the Complaints Committee.

21.2 When considered necessary and in the interests of efficiency, it will be appropriate for the Complaints Committee to conduct a meeting by teleconference or videoconference.

- 21.3 The Chairman shall preside at all meetings of the Complaints Committee at which he or she is present and the Deputy Chairman shall preside at all meetings at which he or she, but not the Chairman, is present, but where neither the Chairman nor the Deputy Chairman is present at a meeting of the Complaints Committee, the members present shall appoint one of their number present to preside at the meeting.
- 21.4 At a meeting of the Complaints Committee, 3 members constitute a quorum.
- 21.5 All determinations and decisions to be made by the Complaints Committee shall be decided by a majority of the votes of the members present and voting. When required to make a final determination, the Chairman will have a casting vote.
- 21.6 The Complaints Committee shall cause accurate minutes to be kept of its proceedings at its meetings.

22. Hearings before the Committee

- 22.1 The Complaints Committee must give reasonable notice to the Member who is the subject of a complaint, of the time and place at which it intends to hear the complaint and must advise the Member of his or her right to appear, give evidence and be represented at the hearing.
- 22.2 Use of Electronic Hearings is permissible where documentary evidence is the principle method used to determine whether the member is guilty of Professional Misconduct in accordance with section 2. The Chairman of the Complaints Committee will determine the method of the hearing to ensure natural justice and procedural fairness.
- 22.3 The Committee must give reasonable notice to the complainant of the time and place at which it intends to hear the complaint and must advise the complainant whether they will be required to give evidence at the hearing.
- 22.4 If a person to whom notice has been given pursuant to 22.1 or 22.3 does not attend at the time and place fixed by the notice, the Committee may hear the proceedings in his or her absence.
- 22.5 At the hearing of a complaint:
- (a) the Compliance Manager must present the charge to the Committee on behalf of the complainant; and
 - (b) every Member who is the subject of the complaint must be given a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Committee.
- 22.6 The Complaints Committee may appoint a person with such qualifications as it thinks fit to assist in proceedings before the Committee, provided however that such person must at all times act impartially and must not have a conflict of interest.
- 22.7 For the purposes of section 22.6, a person will have a **conflict of interest** in any of the following circumstances -
- a) the person is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;

- b) the person has or has had an existing commercial or personal relationship with the complainant or the Member accused; or
- c) the person is or has been in any way involved in the circumstances giving rise to the complaint.

22.8 Any Member the subject of a complaint before the Complaints Committee:

- (a) shall be entitled to appear personally or by a legal practitioner; or
- (b) may, by leave of the Committee, be represented by a person other than a legal practitioner.

22.9 No documents may be admitted into evidence if they have not been made available to the Member complained of within a reasonable time prior to the hearing. This timeframe will be at the discretion of the Chairman of the Complaints Committee. If any party wishes to introduce additional documentary evidence outside of this time frame, the Chairman may, if necessary, adjourn the hearing to allow the other party sufficient time to consider the evidence.

22.10 A transcript of the hearing of the Committee must be kept and a copy given to the Member who is the subject of the complaint. The complainant may obtain a copy of the transcript upon request to the Compliance Manager, and shall be provided with a copy upon payment of a fee prescribed by the Institute.

22.11 To the extent that it is not prescribed, the Committee shall determine its own procedure, including directions for the provision of written submissions and evidence.

23. Powers of the Committee

23.1 In the exercise of its powers in proceedings under this policy, the Complaints Committee may;

- (a) require the attendance before the Committee of the complainant and/or the presentation of such evidence (as is deemed necessary by the Compliance Manager), to be provided to the Committee;
- (b) require the attendance before the Committee of the complainant or the Member complained about;
- (c) require the production of any books, papers, or documents by the complainant or the Member complained about;
- (d) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
- (e) require any person to make oath or affirmation that he or she will truly answer all questions put to him by the Committee relating to any matter being inquired into by the Committee; and
- (f) require any person appearing before the Committee to give evidence, to answer any relevant questions put to him or her by the Committee, or by any other person appearing before the Committee.

23.2 In the course of any proceedings, the Complaints Committee may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact there from that it considers proper; or
- (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.

23.3 In any proceedings the complaints Committee shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

24. Notice of Charge of Professional Misconduct

24.1 If the Complaints Committee lays a charge against the Member for Professional Misconduct pursuant to section 16.2(b)(i), the Complaints Committee must give to the Member written notice of the charge of Professional Misconduct.

24.2 The notice must state:

- (a) the Professional Misconduct alleged against the Member; and
- (b) the facts and circumstances forming the basis for the allegations;
- (c) a day, at least 14 days after the day the notice is given, by which the Member may, in relation to the allegations stated in the notice:
 - i. make written representations to the Complaints Committee about the facts and circumstances forming the basis for the allegations; or
 - ii. request the Complaints Committee to hear him or her.

24.3 If the Member does not request a hearing, the Complaints Committee may conduct a hearing into the matter where it is of the reasonable opinion that it is necessary to properly consider the matter.

24.4 If the Member requests a hearing, or the Complaints Committee decides to conduct a hearing pursuant to section 24.3, the Complaints Committee must advise the Member of the time and place of the hearing.

24.5 Any hearing conducted by the Complaints Committee must be pursuant to section 31.

24.6 After following the procedures set out in this section 24, the Complaints Committee may do any of the following:

- (d) Make a finding that the Member is guilty of Professional Misconduct and impose any one or more or none of the sanctions under section 25; or
- (e) Make a finding that the Member is not guilty of Professional Misconduct and dismiss the complaint.

24.7 The Compliance Manager must give a written notice of any finding of the Complaints Committee under section 24 to the Chief Executive Officer.

25. Sanctions

25.1 Subject to section 11, the Complaints Committee may impose any one or more or none of the following sanctions against a Member:

- (a) publicly reprimand the Member;
- (b) order the Member to give an undertaking to abstain from particular conduct;
- (c) counsel the Member;

- (d) order the Member to pay to the Institute a penalty of an amount no more than \$10,000.00;
 - (e) order that the Member must undertake additional CPD training as specified;
 - (f) order that the Member must undertake such other education or compliance program as the Complaints Committee thinks fit;
 - (g) suspend the Member from membership of the Institute, for such period and on such terms or conditions as the Complaints Committee thinks fit;
 - (h) where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Complaints Committee thinks fit;
 - (i) require the Member to take such steps as the Complaints Committee may determine to correct the effects of any Professional Misconduct found to have been engaged in;
 - (j) expel the Member from membership of the Institute;
 - (k) order that the Member pay the costs of the investigation and the hearing;
 - (l) suspend or expel the Member from membership of any board, committee, panel or group of the Institute;
 - (m) notify any applicable regulatory authority following substantiation of a complaint.
- 25.2 When taking disciplinary action against a Member the Complaints Committee may take into consideration any penalty already imposed on the Member as a result of external legal proceedings (including without limitation, proceedings or investigations by State or Territory regulatory bodies, and any other external bodies) brought against that Member in relation to the same facts and circumstances giving rise to the complaint before the Committee.
- 25.3 The Complaints Committee must give the Member a written notice of its decision to take action against the Member under this section 25, together with a statement of reasons for the decision and advising the Member of their right of appeal.
- 25.4 The Complaints Committee must advise the complainant in writing the details of any decision made against the Member under this section 25.
- 25.5 The Complaints Committee may publish, in a newspaper, journal or on its website, notice of any action taken under section 25.
- 25.6 The Complaints Committee may include as part of any notification or published complaint, the period covered and relevant detail concerning the complaint made, the findings made as a result of the complaint and action taken as a result of those findings.

26. Appeal of Decision

- 26.1 A Member against whom a decision of the Complaints Committee is made pursuant to section 24.6 (decision of Complaints Committee) and section 25 (Sanctions) may apply to the Appeals Tribunal for a review of such decision(s).
- 26.2 A complainant is not entitled to appeal against a decision of the Complaints Committee.
- 26.3 Any appeal to the Appeals Tribunal must be commenced by submitting a notice of appeal to the Compliance Manager within 21 days after receiving written notice of the Complaints Committee's decision.

- 26.4 The notice of appeal must, at the time of lodgement, specify:
- (a) the decision and the date of the decision being appealed;
 - (b) whether the appeal is from all or part of the decision of the Complaints Committee;
 - (c) if the appeal is from part of the decision—the part appealed from;
 - (d) the grounds of the appeal; and
 - (e) the order(s) sought.
- 26.5 The notice of appeal cannot raise any issue that was not before the Complaints Committee in relation to the subject of the complaint.
- 26.6 If a valid notice of appeal is lodged pursuant to this section 26, the Compliance Manager must, within 21 days from receiving the notice of appeal:
- (a) provide notice in writing of the appeal to:
 - i. the Chairman of the Appeals Tribunal;
 - ii. the Member who is the subject of the complaint;
 - iii. the complainant; and
 - iv. the Chief Executive Officer of the Institute; and
 - (b) provide the Appeals Tribunal and the Member with an Appeal Book containing the following documents:
 - i. the original complaint;
 - ii. all correspondence and written communication in relation to the complaint;
 - iii. the report(s) prepared by the Compliance Manager and submitted to the Complaints Committee, if such report(s) were admitted into evidence before the Complaints Committee;
 - iv. the charge formulated from the complaint;
 - v. a record of the Complaints Committee hearing;
 - vi. the decision and statement of reasons of the Complaints Committee; and
 - vii. a copy of the notice of appeal.
- 26.7 Within 28 days from receiving the Appeal Book, the appellant, and the complainant may serve any further submissions on the Appeals Tribunal and the Compliance Manager in support of the grounds of the appeal.
- 26.8 Submissions received after that date will not be accepted as admissible evidence by the Appeals Tribunal.

27. Withdrawal of Appeal

- 27.1 A Member or the Institute who has appealed from a decision of the Complaints Committee may withdraw an appeal by giving notice in writing to the Chair of the Appeals Tribunal.
- 27.2 The notice referred to in Section 27.1 must be received by the Chair of the Appeals Tribunal no later than seven (7) days before the day scheduled for the hearing. After this time, the Member will be responsible for any costs incurred by the Appeals Tribunal and the Institute.

28. Reporting of Complaints, Claims, Notifications and Settlements

- 28.1 Where a Member has been expelled the Chief Executive Officer may notify the ASIC and any relevant State and Territory regulators.
- 28.2 Where a Member has engaged in conduct which relates to a potential breach of the *Financial Services Reform Act 2001* (as amended from time to time) the Chief Executive Officer may notify the ASIC.

29. Enforcement of Sanctions

- 29.1 All sanctions ordered against a Member pursuant to this Policy will be enforced and implemented by the Compliance Manager.
- 29.2 In the event that an application is made to the Appeals Tribunal for a review of a decision of the Complaints Committee pursuant to section 26, the Institute must stay any sanction against a Member, pending a final determination by the Appeals Tribunal.
- 29.3 Where a Member is suspended from membership of the Institute, the Member must continue to satisfy the Institutes CPD requirements as set out in the Institute's Continuing Professional Development Policy.

30. Suspension of Membership

- 30.1 Where a person's membership of the Institute is suspended in accordance with this Complaints Policy the Institute may publish a notice of the suspension in the journal;
AND that person:
- (a) must not use the Institute Members' logo;
 - (b) shall not be entitled to use any postnominals relating to his or her position or membership of the Institute;
 - (c) shall not be entitled to receive any referral of work from the Institute; and
 - (d) shall not be entitled to vote,
- for the period determined at the time of suspension.

31. Appointment of Appeals Tribunal

- 31.1 The-Australian Institute of Quantity Surveyors shall establish a tribunal which shall be known as the "Appeals Tribunal".
- 31.3 A person will not be eligible for nomination to the Appeals Tribunal if they are a member of the Complaints Committee, or a former member of the Complaints Committee within the previous 12 months.
- 31.4 The Board may accept such nominations as it considers reasonable in its complete discretion.
- 31.5 At the discretion of the Board and subject to appointment being necessary, there must be not less than three Appeals Tribunal Members nominated and of those Tribunal Members there must be at least one Tribunal Member who is a lawyer with a current practising certificate and who has at least 7 years' legal experience.

- 31.6 In section 31.5, **legal experience** means —
- (a) standing and practice as a legal practitioner, with a licence to act as a legal practitioner in one or more Australian State or Territory; or
 - (b) judicial service (including service as a judge of a court, a magistrate or other judicial officer) in the State or elsewhere in a common law jurisdiction; or
 - (c) a combination of both kinds of legal experience mentioned in paragraphs (a) and (b).
- 31.7 The Board will as necessary nominate one of the Tribunal Members as Chairman of the Appeals Tribunal and one as Deputy Chairman of the Appeals Tribunal.
- 31.8 For each appeal to be considered by the Appeals Tribunal the chairperson of the Appeals Tribunal must appoint not less than three Tribunal members to the Appeals Tribunal to consider the appeal.
- 31.9 A Tribunal Member will not be eligible for appointment to the Appeals Tribunal for a particular appeal where that member has a conflict of interest.
- 31.10 A Tribunal Member will have a conflict of interest if the Tribunal Member:
- (a) Is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;
 - (b) has or has had an existing commercial or personal relationship with the complainant or the Member accused; or
 - (c) was involved in
 - i. making submissions in or giving evidence at the hearing of the conduct of the complaint; or
 - ii. the decision of the Complaints Committee being appealed from.
- 32. Vacancy**
- 32.1 A nomination to the Appeals Tribunal will remain valid for three years from the date of acceptance of a nomination.
- 32.2 The Board may terminate the appointment of a Tribunal Member for inability, inefficiency, or misbehaviour.
- 32.3 The office of a member of the Tribunal becomes vacant if—
- (a) his or her nomination expires; or
 - (b) his or her appointment is terminated pursuant to section 31.3; or
 - (c) he or she is declared bankrupt or a person whose affairs are under insolvency laws; or
 - (d) he or she becomes permanently incapable of performing his or her duties as a member; or
 - (e) he or she withdraws his or her nomination by written notice addressed to the Chief Executive Officer;
 - (f) he or she ceases to hold any qualification required for his or her becoming or being a member of the Tribunal; or
 - (g) he or she becomes an employee of the Institute.

33. Validity of acts of Tribunal

33.1 No act, proceeding, or determination of the Appeals Tribunal shall be invalid on the ground only of any vacancy in the office of any member of the Tribunal or of any defect in the appointment of any member of the Tribunal, provided that any final determination on an appeal is made by at least two (2) members of the Tribunal.

34. Remuneration of members

34.1 The members of the Appeals Tribunal shall be paid such remuneration, allowances and expenses as may from time to time be approved by the Board.

35. Meetings of the Appeals Tribunal

35.1 The Appeals Tribunal shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Policy and the Board may at any time require the Chairman to convene a meeting of the Tribunal.

35.2 When considered necessary and in the interests of efficiency, it will be appropriate for the Appeals Tribunal to conduct a meeting by teleconference, video conference or web conference.

35.3 The Chairman shall preside at all meetings of the Appeals Tribunal at which he or she is present and the Deputy Chairman shall preside at all meetings at which he or she, but not the Chairman, is present, but where neither the Chairman nor the Deputy Chairman is present at a meeting of the Appeals Tribunal, the members present shall appoint one of their number present to preside at the meeting.

35.4 At a meeting of the Appeals Tribunal, 3 members constitute a quorum.

35.5 The Appeals Tribunal shall cause accurate minutes to be kept of its proceedings at its meetings.

36. Hearings before the Appeals Tribunal

36.1 The Appeals Tribunal must give reasonable notice to an appellant of the time and place at which it intends to hear the complaint and must advise the Member of his or her right to appear and be represented at the hearing.

36.2 The Appeals Tribunal must give reasonable notice to the complainant of the time and place at which it intends to hear the complaint.

36.3 If a person to whom notice has been given pursuant to 38.1 or 38.2 does not attend at the time and place fixed by the notice, the Appeals Tribunal may hear the proceedings in his or her absence.

36.4 Any appellant:

- (a) shall be entitled to appear personally or by a legal practitioner; or
- (b) may, by leave of the Appeals Tribunal, be represented by a person other than a legal practitioner.

36.5 At the hearing of an appeal:

- (a) the complainant must be given reasonable opportunity to make submissions to the Appeals Tribunal; and

- (b) the appellant must be given a reasonable opportunity to make submissions to the Appeals Tribunal.
- 36.6 The Appeals Tribunal may appoint a person with such qualifications as it thinks fit to assist in proceedings before the Appeals Tribunal, provided however that such person must at all times act impartially and must not have a conflict of interest.
- 36.7 A person will have a **conflict of interest** in any of the following circumstances
- (a) the person is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;
 - (b) the person has or has had an existing commercial or personal relationship with the complainant or the Member accused; or
 - (c) the person is or has been in any way involved in the circumstances giving rise to the complaint.
- 36.8 The Appeals Tribunal may, if it considers it appropriate and in the interests of justice to do so, receive such further evidence about questions of fact, either orally, or in writing as it deems necessary
- 36.9 A transcript of the hearing of the Appeals Tribunal must be kept. The appellant or the complainant may obtain a copy of the transcript upon request to the Compliance Manager and shall be provided with a copy upon payment of a fee prescribed by the Institute.
- 36.10 To the extent that it is not prescribed, the Appeals Tribunal shall determine its own procedure, including directions for the provision of written submissions and evidence
- 36.11 All determinations and decisions to be made by the Appeals Tribunal shall be decided by a majority of the votes of the members present and voting. When required to make a final determination, the Chairman will have a casting vote

37. Powers of the Appeals Tribunal

- 37.1 In the exercise of its powers in proceedings under this Policy, the Appeals Tribunal may—
- (a) require the attendance before the Appeals Tribunal of the complainant and / or such evidence (as is deemed necessary by the Appeals Tribunal)
 - (b) require the attendance before the Appeals Tribunal of the appellant;
 - (c) require the production of any books, papers, or documents by the complainant or the Member complained about;
 - (d) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
 - (e) require any person to make oath or affirmation that he or she will truly answer all questions put to him or her by the Appeals Tribunal relating to any matter being inquired into by the Appeals Tribunal; and
 - (f) require any person appearing before the Appeals Tribunal to give evidence, to answer any relevant questions put to him or her by the Appeals Tribunal, or by any other person appearing before the Appeals Tribunal.

- 37.2 In the course of any proceedings, the Appeals Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact there from that it considers proper; or
 - (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings
- 37.3 In any proceedings the Appeals Tribunal shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.
- 37.4 The Appeals Tribunal may do any one or more of the following:
- (a) confirm, amend or set aside the decision of the Complaints Committee;
 - (b) vary the sanction imposed by the Complaints Committee; and
 - (c) make such other order that it considers appropriate.
- 37.5 The Appeals Tribunal must notify the Compliance Manager, the Member and the complainant of its decision and must give the parties written reasons for its decision.
- 37.6 If the appeal is unsuccessful, the Appeals Tribunal may, if it sees fit, order the Member to pay the reasonable costs of the Appeals Tribunal and the Institute.
- 37.7 A decision of the Appeals Tribunal is binding upon the complainant and the Member who is the subject of the complaint, and the Board of the Institute cannot overrule or vary the decision of the Appeals Tribunal.

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