



Institute of Actuaries of Australia

# CONSTITUTION

**December 2001**

## TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	OBJECTS.....	3
3.	INCOME AND PROPERTY OF THE INSTITUTE .....	4
4.	ADMISSION .....	5
5.	INDEPENDENT MEMBERSHIP REVIEW PANEL .....	6
6.	CLASSES OF MEMBERS.....	7
7.	VOTING MEMBERS.....	8
8.	LIFE MEMBERS .....	8
9.	THE COUNCIL .....	8
10.	PRESIDENT, VICE-PRESIDENTS & IMMEDIATE PAST PRESIDENT .....	11
11.	POWERS OF THE COUNCIL.....	12
12.	PROCEEDINGS OF THE COUNCIL .....	13
13.	APPOINTMENT AND REMUNERATION OF OFFICERS AND OTHERS.....	15
14.	SECRETARY .....	15
15.	THE TREASURER OF THE INSTITUTE .....	15
16.	SUBSCRIPTIONS.....	16
17.	FINANCIAL YEAR.....	16
18.	AUDIT AND ACCOUNTS.....	17
19.	EXAMINATIONS.....	17
20.	TUITION .....	17
21.	LIBRARIES.....	17
22.	PUBLICATIONS.....	17
23.	PROFESSIONAL DISCIPLINE .....	18
24.	TERMINATION OF MEMBERSHIP.....	18
25.	GENERAL MEETINGS OF THE INSTITUTE .....	18

26.	VOTING BY PROXY .....	21
27.	LODGMET OF PROXY .....	22
28.	VALIDITY .....	22
29.	COMMON SEAL .....	22
30.	INSPECTION OF RECORDS.....	23
31.	SERVICE OF NOTICES.....	23
32.	PERSONS ENTITLED TO NOTICE.....	24
33.	WINDING UP .....	24
34.	INDEMNITY AND INSURANCE .....	25

**SCHEDULE**

S1.	PART A. OBJECTIVE .....	26
S2.	PART B. INTERPRETATION.....	26
S3.	PART C. ACTIONABLE CONDUCT .....	27
S4.	PART D. COMMITTEE; INVESTIGATING SUBCOMMITTEES; TRIBUNAL; APPEAL BOARD .....	28
S5.	PART E. THE INVESTIGATION STAGE .....	31
S6.	PART F. THE TRIBUNAL STAGE .....	34
S7.	PART G. THE APPEAL BOARD STAGE.....	39
S8.	PART H. CONFIDENTIALITY .....	42
S9.	PART I. PUBLICITY .....	42
S10.	PART J. CONFLICT OF INTEREST .....	43
S11.	PART K. GENERAL PROVISIONS .....	44

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

**1. DEFINITIONS AND INTERPRETATION**

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.

**'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.

'**Treasurer**' means the person appointed by the Council to perform the duties of treasurer of the Institute.

'**Voting Member**' means a Member referred to in clause 7.

'**Written**' or '**in writing**' means and includes words printed, lithographed, represented or reproduced in any mode 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 of this Constitution;
  - (e) a reference to the Corporations Act is a reference to the Corporations Act 2001 (Commonwealth) as modified or amended 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

2.1 The objects for which the Institute is established are:

- (a) To increase the value to the community of the actuarial profession and foster the development of actuarial science.
- (b) To encourage and assist persons in the study of actuarial science and any other subjects of interest to the actuarial profession.
- (c) To represent the actuarial profession in Australia.
- (d) To promote the general efficiency of the actuarial profession and to encourage and promote good relationships between the members of the actuarial profession.
- (e) To increase public awareness of the actuarial profession and to enhance its reputation.
- (f) To establish and uphold standards of professional conduct by members of the actuarial profession for the protection of the public and in the public interest.
- (g) To provide education, encourage continuing professional development and promote research in actuarial science.
- (h) To hold and collaborate 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 to create forums for discussion of contemporary and relevant issues.
- (i) To discuss and comment 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) To consider the actuarial aspects of legislation and regulation existing and proposed and to take such action as is considered desirable in relation to such legislation and regulation.
- (k) To provide a system of professional accreditation of actuaries (including mutual recognition) for the benefit and protection of the public and Members and to arrange and conduct 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) To arrange for the compilation and publication of statistical data and of actuarial tables.
- (m) To undertake and institute 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) To safeguard the interests and welfare of Members to further their advancement and to promote whatever may lead to the improvement of their status.
- (o) To institute, defend, appear and join 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 to make submissions and give evidence as the Council may consider desirable.
- (p) To do 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 license 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**

3.1 The income and property of the Institute will only be applied in the promotion of the objects of the Institute 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 Clause 3.2 does not prevent:

- (a) the payment in good faith of 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) the payment in good faith of interest on moneys lent at a rate not exceeding current bank overdraft rates of interest.

3.4 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 0.

#### **4. ADMISSION**

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 will 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 recommendation 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 paragraph (c) (i) or (c) (ii) of Rule 4 of the Disciplinary Scheme refers.
- 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**

- 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**

6.1 Members shall be of four classes, namely:

- (a) Fellow
- (b) Accredited Member
- (c) Associate
- (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 and 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:

- (a) the Member was classified as a Fellow pursuant to the constitution of the Institute in force immediately before adoption of this Constitution; or
- (b) the Member 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:

- (a) the Member was classified as an Accredited Member pursuant to the constitution of the Institute in force immediately before adoption of this Constitution; or
- (b) the Member 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:

- (a) the Member was classified as an Associate pursuant to the constitution of the Institute in force immediately before adoption of this Constitution; or
  - (b) the Member 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:
- (a) the Member 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) the Member 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 at the time of the variation.
- 6.7 The Institute shall maintain at its registered 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 after their names the letters 'FIAA' and 'AIAA', respectively. Such letters may be substituted by another combination of letters approved by the Members by Special Resolution.
- 7. VOTING MEMBERS**
- A Voting Member is a Member who is a Fellow of the Institute.
- 8. LIFE MEMBERS**
- 8.1 The Council may recommend that any Voting Member be elected 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.
- 9. THE COUNCIL**
- 9.1 (a) The Council shall consist of not less than 12 members.

- (b) Subject to clause 9.7(b), five members of the Council shall be elected 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.
  - (c) Subject to clause 10, a member of the Council must retire from office at the conclusion of the third Annual General Meeting after he or she was last elected or deemed to have been elected as a member of the Council.
  - (d) 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.
- 9.2 Only Voting Members shall be eligible to be members of the Council and to vote on the elections of members of the Council.
- 9.3 (a) The election of members of the Council shall be conducted by secret postal 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.
- 9.4 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.
- 9.5 Each election shall be under the control of a returning officer appointed by the Council (not being a candidate for election).
- 9.6 (a) Nominations for election as a member of the Council shall be in writing signed by three Voting Members and by the nominee and shall be lodged with the Secretary at least 30 days before the closing date for the ballot determined under clause 9.3(b).
- (b) Each candidate shall at the time of nominating supply:
- (i) the candidate's date of birth, and
  - (ii) the candidate's actuarial qualifications including the year of qualifying as a Fellow, and
  - (iii) 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.

- 9.7 (a) If the number of nominations for election as members of the Council is 5, the returning officer shall at the Annual General Meeting declare the persons nominated to be elected as members of the Council.
- (b) If the number of such nominations is less than 5, the returning officer shall declare the persons nominated to be elected as members of the Council at the Annual General Meeting and the Council 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 the Annual General Meeting.
- (c) If the number of such nominations is more than 5, the returning officer shall conduct a ballot in accordance with clause 9.3(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.
- 9.8 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; or
- (e) holds any office of profit under the Institute.
- 9.9 The Council may appoint any person (being a 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 member appointed under this clause shall be deemed to have been elected at the Annual General Meeting at which the member whom he or she replaces was elected or was deemed to have been elected and shall hold such office in accordance with clause 9.1(c) accordingly.

**10. PRESIDENT, VICE-PRESIDENTS & IMMEDIATE PAST PRESIDENT**

- 10.1 (a) Subject to clause 9.1, except in the case where the Vice President has already been elected in pursuance of paragraph (d) of this clause, at a meeting to be held within three months prior to each Annual General Meeting, the Council shall elect from its members, other than those who have served a full year's term as President of the Institute in the previous five 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.
- (b) 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 9.1(c).
- (c) The President, Senior Vice President or Vice President may resign such office at any time by notice in writing to the Institute.
- (d) Whenever a vacancy occurs in the office of Vice President or Senior Vice President of the Institute, the Council shall fill the vacancy by electing from its members, other than those who have served a full year's term as President of the Institute in the previous five years, a person (in this paragraph referred to as "the newly elected person") as Vice President or Senior Vice President of the Institute, as the case may be, from the date of such election until the conclusion of the term of office as President of the member who was President at the time the newly elected person was elected. At the conclusion of such term the newly elected person shall assume the office of Senior Vice President or President, as the case may be, and shall serve in that capacity until the conclusion of the Annual General Meeting next following the date on which such term concluded and in the case of the newly elected person who assumes the office of Senior Vice President he or she shall at the conclusion of such Annual General Meeting become and serve as President of the Institute until the conclusion of the Annual General Meeting following his or her becoming President.
- (e) The person elected to serve as Junior Vice President of the Institute at the meeting of the Council held prior to the adoption of this clause shall become and serve as Vice President of the Institute as from the conclusion of the Annual General Meeting at which this clause was adopted until the conclusion of the next following

Annual General Meeting. That person shall then become and serve as Senior Vice President of the Institute until the conclusion of the succeeding Annual General Meeting whereupon he or she shall become and serve as the President of the Institute until the conclusion of the next following Annual General Meeting.

The person serving as Junior Vice President of the Institute at the time of adoption of this clause shall serve as Senior Vice President as from the conclusion of the Annual General Meeting at which this clause was adopted 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.

The person serving as Senior Vice President of the Institute at the time of adoption of this clause shall serve as President of the Institute as from the conclusion of the Annual General Meeting at which this clause was adopted until the conclusion of the next following Annual General Meeting.

- 10.2 The retiring President shall between the conclusion of his or her term as President and the conclusion of the next following Annual General Meeting:
- (a) be known as Immediate Past President of the Institute, and
  - (b) be invited to Council meetings for the year following the conclusion of his or her term as President.
- 10.3 In the event of the office of President of the Institute becoming vacant for any reason the Council shall elect from its members a new President and 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.

## **11. POWERS OF THE COUNCIL**

- 11.1 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.
- 11.2 Without limiting the generality of clause 11.1, the Council may:
- (a) make, publish, alter and repeal by-laws and rules for the regulation and management of the Institute;

- (b) make, publish, alter and repeal 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) make, publish, alter and repeal 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.
- 11.3 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.
- 11.4 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, the Treasurer or by a member of the Council in attending a meeting of the Council.
- 11.5 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 Council.
- 11.6 The Council may at any time revoke or vary any delegation of power to a committee.

## **12. PROCEEDINGS OF THE COUNCIL**

- 12.1 The ordinary meetings of the Council shall be held at such times and places as the Council from time to time determines.
- 12.2 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 8 days.
- 12.3 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.
- 12.4 Five members of the Council present in person or by proxy shall constitute a quorum for a meeting of the Council.

- 12.5 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.
- 12.6 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 27 and 28 apply to the lodgment and validity of proxies under this clause.
- 12.7 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.
- 12.8 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.
- 12.9 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.
- 12.10 A resolution in writing signed by at least 75% of the members of Council shall be as valid and effectual as if it had been passed at a meeting of the members of Council duly called and constituted. Any such resolution may consist of several documents in like form, each signed by one or more members of Council.
- 12.11 Without limiting the discretion of members of Council to regulate their meetings, the members of 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 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 Council apply so far as they are capable of application and, with the necessary changes, to such meetings and conferences.

**13. APPOINTMENT AND REMUNERATION OF OFFICERS AND OTHERS**

The Council may appoint and remove and may, subject to the Constitution, determine the duties and remuneration (if any) of the Secretary, Treasurer, 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 servants or any of them provided that the Council may if it deems fit appoint one person to perform the duties of more than one of the above-mentioned positions and provided further that no member of the Council shall be entitled to receive any remuneration for or in connection with the performance of any of the above-mentioned duties performed while such a person is a member of the Council.

**14. SECRETARY**

- 14.1 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.
- 14.2 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.
- 14.3 The Council may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.
- 14.4 The Secretary is not required to be a Member.

**15. THE TREASURER OF THE INSTITUTE**

- 15.1 The Council may appoint a person as the treasurer of the Institute.
- 15.2 The Treasurer is not required to be a Member.
- 15.3 The Council may, subject to the Treasurer's employment contract, suspend, remove or dismiss the Treasurer.
- 15.4 The Treasurer of the Institute shall pay any moneys received by him or her into the Institute's account with its bankers and keep account of receipts and expenditure.
- 15.5 Cheques required to be signed on behalf of the Institute shall be signed upon the order of the Council by such persons as the Council shall determine.

## **16. SUBSCRIPTIONS**

- 16.1 The Council may determine the entrance fee and annual subscription fee payable by each Member or each class of Member and may vary such fees from time to time.
- 16.2 Subject to clause 16.7, the subscriptions and fees payable by Members shall be fixed from year to year by the Council.
- 16.3 The Council shall have power in cases of misfortune or where a Member resides overseas or has retired on account of age or ill-health or in any other circumstance which it shall think sufficient to waive all or any part of the subscriptions or fees or any arrears due from any Member. The Council may also fix rates at which any subscriptions or fees may be commuted.
- 16.4 No subscriptions and fees shall be payable by Life Members.
- 16.5 Subscriptions in respect of any financial year shall be due and payable on 31 January in that year or such other date determined by the Council.
- 16.6 If a Member does not pay a subscription by its due date for payment the Council:
- (a) may give the Member notice of his or her default; and
  - (b) if the subscription remains unpaid for a period of 30 days (or such longer period determined by the Council) after the date of that notice may declare that person's membership of the Institute terminated.
- 16.7 Except as otherwise resolved by the Council, the subscription and fees payable by a Member in respect of any financial year shall be determined according to the class of Member to which the Member belongs on the date in that year in which the Member's subscription becomes due. The Council may determine that one or more classes of Members be divided into sub-classes or categories for the purposes of different subscription and other fees being fixed for each sub-class or category and the subscription and other fees payable by a Member in a sub-class or category shall be those fixed by the Council for that sub-class or category.
- 16.8 Should any dispute arise as to the amount of any subscription payable by a Member, such dispute shall be referred to the Council and its decision shall be final.

## **17. FINANCIAL YEAR**

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

## **18. AUDIT AND ACCOUNTS**

- 18.1 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.
- 18.2 The Council must cause the financial records of the Institute to be audited in accordance with the requirements of the Corporations Act.
- 18.3 The Council shall cause to be made out and laid before each Annual General Meeting of the Institute a balance sheet and profit and loss account made up to a date not more than three months before the date of the meeting.

## **19. EXAMINATIONS**

- 19.1 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.
- 19.2 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.

## **20. TUITION**

- 20.1 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.

## **21. LIBRARIES**

- 21.1 The Council may from time to time appropriate funds for the establishment or maintenance of libraries of the Institute and make rules for the conduct of such libraries.
- 21.2 The Council may from time to time 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.

## **22. PUBLICATIONS**

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.

## **23. PROFESSIONAL DISCIPLINE**

- 23.1 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.
- 23.2 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.

## **24. TERMINATION OF MEMBERSHIP**

- 24.1 A person shall cease to be a Member:
- (a) if the person resigns as a Member by notice in writing to the Institute;
  - (b) if the person dies;
  - (c) if the person is found to suffer mental illness or mental incapacity under legislation relating to mental health;
  - (d) if the person is terminated or expelled as a Member under clause 16.6 or the Disciplinary Scheme; or
  - (e) if the person is suspended as a Member under the Disciplinary Scheme, in which case the person shall cease to be a Member for the period of such suspension.

A notice of resignation given under paragraph (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).

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

- 25.1 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 21 days written notice must be given to members of any Annual General Meeting.
- 25.2 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 18, duly verified and signed by the Auditor and the report of the Auditor.

- 25.3 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.
- 25.4 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.

- 25.5 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.
- 25.6 Twenty eight 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.
- 25.7 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.
- 25.8 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.
- 25.9 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.
- 25.10 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 declaration by the Chairperson of the meeting that the resolution has on the show of hands been carried or lost, shall be final. On such declaration being made a poll may be demanded by at least five Members present in person or by proxy and entitled to vote upon the resolution at the General Meeting or by 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.
- 25.11 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.

- 25.12 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.
- 25.13 Twelve Voting Members being personally present shall constitute a quorum for a General Meeting.
- 25.14 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.

## **26. VOTING BY PROXY**

- 26.1 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 subsection 250A(1) of the Corporations Act. The Council may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 26.2 For the purposes of clause 26.1, an appointment 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.
- 26.3 Any person may be appointed as a proxy to attend and vote for a Member at a General Meeting of the Institute.
- 26.4 A proxy's appointment is valid at an adjourned meeting.
- 26.5 A proxy may be appointed for all meetings or for any number of meetings or for a particular purpose.
- 26.6 A proxy appointed to attend and vote for a Member has the same rights as the Member:
- (a) to speak at the meeting;
  - (b) to vote (but only to the extent allowed by the appointment); and
  - (c) to join in a demand for a poll.
- 26.7 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.

## **27. LODGMENT OF PROXY**

27.1 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 (unless otherwise specified in the notice of meeting to which the proxy relates) 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.

27.2 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.

## **28. VALIDITY**

28.1 A vote cast in accordance with an appointment of 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.

## **29. COMMON SEAL**

29.1 If the Institute has a Seal:

- (a) the Council must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Council or a Council committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a member of the Council and be countersigned by another member of the Council, the Secretary or another person appointed by the Council to countersign the document.

### **30. INSPECTION OF RECORDS**

- 30.1 Except as otherwise required by 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 Council.
- 30.2 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.

### **31. SERVICE OF NOTICES**

- 31.1 A notice may be given by the Institute to any person who is entitled to or may be given notice under this Constitution:
- (a) by delivering it by hand to the person; or
  - (b) by 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.
- 31.2 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 registered office of the Institute.
- 31.3 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.
- 31.4 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 it has not received the entire notice.
- 31.5 A certificate in writing signed by a member of Council, 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.
- 31.6 Subject to the Corporations Act the signature to a written notice given by the Institute may be written or printed.
- 31.7 All notices sent by post outside Australia must be sent by prepaid airmail post.

## **32. PERSONS ENTITLED TO NOTICE**

32.1 Notice of every General Meeting must be given to:

- (a) every Member; and
- (b) the Institute's auditor.

32.2 No other person is entitled to receive notice of a General Meeting.

## **33. WINDING UP**

33.1 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 33.1(b), 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.

33.2 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.

33.3 To the extent that effect cannot be given to clause 33.2 any surplus should be given or transferred to some charitable object.

## INDEMNITY AND INSURANCE

- 33.4 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 any liability (other than for legal costs) incurred by that person as such an officer of the Institute (including liabilities incurred by the officer as a director of a subsidiary of the Institute where the Institute requested the officer to accept appointment).
- 33.5 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 reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Institute (including such legal costs incurred by the officer as a director of a subsidiary of the Institute where the Institute requested the officer to accept appointment).
- 33.6 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.
- 33.7 For the purposes of this clause 0:
- (a) 'officer' includes:
    - (i) a member of the Council and of any committee or other body established by the Institute or the Council;
    - (ii) the Secretary;
    - (iii) the Treasurer; and
    - (iv) an officer (as defined by the Corporations Act) of the Institute;
  - (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.

**SCHEDULE**  
**DISCIPLINARY SCHEME**

**S1. PART A. OBJECTIVE**

- 1 This scheme sets out the rules and procedures governing professional discipline of Members and the handling of complaints about the professional conduct of Members.

**S2. PART B. INTERPRETATION**

- 2 In this scheme, unless the context otherwise requires:

‘**Actionable Conduct**’ has the meaning given to that term in Rule 4(a);

‘**Board**’ means the Appeal Board established under rule 17 to determine a particular appeal;

‘**Board Panel**’ means the panel established under Rule 15;

‘**Chair of the Board**’ means the person appointed as the chairperson of the Board under Rule 17(a);

‘**Chair of the Tribunal**’ means the person appointed as the chairperson of the Tribunal under Rule 14;

‘**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 41 or a statement prepared by the Complainant under Rule 42;

‘**Commencement Date**’ means the date of the resolution of Members by which this scheme was first incorporated in the Constitution;

‘**Committee**’ means the Professional Conduct Committee established under Rule 6;

‘**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;

‘**Convener of the Committee**’ includes an acting Convener of the Committee nominated under Rule 26 or 88;

‘**Member**’ means a member of the Institute of any class;

‘**President**’ means the President of the Institute;

‘**Respondent**’ means a Member against whom a Complaint or Charge has been made;

‘**Rule**’ refers to a numbered provision of this schedule;

‘**Senior Vice President**’ means the Senior Vice President of the Institute;

‘**Sub-Committee**’ means an Investigating Sub-Committee appointed under Rule 28;

‘**Tribunal**’ means the Professional Conduct Tribunal established under rule 12 to determine a particular Complaint;

‘**Tribunal Panel**’ means the panel established under Rule 9;

‘**Vice President**’ means the Vice President of the Institute;

‘**Voting Member**’ has the meaning given to that term in the Constitution.

### **S3. PART C. ACTIONABLE CONDUCT**

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

4 For the purposes of this scheme:

(a) ‘Actionable Conduct’ means:

- (i) professional misconduct;
- (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); and
- (v) being knowingly concerned in or a party to conduct described in (i), (ii) or (iii) engaged in or committed by another person.

(b) ‘unsatisfactory professional conduct’ includes:

- (i) conduct (whether by act or omission) occurring in connection with actuarial practice that falls short of the standard of competence and diligence that a member of the public is entitled reasonably to expect of an actuary; and

- (ii) a substantial or persistent breach of or non-compliance with a published professional standard or mandatory guidance note of the Institute.
- (c) The fact that a Member:
  - (i) is or has been convicted of a criminal offence or found to have acted fraudulently or dishonestly by any court or tribunal of competent jurisdiction in Australia or elsewhere; or
  - (ii) is or has become ‘insolvent under administration’ as defined in Section 9 of the Corporations Law;

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

- 5 A Member to whom paragraph (c)(i) or (c)(ii) of Rule 4 applies must notify the Institute of any event referred to in one of those paragraphs:
- (a) if the event occurs after the Commencement Date – within seven days after the occurrence of the event; and
  - (b) if the event occurred within the period of three years before the Commencement Date – within 60 days after the Commencement Date.

**S4. PART D. COMMITTEE; INVESTIGATING SUBCOMMITTEES; TRIBUNAL; APPEAL BOARD**

***Professional Conduct Committee***

- 6 The Council shall establish a Professional Conduct Committee consisting of seven Voting Members appointed by the Council, not being members of the Council, the Tribunal Panel or the Board Panel.
- 7 The Council shall appoint one of the members of the Committee to be the Convener of the Committee.
- 8 Any member of the Committee, or the Convener 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 Convener of the Committee shall be filled by the Council as it thinks fit.

***The Professional Conduct Tribunal***

***Membership***

- 9 The Council shall appoint seven Voting Members, or such other number of Voting Members as the Council may determine from time to time, not being members of the Council, the Committee or the Board Panel, to serve as a panel from which Voting Members will be appointed to the Tribunal in accordance with Rule 12.

- 10 The Council shall appoint one of the members of the Tribunal Panel to be the Convener of the Tribunal.
- 11 Any member of the Tribunal Panel, or the Convener of the Tribunal, 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 Convener of the Tribunal shall be filled by the Council in accordance with Rule 9 or 10.
- 12 For the purposes of determining a Complaint, a Professional Conduct Tribunal shall be established consisting of:
  - (a) four Voting Members (who shall include the Convener of the Tribunal unless he or she is unable to serve by reason of conflict of interest or otherwise) appointed by the Convener of the Tribunal from members of the Tribunal Panel; and
  - (b) a practising barrister or solicitor, not being a Member, appointed by the President.
- 13 In the event that there are not four members of the Tribunal Panel available to be members of a Tribunal in accordance with Rule 12(a), 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 Board Panel, to the Tribunal so that the Tribunal shall include four Voting Members.
- 14 If the Convener of the Tribunal is a member of the Tribunal established to determine a particular Complaint, he or she shall be chairperson of that Tribunal. If the Convener of the Tribunal 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 chairperson of that Tribunal.

### ***The Appeal Board***

#### *Membership*

- 15 The Council shall appoint five Voting Members, or such other 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 panel from which Voting Members will be appointed to the Board in accordance with Rule 17.
- 16 Any member of the 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 Board Panel shall be filled by the Council in accordance with Rule 15.
- 17 For the purposes of determining an appeal under Rule 65 or 67, an Appeal Board shall be established consisting of:

- (a) a practising barrister of at least five years standing, who is not a Member, nominated by the president or next most senior office bearer of an Australian Bar Council or Association on the request of the President, and the barrister appointed shall be the chairperson of the Board for the purposes of determining the particular appeal;
- (b) a person who is not a Member, with qualifications and experience appropriate to the particular case, appointed by the Chair of the Board in consultation with the President; and
- (c) three Voting Members appointed from members of the Board Panel by the Chair of the Board in consultation with the President.

18 In the event that there are not three members of the Board Panel available to be members of a Board in accordance with Rule 17(c), 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 Board so that the Board shall include three Voting Members.

### ***General***

#### *Replacement of Sitting Members*

- 19 If, by reason of illness or absence or for any other reason (including a declaration under Rule 90), a member of a Sub-Committee, a Tribunal, or a Board is unable to serve in that respective capacity at any time, another member of the Committee, the Tribunal Panel or the Board Panel, as the case may be, shall be appointed to act in that member's place by:
- (a) in the case of a Sub-Committee, the Convener of the Committee;
  - (b) in the case of the Tribunal, the Chair of the Tribunal;
  - (c) in the case of the Board, the Chair of the Board in consultation with the President.

#### *Quorums*

- 20 Except where Rule 21 applies, the quorum for a meeting or hearing conducted by a Tribunal or a 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 chairperson may determine or, at the discretion of the chairperson, the meeting or hearing shall be conducted by a new Tribunal or Board, respectively, appointed in accordance with this scheme.
- 21 The quorum for a meeting of a Tribunal or a Board held for the purpose of dealing with preparatory, procedural or administrative matters preliminary to a hearing shall be the nominated chairperson of such body, together with two other members. An inquorate meeting shall be adjourned until reconvened at such time and place as the chairperson determines.

*Voting*

- 22 Each member of a Tribunal or Board shall have one vote. A chairperson of either body shall not have a casting vote.

**S5. PART E. THE INVESTIGATION STAGE**

*Complaints*

- 23 Subject to Rule 26, any Complaint shall in the first instance be referred to the Convener of the Committee.
- 24 On the request of a person considering lodging a Complaint, the Convener of the Committee shall provide reasonable assistance to the person in formulating the Complaint.
- 25 The Convener of the Committee may refer a Complaint to the Committee for preliminary consideration and the Committee may determine by simple majority vote either that the Complaint not be investigated on the grounds that it is frivolous or obviously without grounds or substance, or that the Complaint be investigated. A determination not to investigate a Complaint shall be reported in writing by the Convener of the Committee to the Respondent and the Complainant. Notwithstanding such a determination, the Complainant may, by notice in writing to the Convener of the Committee within twenty-eight days of receipt of the notice of the Committee's determination, require that the matter be investigated in accordance with this scheme.
- 26 Where, having regard to the interests of the public and the profession of actuary, the President, the Senior Vice President, the Vice President, the Council, a committee of the Institute (other than the Committee) or the Convener of the Committee considers it appropriate that a matter relating to the conduct of a Member should be investigated, the President, the Senior Vice President, the Vice President, the Council, the committee of the Institute or the Convener of the Committee (as the case may be) shall lodge a Complaint with respect to the matter. In the case of a Complaint by the President, the Senior Vice President, the Vice President, the Council or a committee of the Institute, the Complaint shall be lodged with the Convener of the Committee. In the case of a Complaint by the Convener of the Committee, the Complaint shall be lodged with a member of the Committee nominated by the President to be the acting Convener of the Committee with respect to the matter and Rule 98 shall apply to such nomination. A Complaint made under this Rule shall be investigated in accordance with this scheme.
- 27 If the Complaint is to be investigated under Rule 25 or 26, the Convener of the Committee shall refer the Complaint to a Sub-Committee for investigation.

## ***Investigating Sub-Committee***

### *Membership*

- 28 For the purposes of investigating a particular Complaint, a Sub-Committee shall be established comprising not less than three persons appointed by the Convener of the Committee from the members of the Committee. The Convener of the Committee may, if in his or her judgement the circumstances so require, appoint, with the approval of the President, a person, not being a member of the Council, the Tribunal Panel or the Board Panel, to serve as an additional member of the Sub-Committee. Such person may be a non-member of the Institute.
- 29 If the Convener of the Committee is a member of the Sub-Committee, the Convener of the Committee shall be chairperson of the Sub-Committee. Otherwise, the Convener of the Committee shall appoint one of the members of the Sub-Committee to be its chairperson.

### *Powers of the Sub-Committee*

- 30 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.
- 31 Sub-Committees appointed under Rule 28 shall have power:
- (a) 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);
  - (b) to require any further information from any Member relating to the subject matter of the investigation;
  - (c) 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
  - (d) 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.
- 32 Any Member who fails to comply with the obligations imposed by Rule 31 or who hinders, misleads or frustrates the Sub-Committee in its functions shall be *prima facie* guilty of Actionable Conduct.

*Additional questions*

- 33 A Sub-Committee may refer conduct or questions relating to the Respondent which were not included in the Complaint to the Convener 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.

*Sub-Committee determinations*

- 34 A Sub-Committee (acting by a simple majority of those present and voting) shall be empowered to determine that:
- (a) the Respondent has not committed or been engaged in Actionable Conduct;
  - (b) the Respondent has not committed or been engaged in Actionable Conduct but that concern be expressed in relation to the conduct of the Respondent;
  - (c) the Respondent has committed or been engaged in Actionable Conduct and that the Respondent be given a warning in relation to such conduct; or
  - (d) the Respondent has committed or been engaged in Actionable Conduct and a report be made to the Tribunal in respect of such conduct;

and in the event that none of the foregoing determinations is made by the Sub-Committee by the requisite majority, the Complaint shall be dismissed.

- 35 A determination of a kind referred to in Rule 34(b), 34(c) or 34(d) shall not be made unless the Sub-Committee has informed the Respondent that it is considering such course of action and the Respondent has been given the opportunity to make representations or submissions to the Sub-Committee in relation to the determination being considered.

*Access to records*

- 36 A Sub-Committee shall not be entitled to have access to records of the Institute relating to, or take into consideration, any prior complaint against the Respondent, except that if:
- (a) it determines that the Respondent has committed or been engaged in Actionable Conduct; or
  - (b) it is contemplating a determination under Rule 34(b);

the Sub-Committee may take into account information concerning prior complaints against the Respondent when it is considering what kind of determination to make under Rule 34 and what recommendations to make under Rule 41(d).

- 37 For the purposes of Rules 36 and 44, “prior complaint” means a Complaint under this scheme or a complaint, allegation or representation under the professional discipline provisions of the Constitution in force prior to the Commencement Date which, in either case, finally resulted in a determination by the relevant body that the Respondent had committed or been engaged in Actionable Conduct or alternatively that concern be expressed in relation to the conduct of the Respondent.

#### *Communication of decisions*

- 38 The determination of the Sub-Committee under Rule 34 shall be delivered to the Convener of the Committee and reported in writing by the Convener of the Committee to the Respondent and, subject to Rule 81, to the Complainant. Where the Sub-Committee has made a determination under Rule 34(b), the Convener of the Committee’s communication to the Respondent shall convey the Sub-Committee’s concern in relation to the conduct of the Respondent.

#### *Appeals*

- 39 If the Respondent is dissatisfied with a determination under Rule 34(c), the Respondent may give notice in writing to the Convener of the Committee, not more than twenty-eight days after notice of the determination is served on the Respondent, that he or she appeals against the determination to the Tribunal. If the Respondent does not give such a notice, the Convener of the Committee shall, in writing, warn the Respondent in relation to the conduct the subject of the Complaint when the twenty-eight day period has elapsed.
- 40 Where the Complainant has been notified under Rule 38 and is dissatisfied with a determination under Rule 34(a), 34(b) or 34(c), the Complainant may give notice in writing to the Convener of the Committee, not more than twenty-eight days after notice of the determination is received by the Complainant, that he or she requires the Complaint to be referred to the Tribunal.

### **S6. PART F. THE TRIBUNAL STAGE**

#### *Sub-Committee’s report*

- 41 In the event of a determination under Rule 34(d), or if the Respondent exercises his or her right of appeal under Rule 39, the Sub-Committee shall prepare a report for the Tribunal, and a copy of such report shall be sent by the Convener of the Committee to the Convener of the Tribunal, the Respondent and, subject to Rule 81, the Complainant. The report shall include:
- (a) a statement of the Charge or Charges, supported where necessary by concise particulars of each Charge;
  - (b) a statement of all the relevant facts that the Sub-Committee regards as material; and

- (c) a summary of the relevant information obtained by the Sub-Committee in the course of its investigations and of the representations made by the Respondent;

and may include:

- (d) the recommendations of the Sub-Committee as to the action which the Tribunal should take under Rules 58 and 59, and which the Council should take under Rule 84, in relation to the matter.

- 42 Where the Complainant gives notice in accordance with Rule 40 and within twenty-eight days of giving such notice lodges with the Convener of the Committee a statement summarising the facts upon which the Complaint relies and the Charge or Charges (supplemented by particulars of each Charge where appropriate) as formulated by the Complainant, the Sub-Committee shall prepare a report for the Tribunal containing the statement and supplementary particulars lodged by the Complainant and the information mentioned in Rules 41(b) and 41(c). A copy of such report shall be sent by the Convener of the Committee to the Convener of the Tribunal, the Respondent and the Complainant.
- 43 In the event that the Complainant does not lodge a statement under Rule 42 within the period specified in that rule, the Complainant's notice under Rule 40 shall be deemed not to have been given.

#### *Prior complaints*

- 44 If the Sub-Committee prepares a report under Rule 41 or 42, the Sub-Committee shall also prepare a separate report about any prior complaint (as defined in Rule 0) against the Respondent.
- 45 The report under Rule 44 shall be given to the Tribunal and its contents considered by the Tribunal:
- (a) only if the Tribunal shall have determined in accordance with Rule 58 that the Member has committed or been engaged in Actionable Conduct; and
  - (b) only for the purposes of determining what kind of determination the Tribunal should make under Rule 58 and what kind of recommendation the Tribunal should make under Rule 64.

#### *Proceedings of the Tribunal*

- 46 Where:
- (a) the Sub-Committee has determined that the Complaint should be referred to the Tribunal;
  - (b) the Respondent has lodged notice of appeal against a determination of the Sub-Committee under Rule 39; or

- (c) the Complainant has given notice in accordance with Rule 40 and lodged a statement in accordance with Rule 42,

a Tribunal established under Rule 12 shall proceed to determine the matter in accordance with the following provisions of this scheme.

### *No prima facie case*

- 47 Where the Tribunal, by a simple majority of its members, is of the opinion that the documents presented to it under Rule 41 or 42 do not show a *prima facie* case of Actionable Conduct, the Tribunal shall dismiss the Complaint without hearing either the Complainant or the Respondent but may nevertheless by simple majority determine that concern be expressed in relation to the conduct of the Respondent. The Tribunal shall notify its determination and reasons in a report to the Convener of the Committee, send a copy of its report to the Respondent and, where relevant and subject to Rule 81, to the Complainant.

### *Hearings*

- 48 If the Complaint has not been dismissed under Rule 47, a hearing before the Tribunal shall be convened by the Chair of the Tribunal to determine the Complaint. Not less than forty-two days notice of such hearing shall be given to the Convener of the Committee, the Respondent and, if the Complainant is invited to be a party under Rule 49, the Complainant.
- 49 Subject to this scheme and the rules of natural justice, 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 41 or 42 and shall be a party to the proceedings before the Tribunal. The Tribunal may invite the Complainant to become a party to the proceedings before the Tribunal and shall so invite the Complainant if the Complainant has given notice under Rule 40 and the statement under Rule 42. 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, present evidence and information, and make submissions subject to any directions or rules of the Tribunal.
- 50 Hearings of the Tribunal shall be held in private.
- 51 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.
- 52 At the hearing, the Respondent shall be entitled, subject to Rule 96, to be represented by a lawyer or by a Member. In the event that the Respondent is legally represented, the Convener of the Committee may decide that the Sub-Committee should also be legally represented.

- 53 Each party must give to the Chair of the Tribunal no later than twenty-one days before the commencement of the hearing the documents upon which it intends to rely. On the application of any party, the Tribunal may require the disclosure to that party of documents disclosed by the other party if the Tribunal considers that they are relevant and that it is fair in all the circumstances that the documents should be so disclosed. The Tribunal shall not require the production of any document which is the subject of legal professional privilege.
- 54 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.
- 55 In a hearing before the Tribunal that involves the decision of a court or tribunal that relates to the Respondent:
- (a) the fact that the Respondent has been convicted of a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence;
  - (b) 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
  - (c) the judgment of any civil court may be proved by producing a certified copy of the judgment.

In any of the cases 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 those facts, unless otherwise determined by the Tribunal.

- 56 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:
- (a) 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
  - (b) 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.
- 57 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 Convener of the Tribunal.

### *Determinations of the Tribunal*

58 The Tribunal shall be empowered to make by simple majority of its members a determination of the kind referred to in Rule 34(a), 34(b) or 34(c). The Tribunal shall also be empowered to determine by a majority of not less than seventy-five percent of its members that the Respondent has committed or been engaged in Actionable Conduct and that the Respondent:

- (a) be reprimanded;
- (b) be suspended as a Member for such period, not exceeding two years, as the Tribunal shall specify; or
- (c) be expelled as a Member.

In the event that none of the foregoing determinations is made by the Tribunal by the requisite majority, the Complaint shall be dismissed.

59 As a condition of any determination under Rule 58, by decision of a simple majority of the members of the Tribunal, 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, 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.

60 The Tribunal may by simple majority of its members order:

- (a) the Respondent to make such contribution to the Institute's or the Complainant's costs of the proceedings; or
- (b) the Institute to make such contribution to the Respondent's or the Complainant's costs of the proceedings;

as it thinks fit.

61 If the determination of the Tribunal is that the Respondent be suspended as a Member under Rule 58(b), or expelled as a member under Rule 58(c), the Tribunal may determine by a simple majority of its members that the Respondent be suspended as a Member with effect from the date on which its determination is communicated to the Respondent under Rule 64. In the absence of such a determination, the Respondent's suspension or expulsion shall take effect, if the Respondent does not lodge an appeal against the determination under Rule 65, on the expiry of the period for giving notice of an appeal under that Rule.

62 Unless notice of appeal is given, any costs ordered to be paid by the Respondent shall be paid within twenty-eight 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.

- 63 If notice of appeal is given where the Respondent has been suspended under Rule 61, the Respondent shall remain suspended until the appeal has been determined.

#### ***Communication of Tribunal determinations***

- 64 The Tribunal shall communicate its determination to the Institute, with copies to the Respondent, the Convener of the Committee and, subject to Rule 81, the Complainant, by notice in writing signed by the Chair of the Tribunal. The notice to the Respondent shall, if it is the Tribunal's determination, include an expression of the Tribunal's concern, a warning, or a reprimand, in relation to the conduct of the Respondent. 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 Institute shall include a recommendation as to the action which the Council should take under Rule 86 (if it applies) in relation to the matter

### **S7. PART G. THE APPEAL BOARD STAGE**

#### ***Appeal by Respondent***

- 65 Subject to Rule 66, the Respondent may by notice appeal against:
- (a) a determination of the Tribunal that the Respondent has committed or been engaged in Actionable Conduct and that the Respondent be given a warning in relation to such conduct;
  - (b) a determination of the Tribunal of a kind referred to in Rule 58(a), 58(b) or 58(c);
  - (c) a condition of a determination referred to in paragraph (a) or (b) of this Rule imposed under Rule 59; or
  - (d) an order under Rule 60(a).

Such notice shall be given in writing and be sent to the Institute, with a copy to the Chair of the Tribunal, no later than forty-two days after the receipt by the Respondent of the Tribunal's determination.

#### ***Grounds of appeal***

- 66 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 Board. Such consent may be refused or may be given on conditions as the Board, in its discretion, determines.

### ***Appeal by Complainant***

- 67 Subject to Rule 68, where the Complainant has been notified under Rule 64 and is dissatisfied with a determination under Rule 58, a condition of such a determination (including the absence of such a condition), or an order referred to in Rule 65(d) (including the absence of such an order), the Complainant may by notice in writing to the Institute, with a copy to the Chair of the Tribunal, not later than forty-two days after notice of the determination is received by the Complainant, appeal against the determination, the condition (or the absence thereof) or the order (or the absence thereof).
- 68 In the notice of appeal, the Complainant shall state the grounds of appeal relied upon. The Complainant may amend the grounds of appeal with the consent of the Board. Such consent may be refused or may be given on conditions as the Board, in its discretion, determines.

### ***Hearings***

- 69 If the Respondent gives notice of appeal under Rule 65, or the Complainant gives notice of appeal under Rule 67, a hearing before a Board established under Rule 17 shall be convened by the Chair of the Board to determine the appeal. Not less than forty-two days notice of such hearing shall be given to the Respondent.
- 70 In advance of the hearing before the Board, the Board, the Respondent and, if the Complainant is a party to the proceedings, the Complainant, shall receive copies of:
- (a) the determination of the Tribunal;
  - (b) any transcript of the proceedings before it; and
  - (c) the documentary evidence and any written submissions placed before it.
- 71 Subject to this scheme and the rules of natural justice, the Board shall conduct the proceedings before it in such manner as it sees fit, including by video conferencing or other electronic means. A representative of the Sub-Committee shall be entitled to be a party to the proceedings, and the Board may invite the Complainant to be a party to the proceedings before the Board and shall so invite the Complainant if the Complainant has given notice under Rule 67. The Respondent shall be entitled to be a party to the proceedings before the Board. Each party shall be entitled to call and question witnesses, present evidence and information, and make submissions subject to any directions or rules of the Board.
- 72 The Board shall be entitled to hear or re-hear any witnesses it so chooses. The Board shall have a discretion to admit fresh evidence if it thinks it is reasonable and in the interests of justice so to do. The Board may obtain such legal or other advice or opinions as it thinks fit.
- 73 Hearings of the Board shall be held in private.

- 74 At the hearing, the Respondent shall be entitled, subject to Rule 96, to be represented by a lawyer or by a Member. In the event that the Respondent is legally represented, the Convener of the Committee may decide that the Sub-Committee should also be legally represented.

### ***Determinations of the Board***

- 75 The 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 Rules 58, 59 and 60. In order to impose a penalty of reprimand, suspension or expulsion, or to affirm a determination by the Tribunal that such penalty be imposed, a majority decision of not less than seventy-five percent of the members of the Board shall be required. Any other determination shall require a decision of a simple majority of the members of the Board. In the event that no determination to affirm, amend, vary or rescind the determination of the Tribunal is made by the requisite majority, the determination of the Tribunal shall be deemed to have been affirmed.
- 76 The determination of the Board shall be final.
- 77 If the Respondent is ordered by the Board to pay costs, they shall be paid by the Respondent within twenty-eight days of the receipt of the Board's determination. In the event of non-payment of such costs within the specified time period, the provisions of Rule 62 shall apply.
- 78 Where the Board determines that the Respondent shall be suspended as a Member, and the Respondent has not already been suspended under Rule 61, the suspension shall take effect from the date of communication of the Board's determination to the Respondent under Rule 80.
- 79 Where the Board determines that the Respondent shall be expelled as a Member, the expulsion shall take effect on the date of communication of the Board's determination to the Respondent under Rule 80.

### ***Communication of Board determinations***

- 80 The Board shall communicate its determination to the Institute, with copies to the Respondent, the Convener of the Committee, the Chair of the Tribunal and, subject to Rule 81, the Complainant, by notice in writing signed by the Chair of the Board. The notice to the Respondent shall, if it is the Board's determination, include an expression of the Board's concern, a warning, or a reprimand, in relation to the conduct of the Respondent.

.All such notices shall include the reasons for the determination, the names of the members of the Board, whether the determination was unanimous and, in the event of a non-unanimous determination, the numbers (but not the names) of Board members voting in favour of the determination. The Board's notice shall include a recommendation as to the action which the Council should take under Rule 86 (if it applies) in relation to the matter.

## **S8. PART H. CONFIDENTIALITY**

- 81 When a Complaint is made, the Convener of the Committee may in his or her discretion request that the Complainant agree in writing to keep confidential information provided to the Complainant on a confidential basis concerning the application of the disciplinary process to the Respondent. If in such a case the Complainant fails to provide such written agreement, the Convener of the Committee, the Chair of the Tribunal and the Chair of the Board may determine not to provide the Complainant with any confidential information concerning the application of the disciplinary process to the Respondent.
- 82 Except as provided in this scheme, in particular, under Rules 84 to 87 inclusive:
- (a) the deliberations of the Board, Tribunal, Committee and Sub-Committee, including their records and minutes, are confidential. Meetings of a Board, Tribunal, Committee and Sub-Committee may only be attended by their members and by any other person entitled or invited to attend; and
  - (b) all Members present at a meeting or hearing of the 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 verbal or in written form, and whether obtained before, during or after such a meeting.
- 83 Notwithstanding the provisions of Rule 82, the Convener of the Committee, the Chair of the Tribunal and the Chair of the Board may communicate any information concerning the activities of their respective bodies and the matters being considered by them to the President, the Senior Vice President, or the Vice President at their discretion. The President, the Senior Vice President or the Vice President in turn may at his or her discretion communicate such information to the Council.

## **S9. PART I. PUBLICITY**

- 84 If:
- (a) a Sub-Committee decides to make a report to the Tribunal under Rule 34(d); or
  - (b) a Complaint is referred to the Tribunal by the Complainant under Rule 40, and the Complainant lodges a statement under Rule 42;

the Convener of the Committee shall as soon as practicable report to the Council:

- (a) the names of the Complainant and the Respondent;
- (b) the nature and circumstances of the Complaint; and
- (c) the recommendation of the Sub-Committee under Rule 41(d), if any;

and in this event the Council may, at its discretion, and after having taken account of any recommendation by the Sub-Committee under Rule 41(d), publish to Members such information about the matter, including the names of the Respondent and the Complainant, as it thinks fit.

- 85 On the conclusion of action under this scheme in relation to each Complaint, the Convener of the Committee shall report to the Council the following information relating to that Complaint, namely:
- (a) the names of the Complainant and the Respondent;
  - (b) the nature and circumstances of the Complaint; and
  - (c) the manner in which the Complaint was dealt with, including determinations and recommendations of the Sub-Committee, and any Tribunal or Board.
- 86 If the Respondent is reprimanded, suspended or expelled in accordance with this scheme, the Council may at its discretion publish to Members, to government agencies and to the media the name of the Respondent and particulars of the Actionable Conduct committed or engaged in by the Respondent together with such other information as it deems appropriate and in considering whether to publish information under this Rule, and if so what information, the Council shall take into consideration the recommendations by the Tribunal under Rule 64 and by the Board under Rule 80, if any.
- 87 The Council shall report annually to Members such information in relation to the activities of the Committee, and any proceedings before any Tribunal or Board during the year, as the Council deems appropriate.

#### **S10. PART J. CONFLICT OF INTEREST**

- 88 Members of the Committee must not participate in any matter in respect of which they are or would be in a position of conflict of interest. If the Convener of the Committee is in such a position, the President shall nominate another member of the Committee to be acting Convener of the Committee for the purposes of the particular matter.
- 89 The parties to proceedings before the Tribunal or the Board shall be notified by the Chair of the Tribunal, or the Chair of the Board, respectively, of the composition of the Tribunal or the Board, respectively. A party may request the replacement of a member of the Tribunal or the 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 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 Board, respectively, who shall have the power to reconstitute the relevant body in accordance with this scheme.

- 90 A member of a Tribunal or a 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 Board, respectively, shall have the power to reconstitute the relevant body in accordance with this scheme in order that such member should be replaced.

## **S11. PART K. GENERAL PROVISIONS**

### ***Transitional***

- 91 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.

### ***Regulations***

- 92 The Council may from time to time make and 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 Board of their respective functions under this scheme.

### ***Proceedings in general***

- 93 Subject to this scheme the Committee, a Sub-Committee, Tribunal and Board (as the case may be) may give all 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 Board shall not be bound by any enactment or rule of law relating to the admissibility of evidence in a court of law.

### ***Custody of records***

- 94 The Secretary of the Institute shall arrange appropriate custody of the records of the Committee, Tribunals and Boards (including the past records).

### ***Non-member engagement***

- 95 Any non-Member appointed to serve on a Sub-Committee, Tribunal or Board and any legal adviser engaged to represent or assist a Sub-Committee, Tribunal or Board shall be engaged on such terms (including remuneration) as the Council or the President shall determine.

### ***Representation at Hearings***

- 96 If the Respondent wishes to be represented by a lawyer or a Member at the hearing of a Tribunal or a Board, the Respondent shall give notice of this desire to the Chair of the Tribunal, or the Chair of the Board, as the case may be, at least seven days before the hearing, but the Chair of the Tribunal, or the Chair

of the 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 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.

***Former members***

- 97 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 and a Board regarding that person's conduct and shall remain bound by any determinations of the Tribunal or Board in respect of any Actionable Conduct committed while that person was a Member notwithstanding that that person's membership has ceased.

***References to "President" to include President, Senior Vice President and Vice President***

- 98 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 the President is:
- (a) a reference to the Senior Vice President, in the event that the President is unable, by reason of absence or illness, or for any other reason, to act as required by the provision; or
  - (b) a reference to the Vice President, in the event that neither the President nor the Senior Vice President is able, by reason of absence or illness, or for any other reason, to act as required by the provision.