Actuaries Institute.

Disciplinary scheme

2018 (review effective 1 July 2024)

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1. Overview

1.1 This Scheme sets out the rules and procedures for the handling of Complaints, and the consideration of Disciplinary Action against Members. The Scheme is supported by guidance materials relating to its practical operational issues.

1.2 The objective of this Scheme is to protect the public and public confidence in the profession by establishing a mechanism to maintain and enforce the standards expected of Members. The Disciplinary Scheme is established in section 31 of the Constitution for the purposes 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 interest of the Members, and in the public interest.

1.3 The scheme operates in four stages, which are the Complaint Stage, Investigation Stage, Determination Stage and Appeal Stage.

(a) At the Complaint Stage, a Complaint or potential Complaint alleging Misconduct against a Member is lodged with the Institute. This Complaint or potential Complaint is referred to the Convenor of the Conduct Committee for a preliminary assessment. Depending on the outcome of that assessment, the Complaint may be referred to a Sub-Committee of the Conduct Committee for investigation. Not all complaints will include an element of professional discipline applicable to this Scheme, and accordingly different complaint mechanisms may operate in relation to the conduct of actuaries in addition to this Scheme.

(b) At the Investigation Stage, the investigating Sub-Committee will seek information from the Complainant, the Respondent (being the Member against whom the Complaint has been made) and any other parties the Sub-Committee regards as relevant. If the Sub-Committee concludes there is a prima facie case of Misconduct, the Sub-Committee can refer the Complaint to the Tribunal for determination.

(c) At the Determination Stage, a Tribunal is established specifically to deal with the Complaint. The Tribunal is formed by the appointment of at least five people selected from a pre-existing Tribunal Panel, and which must include at least one lay participant and at least one legal professional. The Convenor of the Tribunal Panel appoints the members of each Tribunal.

(d) If a Tribunal determines the Misconduct the subject of the Complaint has been substantiated, it may order Disciplinary Action against the Member. This Disciplinary Action may be a letter of warning or concern at one end of the spectrum, through to a range of other actions and remedies such as undertakings by the Member, retraining, suspension and expulsion at the other end of the spectrum.

(e) The Appeal Stage exists to enable a person who has grounds for an appeal, in respect of the determination or order of the Tribunal, to lodge an appeal. An Appeal Board will be established to consider an appeal that has been lodged against a Tribunal determination or order. The Appeal Board is formed by the appointment of at least five people selected from an Appeal Board Panel, including at least one lay participant and at least one legal professional. The Convenor of the Appeal Board Panel appoints the members of each Appeal Board.

(f) An Appeal Board will hold its own hearings. The Appeal Board may affirm or amend any determination or order of the Tribunal or return a matter to the Tribunal for reconsideration.

(g) In the interests of informing the public and the profession, decisions about Complaints that go to a Tribunal or an Appeal Board may be made public, either on a named or anonymised basis, on the Institute's website but in exceptional circumstances the Tribunal or the Appeal Board considering the case may decide against any public disclosure. In making publication decisions the Tribunal or Appeal Board will consider the impact of the publication on the parties.

1.4 A diagram outlining the standard process or steps in the application of this Scheme is contained at Schedule 1.

1.5 While this Scheme does not constitute a formal judicial process and the rules of evidence do not apply, it is the intention of the Institute that all matters will be dealt with as expediently as possible, in accordance with the principles of natural justice, procedural fairness, and to the civil standard of proof being on the balance of probabilities.

1.6 This Scheme and information regarding the Complaints process will be readily available to the public, including by way of publication on the Institute's website.

2. Interpretation

2.1 Words and terminology used in this Scheme are to be given their ordinary meaning and should be defined by reference to other applicable instruments or documents of the Institute (such as the Constitution).

2.2 Unless otherwise indicated by express words or the context otherwise requires:

'Complainant' means a person (irrespective of whether that person is a Member) who has lodged a Complaint in accordance with this Scheme.

'**Complaint'** means a statement in writing containing an allegation or representation to the effect that a Member has or may have engaged in Misconduct.

'**Disciplinary Action'** means potential orders, actions, penalties or initiatives that may be implemented.

'Institute' means the Institute of Actuaries of Australia (ABN 69 000 423 656).

‘**Member’** means a Fellow, Accredited, Associate, Affiliate, Student, and any other class of member determined by the Council.

‘**Member Disclosure Matters’** is defined at clause 4.1.

‘Misconduct’ is defined at clause 3.2.

‘Professional Conduct Undertaking’ means a written promise by the Respondent to the Institute to do something within a certain period of time that is capable of being performed, and which has been agreed to by the Conduct Committee or the relevant Tribunal.

‘Respondent’ means a Member against whom a Complaint has been made.

‘Scheme’ means this disciplinary scheme.

3. Misconduct

3.1 A Member may be subject to Disciplinary Action under this Scheme if the Member has engaged in Misconduct.

3.2 **Misconduct** is defined as any acts or omissions by a Member that do not meet the standards as reasonably determined and expected by the Institute. The standards and expectations of the Institute are explained within the Institute’s Code of Conduct.

3.3 Misconduct may include (but is not limited to):

(a) acts or omissions that are contrary to the Institute’s collective values, principles and objectives;

(b) acts or omissions that have the potential to bring into disrepute or damage the reputation of the profession, the Institute or Members;

(c) aiding, abetting, counselling, procuring, inducing or attempting to induce another person to engage in Misconduct;

(d) knowingly being involved in, or a party to, Misconduct engaged in by another person;

(e) a failure to comply with requirements regarding a Member Disclosure Matter; or

(f) non-compliance with the Constitution, Code of Conduct, a professional standard, requirements imposed by applicable legislation (including subordinate standards or rules) and any policies, procedures or guidelines of the Institute (as in force from time to time).

3.4 A Member may be found to have engaged in Misconduct due to any act or omission, or series of acts or omissions that occur:

(a) during their work as an actuary or in their capacity as a Member; or

(b) which took place before the Respondent became a Member; or

(c) which took place after the Respondent became a Member; even if the Respondent was no longer a Member at the time the Complaint(s) were made; and

(d) in other external contexts (such as a Member's personal life) where those acts or omissions can be considered to reflect or have a potential impact on the profession or the Institute; and

(e) in any location.

3.5 Misconduct does not include any act or omission, or series of acts or omissions, that a Member has previously and fully disclosed in writing to the Institute before the Member was admitted to membership.

4. Member disclosure matters

4.1 A **Member Disclosure Matter** is a matter where, in any jurisdiction, a Member:

(a) is or has been convicted of a criminal offence;

(b) has been found to have acted fraudulently or dishonestly by any court, tribunal or professional body;

(c) has been found by any court or tribunal to have engaged in misleading or deceptive conduct;

(d) has been the subject of an adverse determination by a regulatory body or professional association;

(e) is, has been or has become bankrupt or insolvent; or

(f) has breached a determination or failed to comply with any Disciplinary Action imposed by a Tribunal or Appeal Board of the Institute.

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

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

(a) within seven days after the occurrence of the event; or

(b) if the event occurred before the commencement of this Scheme and has not previously been dealt with by the Institute, within 60 days of the date of commencement.

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

5. Conduct Committee, Tribunal and Appeal Board

5.1 Conduct Committee

(a) A Conduct Committee will be appointed consisting of:

(i) at least seven Fellows, or such greater number of Fellows as the Council may determine from time to time, appointed by the Council and who during their terms of membership of the Conduct Committee will not be Council members, members of the Tribunal Panel or members of the Appeal Board Panel;

(ii) at least one appropriately skilled and qualified lay participant who is not a Member (of the Institute) appointed by the Convenor of the Conduct Committee; and

(iii) at least one appropriately skilled and qualified legal professional who is not a Member (of the Institute) appointed by the Convenor of the Conduct Committee.

(b) The Council will appoint one Fellow that has been appointed as a member of the Conduct Committee to be the Convenor of the Conduct Committee.

(c) The Convenor will on their appointment nominate another member to fulfil the role of Deputy Convenor, and that person will act as Convenor if at any point the appointed Convenor cannot act.

(d) Any member of the Conduct Committee may resign from their position by written notice to either:

(i) the Council in relation to a Fellow that is a member of the Conduct Committee; or

(ii) the Convenor of the Conduct Committee in relation to a lay participant or legal professional that is a member of the Conduct Committee.

(e) Any member of the Conduct Committee may be removed or replaced at the discretion of:

(i) the Council in relation to a Fellow that is a member of the Conduct Committee; or

(ii) the Convenor of the Conduct Committee in relation to a lay participant or legal professional that is a member of the Conduct Committee.

(f) Any vacancy in the membership of the Conduct Committee will be filled by determination of:

(i) the Council in relation to a Fellow that is a member of the Conduct Committee; or

(ii) the Convenor of the Conduct Committee in relation to a lay participant or legal professional that is a member of the Conduct Committee.

5.2 Tribunal Panel and Tribunal

(a) The Council will appoint seven Fellows, or such greater number of Fellows as the Council may determine from time to time, not being Council members, Conduct Committee members or members of the Appeal Board Panel, to be members of the Tribunal Panel from which they may be appointed to a Tribunal to determine a Complaint.

(b) The Council will appoint one member of the Tribunal Panel to be the Convenor of the Tribunal Panel.

(c) The Convenor will on their appointment nominate another member to fulfil the role of Deputy Convenor, and that person will act as Convenor if at any point the appointed Convenor cannot act.

(d) Any member of the Tribunal Panel may resign from their position by written notice to the Council and may be removed or replaced at the discretion of the Council.

(e) Any vacancy in the membership of the Tribunal Panel will be filled by determination of the Council.

(f) For the purposes of determining a Complaint, a Tribunal will be appointed by the Convenor of the Tribunal Panel and will include:

(i) at least one appropriately skilled and qualified lay participant who is not a Member (of the Institute);

(ii) at least one appropriately skilled and qualified legal professional who is not a Member (of the Institute); and

(iii) at least three members of the Tribunal Panel (who will include the Convenor of the Tribunal Panel unless the Convenor is unable to serve by reason of conflict of interest or otherwise).

(g) In the event there are not at least three members of the Tribunal Panel available to constitute a Tribunal (as a result of conflict of interest or otherwise), the Council will appoint additional Fellows to the Tribunal Panel (in accordance with the requirements prescribed in clause 5.2(a) to enable the Tribunal to include at least three members of the Tribunal Panel.

(h) If the Convenor of the Tribunal Panel is a member of the Tribunal established to determine a particular Complaint, the Convenor will be Chair of that Tribunal. If the Convenor of the Tribunal Panel is not appointed to the Tribunal, the Convenor will appoint one of the other members of the Tribunal Panel to be Chair of that Tribunal.

5.3 Appeal Board Panel and Appeal Board

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

(b) The Council will appoint one member of the Appeal Board Panel to be the Convenor of the Appeal Board Panel.

(c) The Convenor will on their appointment nominate another member to fulfil the role of Deputy Convenor, and that person will act as Convenor if at any point the appointed Convenor cannot act.

(d) Any member of the Appeal Board Panel may resign from their position by written notice to the Council and may be removed or replaced at the discretion of the Council.

(e) Any vacancy in the membership of the Appeal Board Panel will be filled by determination of the Council.

(f) For the purposes of determining an appeal, an Appeal Board will be appointed by the Convenor of the Appeal Board Panel and will include:

(i) at least one appropriately skilled and qualified lay participant who is not a Member (of the Institute);

(ii) at least one appropriately skilled and qualified legal professional who is not a Member (of the Institute); and

(iii) at least three members of the Appeal Board Panel (who will include the Convenor of the Appeal Board Panel unless the Convenor is unable to serve by reason of conflict of interest or otherwise).

(g) In the event three members of the Appeal Board Panel are not available to constitute an Appeal Board (as a result of conflict of interest or otherwise), the Council will appoint additional Fellows to the Appeal Board Panel (in accordance with the requirements prescribed in clause 5.3(a) to enable the Appeal Board to include at least three members of the Appeal Board Panel.

(h) If the Convenor of the Appeal Board Panel is a member of the Appeal Board established to determine a particular appeal, the Convenor will be Chair of that Appeal Board. If the Convenor of the Appeal Board Panel is not appointed to the Appeal Board, the Convenor will appoint one of the other members of the Appeal Board Panel to be Chair of that Appeal Board.

5.4 Scheme Governance and Guidance

(a) Each of the Convenors will have responsibility for the operation of their respective part of the Scheme.

(b) Any Convenor can prepare draft guidance materials in relation to the Scheme provided such materials are not inconsistent with the terms of the Scheme and submit them to the Council for approval.

5.5 General

(a) Replacement of Sitting Members

(i) If, by reason of illness or absence for any other reason, a Conduct Committee member, a Tribunal member or an Appeal Board member is unable to serve in that respective capacity at any time, another person eligible to hold that position may be appointed to act in that capacity by:

(A) in the case of the Conduct Committee, the Convenor of the Conduct Committee;

(B) in the case of a Tribunal, the Convenor of the Tribunal Panel; and

(C) in the case of an Appeal Board, the Convenor of the Appeal Board Panel in consultation with the President.

(b) Terms of Appointments

(i) A member of the Conduct Committee, Tribunal Panel or Appeal Board Panel will be appointed by the Council for a term not exceeding five years. This term may be extended by the Council or CEO for up to a further twelve months.

(ii) A member of the Conduct Committee, Tribunal Panel or Appeal Board Panel cannot be appointed for more than two consecutive terms of up to five years each.

(c) Quora

(i) Subject to the following sub-clause, the quorum for any proceeding conducted by a Tribunal or an Appeal Board will be all the members of that body. In the event that such a proceeding is inquorate then it will be adjourned and reconvened at such time and place as the Chair may determine or, at the discretion of the Chair, the proceeding will be conducted by a new Tribunal or Appeal Board, respectively, appointed in accordance with this Scheme.

(ii) The quorum for any proceeding conducted by a Tribunal or an Appeal Board held for the purpose of dealing with preparatory, procedural or administrative matters preliminary to a final determination on a Complaint or appeal will be the Chair of that Tribunal or Appeal Board, together with two other members of that Tribunal or Appeal Board. In the event that any such proceeding is inquorate then it will be adjourned and reconvened at such time and place as the Chair may determine.

(d) Voting

(i) Each member of a Tribunal or of an Appeal Board will have one vote.

(ii) The Chair of a Tribunal or of an Appeal Board will not have a casting vote.

(iii) A determination substantiating a Complaint may only be made with the majority of votes from members of a Tribunal or Appeal Board.

(e) Specialist or Expert Advice and Assistance

(i) Subject to the approval and authorisation of the CEO, the Convenor of the Conduct Committee, the Chair of a Tribunal or the Chair of an Appeal Board may engage external specialists or experts (for example, legal representation) to obtain advice and assistance in relation to the discharge of functions under this Scheme or otherwise arising in connection with this Scheme.

(f) Payment for Services

(i) The CEO may approve and authorise payment to any Conduct Committee member, member of a Tribunal, member of an Appeal Board or other person for services provided in relation to this Scheme.

(g) Decisions of other bodies or forums

(i) Any decision or finding of a court, tribunal, regulatory body or professional association relating to a Complaint or a Respondent may be considered and given significant weight by the Conduct Committee, a Sub-Committee, a Tribunal or an Appeal Board as part of any process implemented in accordance with this Scheme.

6. The complaint stage

6.1 Any person (whether a Member or not a Member) may lodge a Complaint. Being a member of the Council, the chair of a committee or the chair of a taskforce of the Institute does not preclude such a person from lodging a Complaint in accordance with this Scheme.

6.2 When initially lodged, a Complaint or potential Complaint will be referred to the Convenor of the Conduct Committee for assessment. On the request of a person considering the lodgement of a Complaint, the Convenor of the Conduct Committee may arrange for reasonable assistance to the person in formulating their Complaint.

6.3 As soon as reasonably practicable after receiving a Complaint, the Convenor of the Conduct Committee will conduct a preliminary assessment of the Complaint, based on the available information, and having considered the interests of the public, whether the Complaint should be the subject of investigation by a Sub-Committee.

6.4 If the preliminary assessment by the Convenor of the Conduct Committee is that:

(a) the Complaint does not give rise to a prima facie case of Misconduct (including, but not limited to a conclusion by the Convenor of the Conduct Committee the Complaint is spurious, vexatious, frivolous or contains unsupportable allegations or relates to conduct or matters that fall outside of the Scheme's remit), the Convenor of the Conduct Committee may dismiss the Complaint provided this view and proposed course of action has been discussed with and approved by the Convenor of the Tribunal Panel. If the decision is made to dismiss the Complaint, the Convenor of the Conduct Committee will inform the Complainant and the Respondent of these circumstances in writing with brief reasons being provided regarding this decision. In the event that the Convenor of the Tribunal Panel does not agree with the proposed dismissal of the Complaint, it will proceed on the basis the Complaint gives rise to a prima facie case of Misconduct (in accordance with clause 6.5(b), below).

(b) the Complaint gives rise to a prima facie case of Misconduct, then the Convenor of the Conduct Committee will

(i) refer the Complaint to a Sub-Committee to investigate the Complaint in accordance with clause 7; or,

(ii) invite the Respondent to accept a Professional Conduct Undertaking with the Institute.

7. The investigation stage

7.1 Membership of the Investigating Sub-Committee

(a) Where the Convenor of the Conduct Committee has determined that a Complaint should be investigated, the Convenor of the Conduct Committee will establish a Sub-Committee for the purpose of conducting the investigation.

(b) A Sub-Committee must comprise at least two but not more than three persons appointed by the Convenor of the Conduct Committee from the members of the Conduct Committee.

(c) In appointing members to a Sub-Committee, the Convenor of the Conduct Committee must ensure the Sub-Committee comprises at least 3 persons, of whom two must be:

(i) one appropriately skilled and qualified lay participant or appropriately skilled and qualified legal professional who is not a Member (of the Institute); and

(ii) one Fellow.

(d) If the Convenor of the Conduct Committee is a member of the relevant Sub-Committee, the Convenor of the Conduct Committee will be Chair of the Sub-Committee. Otherwise, the Convenor of the Conduct Committee will appoint one of the Sub-Committee members to be its Chair.

7.2 Powers of the Sub-Committee

(a) The Sub-Committee may seek and receive any information from a Complainant, a Respondent, a Member, the Council or any other third party as it thinks appropriate and necessary for the conduct of the investigation into a Complaint being undertaken by the Sub-Committee.

(b) The Sub-Committee will have the power:

(i) to require the production of originals or copies of any documents relevant to the investigation from any Member (whether or not such Member is the subject of the investigation);

(ii) to require any further information from any Member relating to the subject matter of the investigation;

(A) to conduct interviews, request responses to questions or otherwise require any Member to appear before the Sub-Committee to give evidence as to any matter relevant to the investigation; and

(B) subject to the consent of the CEO and the Convenor of the Conduct Committee, to engage external specialists or experts (for example, legal representation) to obtain advice and assistance in relation to any issue relevant to the investigation.

(c) A Respondent or any other Member involved in or required to participate in the conduct of an investigation pursuant to this Scheme is required to apply their best endeavours to comply with any reasonable request or exercise of power by the Sub-Committee.

(d) If a Member hinders, misleads or obstructs a Sub-Committee in performing or exercising any functions under this Scheme, this may be considered Misconduct by that Member warranting Disciplinary Action.

(e) Additional questions:

(i) A Sub-Committee may refer potential issues or questions which were not included in the Complaint but relate to a Respondent to the Convenor of the Conduct Committee.

(ii) If the issues or questions referred to the Convenor of the Conduct Committee relate to potential Misconduct, the Convenor of the Conduct Committee may:

(A) direct the Sub-Committee to investigate or deal with the issues or questions as part of its existing investigation; or

(B) refer the issues or questions to another Sub-Committee.

7.3 Rights of the Respondent

(a) If the Sub-Committee does not interview a Respondent during the investigation of the Complaint, then prior to completion of the investigation by the Sub-Committee, the Respondent is entitled to request the Sub-Committee provide the Respondent with an opportunity to:

(i) be interviewed by the Sub-Committee; and

(ii) lodge any documents or submissions as the Respondent considers relevant to the investigation.

(b) A Respondent does not have a right to participate in investigative processes of the Sub-Committee directed to or involving other persons (for example, a Respondent is not entitled to attend any interview of another Member or a third party conducted by the Sub-Committee in relation to the Complaint). If a Respondent seeks to attend or be involved in any such process, the Respondent must obtain permission from the Chair of the Sub-Committee and the grant of permission remains at the discretion of the Chair of the Sub-Committee.

7.4 Sub-Committee findings

(a) A Sub-Committee (acting by a majority of those present and voting) will make findings as to whether or not there is a prima facie case of Misconduct.

(b) If a Sub-Committee finds there is a prima facie case of Misconduct:

(i) the Sub-Committee will report its findings, as described in clause 7.4(e) to the Convenor of the Conduct Committee;

(ii) the Convenor of the Conduct Committee will

(A) refer the Complaint to the Convenor of the Tribunal Panel for referral to a Tribunal for hearing; or

(B) invite the Respondent to accept a Professional Conduct Undertaking with the Institute.

(iii) the Complainant and the Respondent will be notified in writing of the finding and the referral.

(c) If a Sub-Committee finds the information obtained from the investigation does not establish a prima facie case of Misconduct:

(i) The Convenor of the Conduct Committee will inform the Complainant of the assessment and invite the Complainant to provide any further written submission in support of the Complaint. The Complainant will have 14 days from receiving notice from the Convenor of the Conduct Committee to provide any such written submission.

(ii) Upon receipt of any further written submissions, the Sub-Committee will consider whether this information alters the Sub-Committee’s assessment of the Complaint.

(iii) If the Sub-Committee’s assessment is not altered, the findings will be referred to both the Convenor of the Conduct Committee and the Convenor of the Tribunal Panel who will together determine whether to confirm the Sub-Committee’s findings.

(iv) If the Convenor of the Conduct Committee and Convenor of the Tribunal Panel both accept the information obtained from the investigation does not establish a prima facie case of Misconduct, the Complainant and the Respondent will be informed of this in writing.

(v) If either or both the Convenor of the Conduct Committee and the Convenor of the Tribunal Panel concludes the information obtained from the investigation does establish a prima facie case of Misconduct, the Complaint will be referred to a Tribunal for hearing, of the Convenor of the Conduct Committee, the Convenor of the Tribunal Panel and the Respondent may agree to enter into a Professional Conduct Undertaking where such an undertaking is appropriate in the circumstances, having regards to the objectives of the Scheme.

(d) Any findings of a Sub-Committee must be contained in a written report and include (as a minimum):

   (i) a summary of the information relied upon;

   (ii) a brief analysis of the information relied upon and reasons for the findings; and

   (iii) a clear statement as to the accepted factual circumstances and findings of the Sub-Committee.

   (iv) In making its findings, a Sub-Committee will not make any comments or recommendations as to whether or not any potential orders for Disciplinary Action should be contemplated.

   (v) If a Professional Conduct Undertaking is agreed to, the reasons for the Professional Conduct Undertaking and its terms must be recorded.

8. The determination stage

8.1 Proceedings of a Tribunal

Where a Complaint has been referred to the Convenor of the Tribunal Panel for allocation for a hearing:

   (i) the Convenor of the Tribunal Panel will appoint a Tribunal; and

   (ii) the Tribunal will proceed to hold a hearing to determine the Complaint.

8.2 Hearings

(a) A hearing before a Tribunal will be convened by the Chair of the Tribunal to determine the Complaint. At least 20 business days' notice of such hearing will be given to the Convenor of the Conduct Committee, the Respondent, and the Complainant.

(b) A Tribunal will conduct the hearing in any manner as it sees fit having regard to natural justice and the wellbeing of the parties involved.

(c) A party to a hearing before a Tribunal may request and may be granted permission to appear in person or by telephone, video conference or other electronic means.

(d) A representative of the Sub-Committee will present its report and will be a party to the proceedings before a Tribunal. A copy of this report will be made available to the Respondent.

(e) Subject to any alternative requirement under this Scheme, a Tribunal may join any of the following persons to be parties to the proceedings before the Tribunal:

   (i) the Complainant;

   (ii) the Respondent; and

(iii) other interested third parties, including but not limited to any regulatory body or relevant professional association.

(f) Subject to any directions or rules of the Tribunal to the contrary, parties to proceedings before a Tribunal will be entitled to:

(i) present evidence and information;

(ii) call and question witnesses (excluding the Conduct Committee, a Sub-Committee, a Tribunal, an Appeal Board and/or the relevant members of these bodies); and

(iii) make submissions (written or oral).

(g) In the absence of a direction by the Tribunal to the contrary, each party to proceedings before a Tribunal must give to the Chair of the Tribunal any documents upon which they intend to rely by no later than 14 days before the scheduled commencement of the hearing.

(h) On the application of any party or on its own initiative, a Tribunal may require the disclosure of documents (or parts thereof) by one party to another if the Tribunal considers this appropriate and in the interests of fairness. However, the Tribunal will not require the production of any document which is privileged.

(i) If a party challenges the authenticity of any document or otherwise objects to any information put to a Tribunal, the Tribunal will consider and rule on the issue raised and may give the information such weight as it thinks fit.

(j) In a hearing before a Tribunal, the Tribunal may consider and give weight to any decision or finding of another court, tribunal, regulatory body, or professional association. If such a decision or finding relates to the same matter or matters that are the subject of the Complaint, this decision or finding may be given significant weight by the Tribunal.

(k) A Tribunal may, at any time before or during a hearing, direct that a Complaint be amended, provided that:

(i) the Tribunal is satisfied the Respondent will not be substantially prejudiced in the conduct of their defence by the making of such an amendment; and

(ii) the Tribunal will, if so requested by the Respondent, adjourn the proceedings or hearing for such time as is reasonably necessary to enable the Respondent to consider and respond to the Complaint in its amended form.

(l) A Tribunal may, acting on its own motion or upon the application of any party to proceedings before the Tribunal:

(i) adjourn the proceedings or hearing at any time upon such terms as the Tribunal sees fit; and/or

(ii) seek to inform itself by obtaining whatever additional and/or independent evidence deemed relevant to its consideration of the matter.

(m) A Respondent may make an admission of Misconduct at or prior to a hearing before a Tribunal. Such admission prior to a hearing will be made in writing by the Respondent:

(i) to the Chair of the Tribunal; or,

(ii) If a Tribunal has not been convened to consider the Complaint, to the Convenor of the Tribunal Panel.

8.3 Determinations and orders of a Tribunal

(a) A Tribunal will make a determination regarding the Complaint, on the balance of probabilities and by the majority of votes by members, as to whether or not the Respondent has engaged in Misconduct.

(b) The Tribunal may order one or more of the following forms of Disciplinary Action or some other variant appropriate to respond to the subject Misconduct:

(i) formal counselling or Professional Conduct Undertaking;

(ii) a written warning or letter of concern directed to the Respondent;

(iii) a Reprimand (Level 1) for Misconduct considered to be at the low end of severity;

(iv) a Reprimand (Level 2) for Misconduct considered to be severe;

(v) suspension from membership with the Institute for such a period as the Tribunal will specify;

(vi) a direction to undertake specific action including education, retraining or supervised practice as the Tribunal will specify;

(vii) restrictions on engaging in particular professional activities, as determined by the Tribunal, for such a period as the Tribunal will specify;

(viii) payment of a financial penalty to the Institute or other persons of an amount the Tribunal will specify;

(ix) expulsion as a Member;

(x) a requirement for the Respondent to enter an enforceable undertaking with the Institute (for example, an undertaking not to practise in a specified area of professional practice for a particular period or to undergo training of a specified kind). If the Respondent breaches such an undertaking, following a finding of Misconduct, this breach may of itself constitute Misconduct and may result in further proceedings against the Respondent under this Scheme; or

(xi) a contribution to the costs of the proceedings including (but not limited to) an order for the Respondent to make such contribution to the Institute's or the Complainant's costs of the proceedings.

(c) An order under clause 8.3(b) may focus on practice improvement rather than punishment if appropriate.

(d) If a Tribunal makes orders in the form of suspension or expulsion of a Member, then:

(i) if a notice of appeal is lodged, the imposition of the order will be stayed until that appeal is finalised;

(ii) if a notice of appeal is not lodged, the imposition of the order will take effect from the expiration of the period within which a notice of appeal must be lodged (unless the Tribunal issues an interim suspension order).

(e) Unless a notice of appeal is lodged, any costs ordered to be paid by the Respondent will be paid within 20 business days of the receipt of the Tribunal's determination and order by the Respondent. If the Respondent does not pay the costs ordered in such time, the Respondent may be declared by the Chair of the Tribunal to be a defaulter and after being so declared will cease to be a Member (but may be reinstated upon such terms and conditions as the Chair of the Tribunal determines).

(f) Any determination or order of a Tribunal on any of the above matters will be made by a majority of members of the Tribunal.

(g) Any determination or order of a Tribunal must be contained in a written report and include:

(i) a summary of the information relied upon;

(ii) a brief analysis of the information relied upon and reasons for the determination;

(iii) a clear statement as to the factual findings, determination and any orders of the Tribunal; and,

(iv) The proposed material to be published in relation to the case, being the Case Publication.

8.4 Communication of Tribunal Determinations and orders

(a) A Tribunal will communicate its determination and orders in any proceedings to the CEO by providing a copy of its written report pursuant to clause 8.3(g) signed by the Chair of the Tribunal.

(b) Copies of the written determinations and orders of the Tribunal will also be provided to the Respondent, and the Convenor of the Conduct Committee as soon as reasonably practicable (unless deemed inappropriate, unreasonable or undesirable by the Tribunal) following the Determination.

(c) Subject to clause 11 of this Scheme, the Case Publication may be made publicly available (including but not limited to being published on the Institute's website) not less than 20 business days after the date it is provided to the CEO, the Respondent, and the Convenor of the Conduct Committee unless the Tribunal considers some other form of communication is more appropriate. Alternatives may include anonymised case study or similar publication.

(d) A submission in relation to the publication materials must be received by the CEO no later than 20 business days after the written report of determination has been issued.

9. The appeal stage

9.1 Appeal by Respondent

(a) The Respondent may appeal against a determination or order made by a Tribunal by lodging a notice of appeal.

(b) A notice of appeal will be provided in writing to the CEO, with a copy being provided to the Chair of the Tribunal, no later than 20 business days after the Tribunal's written report of determination has been issued.

(c) If the Respondent is not lodging an appeal, a submission in relation to the publication materials the subject of the determination must be made no later than 20 business days after the Tribunal's written report of determination has been issued.

9.2 Appeal by the Convenor of the Conduct Committee (acting on behalf of the Institute)

(a) The Convenor of the Conduct Committee may appeal against a determination or order made by a Tribunal, by lodging a notice of appeal.

(b) A notice of appeal will be provided in writing to the CEO, with a copy being provided to the Chair of the Tribunal, no later than 20 business days after the Tribunal's written report of determination has been issued.

9.3 Form and Content of the Notice of Appeal

(a) In the notice of appeal, the party making the appeal will state the grounds for the appeal directly relating to a determination or order of the Tribunal.

(b) The grounds for an appeal may include but are not limited to:

(i) inculpatory or exculpatory evidence or facts;

(ii) an error of process, procedural fairness, or natural justice by the Tribunal;

(iii) an error in the considerations or reasons provided by the Tribunal; or

(iv) the orders are demonstrably unfair, unreasonable, or excessive.

(c) The grounds for an appeal do not include dissatisfaction with a determination or an order of the Tribunal.

(d) The party making the appeal may make an application in writing to the Appeal Board to amend the appeal. The Appeal Board has full discretion to consider and permit any amendment to an appeal from the applicant.

9.4 Appeal Hearings

(a) If a party lodges a notice of appeal in the manner specified above, the Appeal Board Convenor (or their delegate), Deputy Convenor (or their delegate), and one other member of the Appeal Board will first consider the grounds for the appeal and determine whether the appeal should proceed to a hearing before the full Appeal Board.

(b) A hearing before an Appeal Board may be constituted by the Convenor of the Appeal Board to facilitate the determination of an appeal within the grounds for an appeal. At least 20 business days' notice will be given to the Respondent, the Convenor of the Conduct Committee and any other party to the proceedings of any hearing listed before an Appeal Board.

(c) In advance of any hearing before an Appeal Board and subject to any directions to the contrary by the Chair of the Appeal Board, the Respondent, the Convenor of the Conduct Committee, and any other party to the proceedings, will receive copies of:

(i) the notice of appeal;

(ii) the determination, orders and written report of the Tribunal; and

(iii) upon request, any transcript of the hearing before the Tribunal as well as any documentary evidence or written submission that was put before and considered by the Tribunal.

(d) An Appeal Board will conduct the hearing in such a manner as it sees fit and in accordance with the provisions of this Scheme.

(e) A party to a hearing before an Appeal Board may request and may be granted permission to appear in person or by telephone, video conference or other electronic means.

(f) A representative of the Sub-Committee may be invited by the Appeal Board to appear as a party to the proceedings before the Appeal Board.

(g) Subject to any other requirement under this Scheme, an Appeal Board may also join any of the following persons to be parties to the proceedings before the Appeal Board:

(i) the Complainant;

(ii) the Respondent; or

(iii) other persons including but not limited to a regulatory body or professional association.

(h) Subject to any directions or rules of the Appeal Board, a party to the proceeding before an Appeal Board may be required by the Appeal Board:

(i) present evidence and information; and

(ii) make submissions (written or oral).

(i) An Appeal Board will be entitled to hear from any witness and review any information it so chooses. The Appeal Board will also have the discretion to admit fresh evidence if it thinks it is appropriate, reasonable and in the interests of procedural fairness.

9.5 Determinations and orders of an Appeal Board

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

(b) An Appeal Board may return a disciplinary matter to the Tribunal for reconsideration.

(c) An Appeal Board will apply the civil standard of proof, being the balance of probabilities, and the onus of proof will rest with the party that has brought the appeal. A determination of an Appeal Board will be made on a majority of votes of members.

(d) The determination of an Appeal Board will be final.

(e) If a Respondent is ordered by an Appeal Board to pay costs, the Respondent will pay these costs within 20 business days of the Appeal Board's determination and order being issued to the Respondent. In the event the Respondent does not pay such costs within the specified period, the Respondent may be declared by the Chair of the Appeal Board to be a defaulter and after being so declared will cease to be a Member (but may be reinstated upon such terms and conditions as the Chair of the Appeal Board determines).

(f) Where an Appeal Board orders a Respondent will be suspended as a Member, and the Respondent has not already been suspended under clause 8.3, the suspension will take effect from the date of communication of the Appeal Board's order to the Respondent.

(g) Where the Appeal Board orders a Respondent will be expelled as a Member, the expulsion will take effect on the date of communication of the Appeal Board's order to the Respondent.

(h) Decisions of an Appeal Board on any of the above matters will be made by a majority of members of the Appeal Board. If the majority of the Appeal Board decides not to amend, vary or rescind the determination and orders of the Tribunal, then the determination and orders of the Tribunal will be deemed to have been affirmed.

(i) Any determination or order of an Appeal Board must be contained in a written report and include:

(i) a summary of the information relied upon;

(ii) a brief analysis of the relevant information and reasons for the determination;

(iii) a clear statement as to the factual findings, determination and any orders of the Appeal Board; and

(iv) the proposed material to be published in relation to the case, being the Case Publication.

9.6 Communication of Appeal Board Determinations

(a) An Appeal Board will communicate its determination and orders in any proceedings to the CEO by providing a copy of its written report pursuant to clause 9.5(i) and signed by the Chair of the Appeal Board.

(b) Copies of the determination and order of the Appeal Board will also be provided to the Respondent, and the Convenor of the Conduct Committee as soon as reasonably practicable (unless deemed inappropriate, unreasonable or undesirable by the Appeal Board).

(c) Subject to clause 11 of this Scheme, the Case Publication may be made publicly available (including but not limited to being published on the Institute's website) not less than 20 business days after the date it is provided to the CEO, the Respondent and the Convenor of the Conduct Committee, unless the Appeal Board considers some other form of communication is more appropriate. Alternatives may include anonymised case study or similar publication.

(d) A submission in relation to the publication materials must be received by the CEO no later than 20 business days after the written report of determination has been issued.

10. Confidentiality

10.1 General Principles

(a) When a Complaint is made, the Convenor of the Conduct Committee, Chair of the Tribunal and/or Chair of the Appeal Board may in their discretion request a party or person otherwise involved in any proceedings agree in writing to keep certain information regarding the Complaint and associated process confidential. If such a request is issued and a person refuses or does not provide such written agreement, the Convenor of the Conduct Committee, the Chair of the Tribunal and/or the Chair of the Appeal Board may elect to refrain from providing the person with certain information associated with the processes implemented in accordance with this Scheme.

(b) So far as reasonably practicable, the identities of any parties to a Complaint will be kept confidential while the Convenor of the Conduct Committee makes their determination at the Complaint Stage and the Investigation Stage.

(c) Except as otherwise provided in this Scheme or directed by the Convenor of the Conduct Committee, Chair of a Tribunal or Chair of an Appeal Board, the deliberations of the Sub-Committee, the Conduct Committee, the Tribunal and the Appeal Board including, but not limited to, any records, minutes, and written reports will be confidential. Any requirement for confidentiality detailed within this Scheme will not preclude the Convenor of the Conduct Committee, the Chair of a Tribunal or the Chair of an Appeal Board from liaising with other regulatory bodies or professional associations as may be appropriate in pursuance of this Scheme.

10.2 Exchange of Information

(a) With the agreement of the Convenor of the Conduct Committee, separate Sub-Committees may exchange information concerning Complaints.

(b) In granting or approving any exchange of information, the Convenor of the Conduct Committee will consider:

(i) any potential impact or issues with respect to procedural fairness;

(ii) whether any Respondent or Complainant should be informed of the exchange of such information; and

(iii) whether any exchange of information should be subject to any undertakings (such as with respect to confidentiality) or any other conditions that may be considered appropriate in the circumstances.

11. Publication and transparency

11.1 The publication of information relating to the Scheme and its operation will be consistent with and support the purposes of the Scheme to uphold and maintain the standards of professional conduct of the Members, to maintain and promote the good standing and reputation of the Institute and of the profession of actuary in the interests of the Members, and in the public interest.

11.2 Any Case Publication relating to a matter before a Tribunal or an Appeal Board will:

(a) be made publicly available not less than 20 business days after a copy of the written report of determination and orders has been provided to the CEO, the Respondent, and the Convenor of the Conduct Committee; and

(b) be published on the Institute's website and in any other locations as may be considered appropriate by the CEO.

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

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

(a) the Convenor of the Conduct Committee and the Convenor of the Tribunal Panel in relation to a Complaint that does not proceed beyond the investigation stage;

(b) a Tribunal in relation to any Complaint or Determination before the Tribunal; and

(c) an Appeal Board in relation to any Complaint or Determination before the Appeal Board.

11.5 Any member of the Council, the Respondent, and the Convenor of the Conduct Committee may make a submission regarding the publication of information made under this Scheme. Where a Complaint is being or has been investigated, the Convenor of the Conduct Committee, Tribunal Panel or Appeal Board Panel, as the case may be, may in their full discretion, inform the CEO of the existence of the complaint and its status or outcome, or any other relevant matter.

12. Conflict of interest

12.1 Conduct Committee, Tribunal and Appeal Board members must not participate in any matter in respect of which they have, or would reasonably be perceived to have a conflict of interest.

12.2 In the event a Conduct Committee, Tribunal or Appeal Board member becomes aware of grounds that may warrant their removal or the removal of another member of such a body under this Scheme (whether from conflict of interest or otherwise), these potential circumstances must be reported to the Convenor of the Conduct Committee, Tribunal Panel or Appeal Board Panel (as applicable). The Convenor of the body in question will have the requisite power to determine any such alleged issue in their discretion and to reconstitute the body, in accordance with this Scheme,

12.3 If the Convenor of the Conduct Committee, Tribunal Panel or Appeal Board Panel is in a position of actual or potential conflict, these circumstances must be reported to the Council. The Council will have the requisite power to determine any such alleged issue in their discretion and to appoint another member, eligible to hold such a position under the provisions of this Scheme, to be acting Convenor of the relevant body for an interim period or for the conduct of a particular matter.

12.4 A party to proceedings before a Tribunal or an Appeal Board will be notified by the Chair of the Tribunal or the Chair of the Appeal Board, respectively, of the composition of the relevant Tribunal or Appeal Board. A party may request the replacement of a member of the Tribunal or the Appeal Board on the grounds of a conflict of interest between the said member and a party, or on the grounds of bias by a member of the Tribunal or the Appeal Board against a party. Any such request will be determined by the Convenor of the Tribunal Panel or the Appeal Board Panel, respectively, who has the requisite power to determine the alleged issue in their discretion and may reconstitute the relevant body, in accordance with this Scheme, should this be considered appropriate.

13. General provisions

13.1 Transitional

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

13.2 Regulations and guidance

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

(b) The Council may consider, modify and approve and publish Guidance prepared by Convenors in accordance with clause 5.4. The Council may also prepare and publish Guidance at its own discretion.

13.3 Proceedings in general

(a) Subject to this Scheme, the Conduct Committee, a Sub-Committee, a Tribunal or an Appeal Board (as the case may be) may give such directions and make rules with regard to the conduct of proceedings before it as it considers most suitable for the clarification, exploration, and determination of the issues and generally for the fair and just handling of the matter.

(b) For the avoidance of doubt, proceedings are not required to be conducted with excessive formality or with regard to the rules of evidence.

13.4 Training

(a) Prior to being appointed to any role under this Scheme, the Institute will ensure any Conduct Committee member, Sub-Committee member, Tribunal member or Appeal Board member (as the case may be) has been provided with appropriate training on:

(i) the work and professional circumstances of Members generally;

(ii) how to perform the role to which the member is to be appointed; and

(iii) making decisions with sufficient skill, diligence and independence in compliance with this Scheme.

13.5 Withdrawal of Complaint(s)

(a) Once a Complaint is received by the Convenor of the Conduct Committee, it remains subject to this Scheme irrespective of whether the Complainant subsequently conveys a desire to withdraw or discontinue the Complaint.

(b) For the avoidance of doubt, the Complaint may continue to be dealt with pursuant to the processes detailed in this Scheme irrespective of the preference or desire of the Complainant. However, the preference or desire of the Complainant should be considered in determining how the Complaint is to be managed.

13.6 Custody of records

(a) The CEO will arrange appropriate custody of the records of the Conduct Committee, Tribunals and Appeal Boards (including the past records and an up-to-date register of Professional Conduct Undertakings).

(b) The CEO will maintain a confidential register containing summary details of finalised Complaints with the object of promoting consistent outcomes in relation to Complaints. The register may be made available to members of a Tribunal or an Appeal Board upon request.

13.7 Representation and support

(a) A Respondent or other party to proceedings under this Scheme may seek to be represented by a lawyer or other person at any hearing of a Tribunal or an Appeal Board. However:

(i) there is no automatic right to be represented;

(ii) it is a matter for the discretion of the presiding body; and

(iii) it is generally expected a party will appear in person during any process implemented pursuant to this Scheme.

(b) If a party seeks to be represented in any process pursuant to this Scheme, the party will provide notice of this intention in writing to the presiding body at least seven days before the scheduled hearing and/or meeting. The presiding body will subsequently reach a decision as to whether or not permission is granted with respect to representation.

(c) A party to proceedings is entitled to bring a support person to any process implemented pursuant to this Scheme to which the party is required to appear.

13.8 Former Members

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

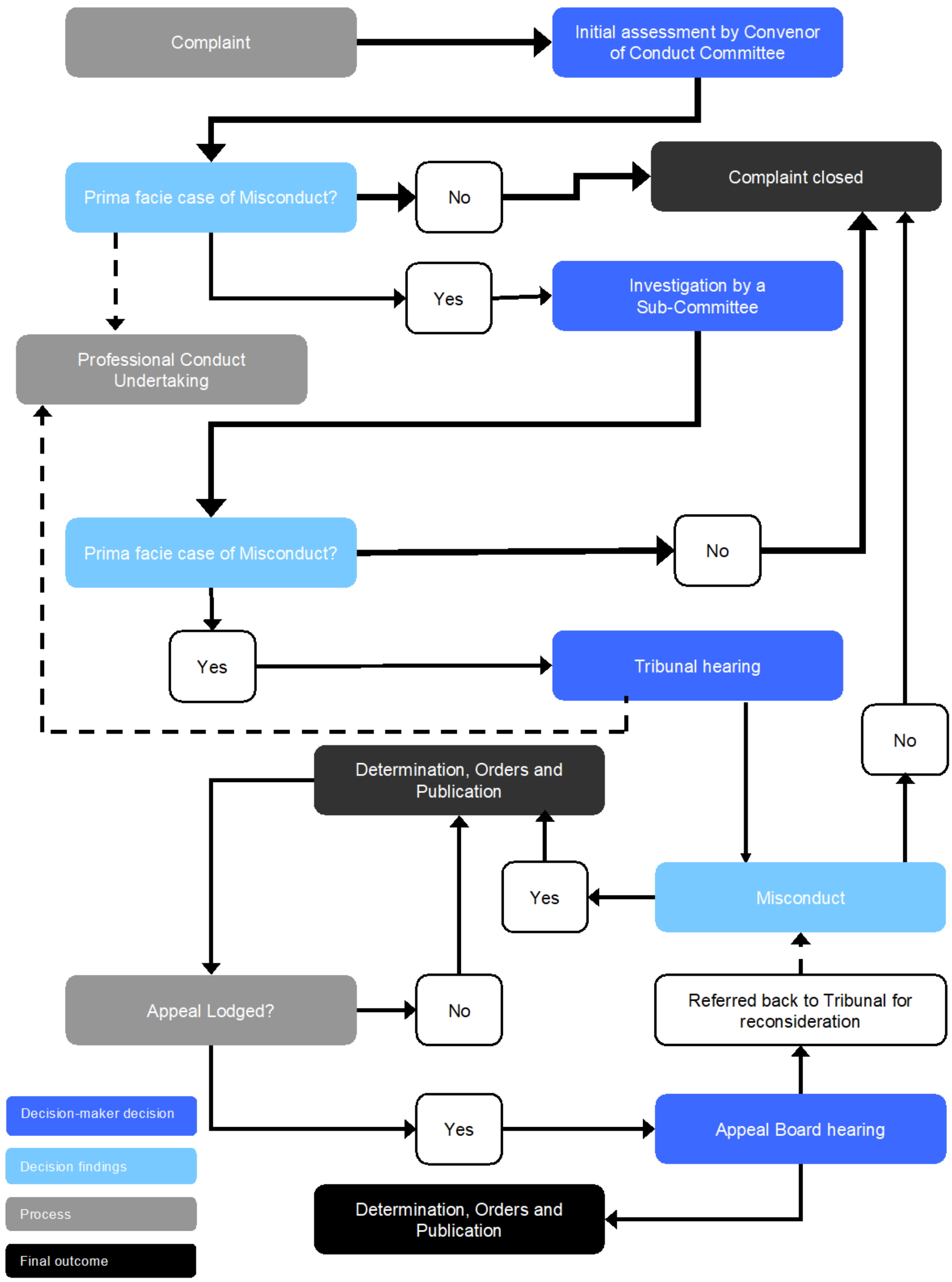
13.9 Delegation of Functions

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

13.10 Review

(a) The Scheme will be reviewed five years from the Commencement Date, and every five years thereafter.

Schedule 1 – Simplified overview of the scheme and key steps



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