

# The Tax Institute

ACN 008 392 372

# Constitution

A company limited by guarantee

Adopted on: 24 November 2021

# Document Control Guidelines

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## STATUS AND GOVERNANCE

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### 1 Company name and type

- 1.1 The name of the company is “The Tax Institute” (in this Constitution called “the Institute”).
- 1.2 The Institute is:
- (a) a public company limited by guarantee; and
  - (b) by licence that was in force immediately before 1 July 1998 and the commencement of section 151(1) of the Corporations Act allowed to omit “Limited” from its name.
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### 2 Member liability and guarantee

- 2.1 The liability of Members is limited.
- 2.2 Every Member undertakes to contribute a maximum of \$2.00 to the Institute for payment of the debts and liabilities of the Institute, the costs, charges and expenses of any winding up and the adjustment of the rights of Members amongst themselves, if the Institute is wound up while the Member is a Member or within one year after the member ceased to be a Member.
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### 3 Replaceable rules

- 3.1 The replaceable rules in the Corporations Act do not apply to the Institute.
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### 4 Objects

- 4.1 The objects of the Institute are to:
- (a) advance public knowledge and understanding of Taxation Laws, the practices of public authorities administering Taxation Laws and the attitude of Governments to Taxation Laws;
  - (b) advance education in relation to taxation and Taxation Laws;
  - (c) encourage and facilitate the study of taxation and Taxation Laws;
  - (d) encourage research into the reform of any Taxation Law; and
  - (e) disseminate information concerning the work of the Institute.
- 4.2 The income and property of the Institute must be applied solely to promote the objects of the Institute.
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### 5 No distribution to Members

- 5.1 The Institute must not make any distributions to Members, whether by way of dividend, bonus, surplus in winding up or otherwise.
- 5.2 Clause 5.1 does not prevent the Institute, with the approval of the National Council acting in good faith, paying:
- (a) reasonable remuneration to a Member for professional or technical services actually rendered to the Institute as an employee, contractor or consultant;
  - (b) for goods supplied by a Member to the Institute in the ordinary course of business;

- (c) interest, at a reasonable rate on money borrowed by the Institute from a Member;
- (d) reasonable rent for premises leased to the Institute by a Member;
- (e) out of pocket expenses incurred by a Member for or on behalf of the Institute;
- (f) reasonable remuneration to the Chairperson or President of the Institute for professional or technical services rendered to the Institute; or
- (g) any other reasonable amount of similar character to those described in paragraphs (a) to (f) of this clause.

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## **6 ASIC Licence**

For so long as the Institute holds the ASIC Licence, the Institute must not:

- (a) breach a condition of the ASIC Licence;
- (b) pursue objects which would have prevented it being granted the ASIC Licence;
- (c) apply its income or property to promote objects which would have prevented it being granted the ASIC Licence; or
- (d) modify its Constitution to allow it to do anything which it is required not to do under this clause or clause 5.

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## **MEMBERS**

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### **7 Membership**

The rights and privileges of every Member are personal to that Member and may not be transferred by any act of the Member or by operation of law.

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### **8 Admission to Membership**

The National Council may admit any person as a Member on the terms and conditions in this Constitution and as prescribed in the By-Laws from time to time.

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### **9 Classes of Membership**

The National Council may establish different classes of membership and prescribe the qualifications required to become a Member in a particular class and the rights, obligations and privileges of Members of a class in the By-Laws from time to time.

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### **10 Register of Members**

10.1 The Institute must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary and must contain:

- (a) for each current Member:
  - (i) their name;
  - (ii) their address;
  - (iii) any alternative address nominated by the Member for the service of notices; and

- (iv) date the Member was entered on to the Register of Members; and
  - (b) for each person who stopped being a Member in the last 7 years:
    - (i) their name;
    - (ii) their address;
    - (iii) any alternative address nominated by the Member for the service of notices; and
    - (iv) dates the membership started and ended.
  - 10.2 The Institute must give current Members access to the Register of Members.
  - 10.3 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.
- 

## **11 Member Fees**

- 11.1 The Institute may require the payment of any membership application fees, annual subscriptions and other membership levies by Members in the amounts and at such times and in such manner as determined by the National Council from time to time in accordance with the By-Laws.
  - 11.2 The National Council may in its discretion:
    - (a) set different fees for different classes of membership;
    - (b) determine that no membership application fees, annual subscriptions or other membership levies are payable by a Member or Members (in whole or in part) for any year; and
    - (c) extend the time for payment of membership application fees, annual subscriptions and other membership levies by any Member or class of Members.
- 

## **12 Conduct of Members**

- 12.1 Each Member is bound by and must comply with this Constitution and any By-Laws prescribed by the National Council as amended from time to time.
  - 12.2 A Member must notify the Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership, a class of membership or to membership of a Division.
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## **13 Suspension or termination of Membership**

The National Council may prescribe the grounds for and procedures related to the suspension and termination of membership from time to time in the By-Laws.

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## **GENERAL MEETINGS**

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### **14 Calling of meetings of Members by a Director**

Not less than one third of the Directors may call a meeting of Members.

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### **15 Calling of general meetings**

- 15.1 The National Council may call a general meeting.



- 15.2 If Members with at least 5% of the votes that may be cast at a general meeting make a request to the Institute for a general meeting to be held, the National Council must:
- (a) within 21 days of the Members' request, give all Members notice of general meeting; and
  - (b) arrange to hold a general meeting within 2 months of the Members' request under clause 15.2(a).
- 15.3 Members with more than 50% of all the votes of the Members who made the request to call the general meeting may call and arrange to hold a general meeting.

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## **16 Annual general meetings**

- 16.1 The Institute must hold an annual general meeting at least once in each calendar year and within five months after the end of its Financial Year to:
- (a) receive the statements, accounts and report of the National Council and the Auditor for the preceding Financial Year;
  - (b) receive the report of the chairperson of the annual general meeting identifying all current Directors and the date on which the term of each such Director is due to expire;
  - (c) consider any matter submitted to the meeting in accordance with this Constitution or the Corporations Act; and
  - (d) transact any other business which under this Constitution ought to be transacted at an annual general meeting of the Institute.
- 16.2 Before or at the annual general meeting, the National Council must give information to the Members on the Institute's activities and finances during the period since the last annual general meeting.
- 16.3 The chairperson of the annual general meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Institute.

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## **17 Amount of notice of meetings**

Subject to the Corporations Act, at least 21 days' notice must be given of a meeting of Members.

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## **18 Notice of meetings**

- 18.1 Written notice of a meeting of Members must be given individually to each Member entitled to receive notice of the meeting, to the Auditor and to each Director in the manner provided in this Constitution and in accordance with the Corporations Act.
- 18.2 Subject to the Corporations Act, notice of a meeting of Members required to be served or given by the Institute may be served upon or given to Members:
- (a) by public advertisement of the notice in the official journal of the Institute, and the sending of the journal addressed to the Member as provided in clause 67.1 will be deemed to be appropriate notice; and/or
  - (b) by providing notice to the Member in accordance with clause 67.1.
- 18.3 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by a person entitled to notice, does not invalidate any proceedings at the meeting.

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## **19 Notice of adjourned meetings**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

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## **20 Members' resolutions**

Members may propose a resolution to be moved at a general meeting only in accordance with the provisions of the Corporations Act.

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## **21 Time and place for meetings of Members**

A meeting of Members must be held at a reasonable time and place.

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## **22 Members' Meetings - Technology**

The Institute may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

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## **23 Quorum**

23.1 The quorum for a meeting of Members is fifteen Members and the quorum must be present at all times during the meeting.

23.2 In determining whether a quorum is present:

- (a) subject to sub-clause (c) an individual who attends as a proxy or body corporate representative is counted;
- (b) if a Member has appointed more than one proxy or representative, only one of them is to be counted; and
- (c) an individual who attends both as a Member and as a proxy or representative, is counted only once.

23.3 Subject to clause 23.5, a meeting of the Institute's Members that does not have a quorum present within 15 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date (not being more than 14 days after such meeting), time and place the chairperson of the meeting specifies. If the chairperson of the meeting does not specify one or more of those requirements, the meeting is adjourned to:

- (a) if the date is not specified, the same day in the next week;
- (b) if the time is not specified, the same time; or
- (c) if the place is not specified, the same place.

23.4 If a quorum is not present at the resumed meeting of the Institute's Members within 15 minutes after the time for the meeting, the Members present constitute a quorum.

23.5 If a meeting of the Institute's Members that does not have a quorum present within 15 minutes after the time set for the meeting was a meeting convened on the requisition of the Members, the meeting is dissolved.

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## **24 Chairperson and adjournment of meetings of Members**

- 24.1 The Chairperson will chair meetings of Members. If the Chairperson is not present within 15 minutes after the time set for the meeting or decline to act as chair of the meeting, the Members may elect an individual to chair the meeting.
- 24.2 The chairperson of a meeting may adjourn the meeting and must if the Members present with a majority of votes at the meeting agree or direct the chairperson to do so. No business may be transacted at an adjourned meeting other than the business left unfinished from the earlier meeting from which the adjournment took place. If a meeting is adjourned for more than 21 days, new notice of the adjourned meeting must be given.

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## **25 Auditor's right to attend meetings**

- 25.1 The Auditor is entitled to attend any general meeting and to be heard by the Members on any part of the business of the meeting that concerns the Auditor in the capacity of auditor.
- 25.2 The Institute must give the Auditor any communications relating to the general meeting that a Member of the company is entitled to receive.

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## **26 Proxies and body corporate representatives**

- 26.1 A Member who is entitled to attend and cast a vote at meetings of Members may appoint a proxy or, if the Member is a body corporate, a representative, to attend and cast a vote at that meeting.
- 26.2 A proxy or representative appointed under clause 26.1 must be appointed in accordance with the Corporations Act.
- 26.3 The instrument appointing a proxy and the power of attorney or other authority under which it is signed or a copy certified as a true copy by a person qualified to witness statutory declarations of that power or authority must be received at the Registered Office not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy will not be treated as valid. The Secretary shall endorse the time of receipt of every instrument appointing a proxy.
- 26.4 A vote given in accordance with the terms of an instrument of proxy or attorney is valid despite the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, provided that no intimation in writing of such death, unsoundness of mind or revocation has been received by the Institute at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used.
- 26.5 Only Members who have voting rights and are Financial Members are entitled to vote at meetings of Members, either personally or by proxy, or be reckoned in a quorum.
- 26.6 A proxy is entitled to vote on a show of hands.
- 26.7 If a Member appoints a proxy to attend and vote for the Member at a meeting and the Member is present at the meeting for which the proxy was appointed, the proxy's authority to speak and vote for the Member at the meeting is suspended while the Member is present at the meeting.

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## **27 Voting at meetings of Members**

- 27.1 Subject to any rights or restrictions attached to any class of membership, each Member has one vote, both on a show of hands and a poll.
- 27.2 The chairperson of a meeting does not have a casting vote. If there is an equality of votes, the question or resolution is not carried.

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## 28 Objections to right to vote

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairperson of the meeting whose decision is final.

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## 29 How voting is carried out

- 29.1 A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded by at least five Members present in person or by proxy and entitled to vote.
- 29.2 A declaration by the chairperson of the meeting that a resolution has been passed, passed by a particular majority or lost and an entry to that effect in the minutes of the meeting are sufficient evidence of that fact.

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## 30 Matters on which a poll may be demanded

- 30.1 A poll may be demanded on any resolution including resolutions concerning the election of the chairperson of the meeting or the adjournment of the meeting in accordance with the Corporations Act.
- 30.2 A demand for a poll may be withdrawn.

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## 31 When and how polls must be taken

- 31.1 Subject to clause 31.2, a poll must be taken when and in the manner the chairperson of the meeting directs.
- 31.2 A poll on the election of a chairperson or on the question of an adjournment must be taken immediately without adjournment.

## NATIONAL COUNCIL

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## 32 Number and Qualification of Directors

- 32.1 The Institute must have at least three Directors. At least two Directors must ordinarily reside in Australia.
- 32.2 Aside from a Director who is appointed in accordance with clause 33.7, a Director must be a Member who is eligible to be a member of a State or Divisional Council.

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## 33 Appointment

- 33.1 Each State Council is entitled to appoint one of its current or former State Councillors to be a Director.
- 33.2 A State Council is entitled to appoint one of its current or former State Councillors as an additional Director once there are two thousand Members registered as residing in the State Division as at 30 September immediately preceding the date of appointment (“**Additional Director**”). A State Council is entitled to appoint one of its current or former State Councillors as a further additional Director for every additional two thousand Members beyond the first two thousand Members who are registered as residing in the State Division as at 30 September immediately preceding the date of appointment (each also an “**Additional Director**”).
- 33.3 If, during the term of an Additional Director, the number of Members registered as residing in the relevant State Division falls below the number required under clause 33.2 to appoint the

Additional Director, the Additional Director may remain in office but during that period the State Council of that State Division will not be entitled to appoint a replacement Director to fill the vacancy created if one of the other Directors appointed by the State Council subsequently resigns or is removed pursuant to clause 35 or becomes the President or Vice President.

- 33.4 A Director who becomes the President or Vice President continues to be a Director while they hold the office of President or Vice President. Subject to clause 35.3 a past President will be entitled to continue as a Director for a period of 12 months from the date they cease to be President, or if they do not so continue may be appointed by the National Council as a Director at any time during that 12 months for the remainder of that 12 months.
- 33.5 A State Council is entitled to appoint one of its current or former State Councillors as a new Director to the National Council if a Director appointed by it becomes the President or Vice President.
- 33.6 If a vacancy occurs on the National Council in the position of a Director appointed under clauses 33.1, 33.2 or 33.5 the State Council who appointed the former Director is entitled to appoint one of its current or former State Councillors as a replacement Director for a term determined in accordance with clause 34.2 or to fill the position as a casual vacancy under clause 36.1.
- 33.7 The National Council may appoint an independent director to the National Council to, among other matters, be Chairperson. A Chairperson appointed under this clause is not required to be a Member of the Institute. The Directors may, amongst other matters and as they see fit, determine the period for which this Director is to be the Chairperson and the terms of appointment of the Chairperson, including reasonable remuneration.
- 33.8 If the National Council chooses not to appoint an independent director to be Chairperson under clause 33.7, the President is taken to be the Chairperson. In this case, the President is only entitled to reasonable remuneration as President and is not entitled to additional remuneration as Chairperson.

## **34 Term**

- 34.1 Subject to the other provisions of this Constitution, Directors will be appointed for a term of three years commencing on 31 December in a year and ending on the third anniversary of the date of appointment.
- 34.2 If a Director is appointed by a State Council under clauses 33.1, 33.2, 33.5 or 33.6:
- (a) during the period from 1 January to 30 June in a year, the term of appointment of that Director ends on 31 December third occurring after the date of appointment; and
  - (b) during the period from 1 July to 30 December in a year, the term of the appointment of that Director ends on 31 December fourth occurring after the date of appointment.
- 34.3 A Director is eligible for re-appointment for one further consecutive term of three years.
- 34.4 A Director is not precluded from appointment to President or Vice-President by virtue of having served as a Director for the maximum terms prescribed by this clause.

## **35 Removal & Vacation of Office**

- 35.1 A Director may at any time resign from the National Council by giving written notice of resignation to the Secretary at the Registered Office.
- 35.2 Subject to compliance with the Corporations Act, the Members in general meeting may by special resolution remove any Director before the expiration of their period of office and may by an ordinary resolution appoint another person in their stead from the State Division the removed Director represented, for the balance of the term of appointment of the Director removed.

- 35.3 The office of Director shall be vacated if they:
- (a) resign or are removed from office pursuant to clause 35.1 or 35.2;
  - (b) become bankrupt or make any arrangement or composition with their creditors generally;
  - (c) cease to be a Member (except for a Director appointed as Chairperson under clause 33.7);
  - (d) are suspended for any period from membership of the Institute;
  - (e) cease to be a Director by virtue of the Corporations Act or become prohibited from being a Director by reason of any order made under the Corporations Act;
  - (f) are absent from three consecutive meetings of the National Council without permission of the National Council; or
  - (g) are charged with a Serious Offence.

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## **36 Casual Vacancies**

- 36.1 If a vacancy occurs on the National Council as a result of clause 35.3(a)-(g), the State Council which appointed the vacating Director may treat the vacancy as a casual vacancy and appoint one of its current or former State Councillors as an interim replacement Director who shall hold office until 31 December next following the occurrence of the vacancy.
- 36.2 If a State Council fails to appoint a replacement Director pursuant to clause 36.1 within two months of the departure of the vacating Director, the National Council may appoint one of that State Council's current or former State Councillors as a replacement Director who shall hold office until 31 December next following the occurrence of the vacancy.

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## **37 Alternate Director**

- 37.1 With the National Council's approval, a Director may appoint a Member from their State Council to be their Alternate Director to exercise some or all of the Director's powers for any period.
- 37.2 If the appointing Director requests, the National Council must give the Alternate Director notice of National Council meetings.
- 37.3 When an Alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the appointing Director exercised the powers.
- 37.4 The appointing Director may terminate the Alternate Director's appointment at any time.
- 37.5 An appointment or termination of an Alternate Director must be in writing. A copy of the appointment must be given to the Secretary and ASIC must be notified of the appointment or termination.

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## **38 Powers**

- 38.1 Subject to the Corporations Act, the National Council shall manage the business and affairs and control the funds and property of the Institute.
- 38.2 In addition to the powers and authorities expressly conferred upon the National Council by this Constitution, the National Council may exercise all such powers and do all such acts and things as may be exercised or done by the Institute and are not by this Constitution or by the Corporations Act expressly directed or required to be exercised or done by the Institute in general meeting.

- 38.3 The National Council may resolve from time to time how negotiable instruments are signed, drawn, accepted, endorsed or otherwise executed including execution by two Directors.
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## **39 Calling National Council meetings**

- 39.1 A National Council meeting may be called at any time by:
- (a) the President;
  - (b) the Chairperson; or
  - (c) the Chief Executive Officer at the written request of a Director.
- 39.2 Not less than seven days' notice in writing will be given of a National Council meeting except where, in the opinion of the President or Chairperson, a matter requires the immediate consideration of the National Council, in which event a meeting of the National Council may be called on not less than 24 hours' notice in writing, or an even shorter period of notice if all Directors have consented to that even shorter period of notice.
- 39.3 Notice of meetings of the National Council must specify the place, date and time of the meeting and the business to be conducted at the meeting.
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## **40 Use of Technology**

- 40.1 As long as all Directors consent, a National Council meeting may be called or held using any technology which allows all of the Directors participating in the meeting to hear each other at the same time. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.
- 40.2 As long as all Directors consent, a National Council resolution may be passed using any technology which allows all of the Directors to pass a resolution. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the resolution is circulated.
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## **41 Chairing National Council meetings**

- 41.1 The Chairperson will chair National Council meetings.
- 41.2 If the Chair is not present at the meeting within 15 minutes after the time appointed for the meeting or is unable or unwilling to act, the National Council shall choose a Director present to chair all or part of the meeting.
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## **42 Quorum at National Council meetings**

A quorum for a National Council meeting is a simple majority of Directors (unless the National Council determines otherwise) and a quorum must be present at all times during the meeting.

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## **43 Passing of National Council resolutions**

- 43.1 A National Council resolution must be passed as an ordinary resolution.
- 43.2 In the case of equality of votes:
- (a) the person chairing the meeting does not have a second or casting vote; and
  - (b) the resolution is not carried.

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## **44 Circulating resolutions of National Council**

- 44.1 The National Council may pass a resolution without a National Council meeting being held if 75 percent or more of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 44.2 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 44.3 The resolution is passed when the last Director constituting 75 percent or more of the Directors entitled to vote on the resolution signs.

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## **45 Delegation**

- 45.1 The National Council may delegate any of its powers to a State Council or a committee of any one or more Directors or the Chief Executive Officer.
- 45.2 The delegate must exercise the delegated powers in accordance with any directions of the National Council.
- 45.3 The effect of the delegate exercising a delegated power is the same as if the National Council exercised it.
- 45.4 The National Council may withdraw any delegated power at any time.

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## **46 Treasurer and Standing Committees**

- 46.1 The National Council shall each year or from time to time nominate Directors to be treasurer and to chair the Standing Committees.

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## **47 Validity of Actions**

All acts done by any meeting of the National Council, a Standing Committee or State Council or by any Director, Alternate Director or State Councillor will despite it afterwards being discovered that there was some defect in the appointment of any such body or person or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified.

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## **48 Institute's attorney**

The National Council may appoint a company, firm, person or body of persons to be the Institute's attorney under a power of attorney for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the National Council under this Constitution.

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## **PRESIDENT AND VICE PRESIDENT**

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### **49 Appointment**

- 49.1 No later than 31 December each year, the National Council shall in meeting:
- (a) subject to clause 49.1(b), appoint a new Vice-President from amongst the Directors;
  - (b) appoint the current Vice-President to the position of President unless:



- (i) the person currently holding office as President is re-elected by the National Council to that position; or
  - (ii) the National Council resolves otherwise, in which event the National Council shall appoint a new President from amongst the Directors; and
- (c) appoint other office holders (if any) from amongst the Directors.
- 49.2 Subject to clause 50, the President and Vice President may stand for re-election.
- 49.3 The duties and responsibilities of the President, the Vice President and other office holders (if any) will be as determined by the National Council from time to time.

## **50 Term**

A person may hold office as President, Vice President or any other office holder appointed under clause 49.1(c) for up to a total of two consecutive years (in addition to any period served in the office to fill a casual vacancy) at any time.

## **CHIEF EXECUTIVE OFFICER**

### **51 Chief Executive Officer**

- 51.1 The National Council may appoint a person as the Chief Executive Officer of the Institute for the period and on the terms (including as to remuneration) as the National Council resolves.
- 51.2 The Chief Executive Officer shall:
- (a) be responsible for the day to day management and operation of the Institute;
  - (b) implement the strategic direction of the Institute; and
  - (c) have such other powers as the National Council may delegate to the Chief Executive Officer from time to time.
- 51.3 The National Council may revoke or vary:
- (a) the appointment of the Chief Executive Officer; or
  - (b) any of the powers conferred on the Chief Executive Officer.

## **SECRETARY**

### **52 Appointment of Secretary**

- 52.1 The Institute must have a Secretary or Secretaries. At least one of them must ordinarily reside in Australia.
- 52.2 The Secretary shall be appointed by the National Council on such terms and conditions as the National Council thinks fit.

## **STATE DIVISIONS & STATE COUNCILS**

### **53 State Divisions**

- 53.1 The National Council may from time to time declare a group of people to be a Division or a State or Territory of Australia to be a State Division.

- 53.2 Nothing in this Constitution affects the validity of any of the State Divisions existing at the date of adoption of this Constitution.

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## **54 Establishment & Management by the National Council**

- 54.1 The National Council may from time to time establish a council for a State (a “**State Council**”) or Division (a “**Divisional Council**”) for the purpose of managing any affairs of the Institute in that State or Division.
- 54.2 Members of a State Council or Divisional Council shall be elected by the members of the relevant State or Division with guidance from the National Council pursuant to clause 55.
- 54.3 No more than one council shall be created for a State or Division.
- 54.4 The National Council shall from time to time delegate for such period and on such terms as it thinks fit such of its powers to State Councils and Divisional Councils and amend and revoke such delegated powers at any time in its discretion.
- 54.5 The operation of State Councils and Divisional Councils shall be as prescribed by the National Council from time to time.
- 54.6 The National Council may at any time remove a State Council or Divisional Council, or suspend the operation of a State Council or Divisional Council for such period of time as determined by the National Council, if two-thirds of the Directors resolve that the State Council or Divisional Council is unable to carry on its affairs in accordance with the directions of the National Council and in the best interests of the Institute.

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## **55 Operation**

- 55.1 Without limiting clause 54, the National Council may from time to time:
- (a) provide recommendations to the Members of the relevant State or Division for the election or appointment of Members to State or Divisional Councils; and
  - (b) define the powers, authorities and procedures of the Divisions and State or Divisional Councils in the By-Laws,
- and vary, amend, add to and remove such powers, authorities and procedures from time to time.
- 55.2 Power exercised by a State or Divisional Council in accordance with a delegation of the National Council is treated as exercised by the National Council.

## **BY-LAWS**

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### **56 By-Laws**

- 56.1 The National Council may from time to time prescribe By-Laws of the Institute on such matters considered necessary or expedient to carry out the purposes of the Institute or for the regulation, management and control of the Institute’s affairs.
- 56.2 By-Laws shall be adopted, amended or repealed by the National Council in meeting by a majority of no less than two thirds of the Directors.
- 56.3 In the event of any inconsistency between this Constitution and any By-Law, this Constitution prevails.
- 56.4 The National Council must publish By-Laws adopted or amended pursuant to this clause in either the Institute’s journal or on the Institute’s website as soon as practicable.

## RECORDS & AUDIT

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### 57 Minutes

The Institute must keep minute books of Members' meetings and National Council meetings (including Standing Committee meetings) and allow access to the minute books for meetings of Members in accordance with applicable law, including, as relevant, the Corporations Act and the ACNC Act.

### 58 Financial Records

58.1 The Institute must:

- (a) keep written financial records and allow access to such financial records;
- (b) prepare, disclose, report and lodge financial reports (as required),
- (c) keep written records that correctly record the Institute's operations; and
- (d) retain its records for at least 7 years.

58.2 The Directors must take reasonable steps to ensure that the Institute's records are kept safe.

### 59 Audit

The Institute must appoint an Auditor and provide assistance to the Auditor in accordance with the Corporations Act.

## WINDING UP

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### 60 Distribution of Property

60.1 Subject to any applicable law, including, as relevant, the Corporations Act, the ACNC Act or any court order, if upon the winding up or dissolution of the Institute there remains after the satisfaction of all its debts and the liabilities any property whatsoever the same shall be given or transferred to some other institution or institutions in Australia:

- (a) having objects similar to the Institute;
- (b) which prohibits the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Institute under or by virtue of clause 5; and
- (c) if at the time of winding up or dissolution the Institute is endorsed as an income tax exempt charity pursuant to the Tax Act, which is endorsed as an income tax exempt charity for the purposes of the Tax Act.

60.2 If the Institute obtains deductible gift recipient endorsement within the meaning of the Tax Act and this endorsement is later revoked (whether or not the Institute is to be wound up), any surplus Gift Funds must be transferred to one or more institutions who meet the requirements of clauses 60.1(a) to 60.1(c) and have deductible gift recipient endorsement.

60.3 The selection of institution or institutions pursuant to this clause is to be determined by the National Council and in default thereof by the Chief Judge in Equity of the Supreme Court of New South Wales or any Judge of that Court as may have or acquire jurisdiction in the matter.

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## 61 Prohibition

The Members have no right to participate in any distribution or payment of the assets or property of the Institute in the event of the winding up or dissolution of the Institute.

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## INDEMNITY & INSURANCE

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### 62 Indemnity of Directors

The Institute must indemnify every Director against a liability incurred as a Director or former Director other than:

- (a) a liability owed to the Institute or a related body corporate;
- (b) a liability for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H of the Corporations Act; or
- (c) a liability that is owed to a person other than the Institute or a related body corporate and did not arise out of conduct in good faith.

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### 63 Indemnity of Officers or Employees

Every Officer or employee of the Institute must by resolution of the National Council be indemnified by the Institute against a liability incurred as an Officer or an employee of the Institute other than:

- (a) a liability owed to the Institute or a related body corporate;
- (b) a liability for a pecuniary penalty order or a compensation order under the Act for contravention of a civil penalty provision; or
- (c) a liability that is owed to a person other than the Institute or a related body corporate and did not arise out of conduct in good faith.

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### 64 Indemnity for legal costs

Every Director and other Officer or employee of the Institute must by resolution of the National Council be indemnified out of the assets of the Institute against a liability for legal costs incurred by that person as a Director other Officer or employee of the Institute in defending an action for liability incurred in that capacity unless the costs arise:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clauses 62 or 63;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (other than costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

For the purposes of this clause 64:

- (a) "proceedings" includes the outcome of the proceedings and any appeal in relation to the proceedings; and

- (b) legal costs include costs incurred in any court, arbitration, mediation, tribunal or commission however constituted and however named.

## **65 Limit of indemnity**

Subject to the provisions of the Corporations Act, a Director, Officer or employee of the Institute shall not be liable for:

- (a) the acts, receipts, neglect or defaults of any other Director, Officer or employee of the Institute;
- (b) joining in any receipt or other act of conformity or for any loss happening to the Institute through:
  - (i) an insufficiency or deficiency of title to any property acquired by order of the Directors, Officer or employee of the Institute for or on behalf of the Institute; or
  - (ii) an insufficiency or deficiency of any security in or upon which any of the moneys of the Institute shall be invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person with whom any moneys, securities or effects shall be deposited;
- (d) any loss occasioned by any error of judgment or oversight on the part of a Director, Officer or employee of the Institute; or
- (e) any other loss, damage or misfortune which occurs in the execution of the duties of the office of Director, Officer or employee of the Institute,

unless the liability was incurred against the Institute or through the dishonesty of the Director, Officer or employee of the Institute.

## **66 Payment of insurance premiums**

The Institute may by resolution of the National Council pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been a Director, Officer or employee of the Institute against:

- (a) a liability for legal costs; and
- (b) any other liability except a liability incurred by the person as such a Director, Officer or employee and arising out of conduct involving:
  - (i) a wilful breach of duty in relation to the Institute; or
  - (ii) a misuse of their position or information acquired because of their position as prohibited by the Corporations Act.

## **NOTICES**

### **67 Notices**

- 67.1 Any notice required to be given by any clause of this Constitution or by any By-Law shall be served in writing upon any Member or person either personally or by sending the same through the post in a prepaid letter addressed to such Member or person at their address as entered in the Register of Members or at their last known place of residence or business, by faxing to a number nominated by the Member or person or by sending it to an electronic address (if any)

nominated by the Member or person. The non-receipt of such notice shall not invalidate the proceedings of any meeting referred to in the notice.

- 67.2 If the address of a Member in the Register of Members is not within Australia and the Member has not nominated an alternate address in Australia, subject to the Corporations Act, the Institute may give a notice to that Member by posting it on the Institute's website.
- 67.3 A notice sent by pre-paid post may be included separately with or as part of any other publication sent by the Institute to Members.
- 67.4 Any notice sent by:
- (a) post shall be deemed to have been served three business days after posting if within Australia or seven business days after posting if to a place outside Australia; and
  - (b) fax or electronic message or publication shall be deemed to have been served on the same day if transmitted on a business day by 5:00pm local time in the place of service and otherwise the next business day.
- 67.5 Where a given number of days' notice or notice extending over any period is required to be given the day of service is counted in such number of days or other period.

## DEFINITIONS & INTERPRETATION

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### 68 Definitions

In this Constitution, unless the context otherwise requires:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and where any provision of the ACNC Act is referred to, the reference is to such provision as amended, modified or re-enacted from time to time;

**Alternate Director** means a person appointed to this position pursuant to clause 37;

**ASIC** means the Australian Securities and Investments Commission;

**ASIC Licence** means the licence noted in clause 1.2(b);

**Auditor** means the Auditor for the time being of the Company;

**By-Laws** means the by-laws of the Institute prescribed, adopted or amended by the National Council from time to time in accordance with clause 56;

**Chairperson** means the director appointed by the National Council to fill the role of Chairperson of the National Council.

**Chief Executive Officer** means the person appointed as the Chief Executive Officer of the Institute from time to time;

**Constitution** means this Constitution as amended from time to time;

**Corporations Act** means the *Corporations Act 2001* and where any provision of the Corporations Act is referred to, the reference is to such provision as amended, modified or re-enacted from time to time;

**Director** means a director on the National Council and includes the President, Vice- President, Chairperson and others described and appointed in accordance with clause 32.2, and Alternate Directors, unless stated otherwise;

**Division** means any group of people located in Australia or overseas that the National Council determines to be a Division;

**Divisional Council** means a council for a Division;

**Financial Member** means a Member whose application fees, annual subscriptions and other membership levies (if any) are paid or are not outstanding for more than one month from the due date of payment;

**Financial Year** means the period of twelve months commencing from 1 July and ending on 30 June of that year;

**Gift Fund** means:

- (a) gifts of money or property for the principal purpose of the Institute;
- (b) contributions made in relation to a fundraising event held for the principle purpose of the Institute; and
- (c) money received by the Institute because of such gifts and contributions; and
- (d) for the purposes of this definition, **contributions** and **fundraising events** have the same meaning as in Division 30 of the Tax Act;

**Guarantee** means the maximum amount each Member agrees to pay to the Institute in accordance with clause 2;

**Institute** means the company named in clause 1;

**Member** means a person admitted as a member of the Institute in accordance with this Constitution;

**Month** means calendar month;

**National Council** means the board of Directors of the Institute;

**Officer** means where the context permits:

- (a) a Director or Secretary of the Institute; or
- (b) a person:
- (c) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Institute; or
- (d) who has the capacity to affect significantly the Institute's financial standing; or
- (e) in accordance with whose instructions or wishes the National Council of the Institute are accustomed to act (excluding advice given by a person in a professional or business capacity).

**President** means the person appointed to that office pursuant to clause 49;

**Register of Members** means the Register of Members to be kept as required under the ACNC Act;

**Registered Office** means the registered office for the time being of the Institute;

**Secretary** means any person appointed in accordance with this Constitution and the Corporations Act as a Secretary of the Institute and includes an assistant or acting Secretary or any substitute for the time being for the Secretary;

**Serious Offence** means:

- (a) an offence against the laws of a State, a Territory or the Commonwealth of Australia or against the laws of a foreign country that:
- (b) is punishable by imprisonment for a period greater than 12 months; or
- (c) involves fraud or dishonesty and is punishable by imprisonment for at least 3 months; and
- (d) an offence that involves a breach of a Taxation Law and is punishable by imprisonment for at least 12 months.

**Standing Committee** means any committees established by the National Council from time to time;

**State** means a State of Australia and unless the National Council resolves otherwise, for the purposes of this Constitution, includes the Australian Capital Territory and the Northern Territory;

**State Council** means the committee of State Councillors for a State Division and reference to State Councils includes reference to Divisional Councils;

**State Councillor** means a member of a State Council;

**State Division** means the body of Members of the Institute registered in a State and, unless the contrary intention appears, reference to "State Divisions" includes Divisions. Unless the National Council resolves to the contrary, the Australian Capital Territory shall be deemed to be part of the New South Wales State Division and the Northern Territory shall be deemed to be part of the South Australia State Division;

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth);

**Taxation Laws** means laws relating to taxation including income tax, goods and services tax, capital gains tax, payroll tax, customs and excise duties, stamp duty, land and other property taxes, death, estate and gift duties and taxes and duties of any other kind whatsoever and taxation laws of any foreign country or place which affect in any way residents or citizens of Australia or persons carrying on business either in Australia or with residents or citizens of Australia; and

**Vice President** means the person appointed to that office pursuant to clause 49.

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## 69 Interpretation

- (a) Words and phrases which are given a special meaning by the ACNC Act or Corporations Act have the same meaning in this Constitution, unless the contrary intention appears.



- (b) Words in the singular include the plural and vice versa.
- (c) Words importing a gender include all other genders.
- (d) Persons include companies and corporations and vice versa.
- (e) A reference to the ACNC Act, Corporations Act or any other statute or regulation is to be read as though the words “as modified or substituted or re-enacted from time to time” were added to the reference.
- (f) Headings are inserted for convenience and do not affect the interpretation of this Constitution.
- (g) “Including” and other similar words are not words of limitation.
- (h) General words following words describing a particular class or category are not restricted to that class or category.
- (i) A duty, obligation, covenant or agreement on the part of two or more persons binds them jointly and severally.

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## **70 Reading this constitution**

- 70.1 While the Institute is a registered charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- 70.2 If the Institute is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with the Corporations Act.

**BY-LAW NO. 1 OF THE TAX INSTITUTE**  
**(the "Institute")**  
**MEMBERSHIP**

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**1 Definitions and interpretation**

In this By-Law, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution.

**Affiliate** means a person admitted as a Member in accordance with clause 2.4.

**Associate** means a person admitted as a Member in accordance with clause 2.3.

**Chartered Tax Adviser** means a person who is a Recognised Chartered Tax Adviser or has been admitted as a Member in accordance with clause 2.1.

**Chartered Tax Adviser Examination** means the examination for admission as a Chartered Tax Adviser as determined by the National Council.

**CPD** means Continuing Professional Development.

**Equivalent Institution** means an institution listed below:

- (a) an Australian tertiary institution;
- (b) an Australian Registered Training Organisation;
- (c) a Registered Higher Education Provider;
- (d) a Tax Practitioners Board approved course provider; and
- (e) an overseas Institution subject to the regulatory activities and quality assurance mechanisms similar to those undertaken by the Tertiary Education Quality and Standards Agency (**TEQSA**) or by the Australian Skills Quality Authority (**ASQA**). (See also National Office of Overseas Skills Recognition (**NOOSR**)).

**Fellow** means a person admitted as a Member in accordance with clause 2.2.

**Graduate Diploma of Applied Tax Law** means the qualification in applied tax law awarded by the Institute.

**Member** means a member as defined in the Constitution.

**Recognised Tax Agent Association** means a professional association noted in the list of recognised professional associations on the Tax Practitioners Board website as a recognised tax agent association.

**Recognised Tax (Financial) Adviser Association** means a professional association approved by the Tax Practitioners Board as a recognised tax (financial) adviser association.

**Recognised Chartered Tax Adviser** means a person who was recognised in September 2012 by the Institute as a Chartered Tax Adviser or has been recognised as a Chartered Tax Adviser by specific resolution of the National Council by reference to the eligibility criteria as at September 2012.

**Register of The Tax Institute Approved Providers/Subjects** means the register of providers and subjects published by the Institute that recognises prior learning.

**Relevant Experience** may include practice as a Solicitor or Barrister or as an employee or principal in an accounting firm, employment in a Government revenue office, performing in-house legal, accounting or other relevant functions in a corporate organisation. Where a person's experience is on a part-time basis that will be pro-rated to a full-time basis with the purpose of satisfying the minimum year requirement. The period does not have to be a continuous period but the National Council may place restrictions on gaps between periods of relevant experience and require additional time in such cases.

**Student Member** means a person admitted as a Member in accordance with clause 2.5.

**Tax Agent Service** is as defined in section 90-5 of the *Tax Agent Services Act 2009* (Cth) (or subsequent changes) but does not include a service specified in the regulations for the purposes of subsection 90-5(2) of the *Tax Agent Services Act 2009* (Cth) (or subsequent changes)

**Voting Member** means a person admitted as a member in the class of Chartered Tax Adviser, Fellow or Associate and has paid all relevant Member Fees in accordance with Clause 10 of the constitution.

**Voting Membership Criteria** means the member or applicant is of good fame, integrity and character **and** any **one** of the following criteria:

- (a) the member or applicant has been awarded a degree or a post-graduate award from:
  - (i) an Australian tertiary institution; or
  - (ii) an Equivalent Institution; in the discipline of accountancy; or
- (b) the member or applicant has been awarded a diploma or higher award from:
  - (i) a registered training organisation; or
  - (ii) an Equivalent Institution; in the discipline of accountancy; or
- (c) the member or applicant has the academic qualifications required to be an Australian legal practitioner; or
- (d) the member or applicant is a registered tax agent; or
- (e) the member or applicant was:
  - (i) registered as a tax agent, or as a nominee, for the purposes of Part VIIA of the *Income Tax Assessment Act 1936* (Cth) as in force immediately before 1 March 2010; and
  - (ii) a member of, and entitled to vote at meetings of, a recognised professional association within the meaning of section 251LA of the *Income Tax Assessment Act 1936* (Cth) as in force immediately before 1 March 2010; or
- (f) the member or applicant has the equivalent of 8 years of full-time experience in providing Tax Agent Services in the past 10 years; or
- (g) the member or applicant has been awarded a Graduate Diploma of Applied Tax Law by the Institute; or

- (h) the member or applicant has been awarded the post-nominals 'CTA' by an organisation entitled to award such recognition as permitted by the Chartered Institute of Tax in the United Kingdom other than the Institute and:
  - (i) has completed at a minimum the CTA1 Foundations subject (or equivalent) as required by the Institute; and
  - (ii) has 12 months Relevant Experience in Australian tax; or
- (i) the member or applicant is a member of a Recognised Tax Agent Association or a member of a Recognised Tax (Financial) Adviser Association.

## **2 Classes of Membership**

Pursuant to Clause 9 of the Constitution, the National Council has determined the following classes of Membership.

### **2.1 Chartered Tax Adviser**

- (a) A person will be eligible to apply to be admitted as a Chartered Tax Adviser if they:
  - (i) meet the Fellow membership criteria (Clause 2.2); and
  - (ii) have successfully passed the Institute's Chartered Tax Adviser Examination.
- (b) If a Chartered Tax Adviser, who has gained that status without having completed the Chartered Tax Adviser Examination, has their membership ceased under By-Law 4, Clause 2 they will be required to complete the Chartered Tax Adviser Examination to be reinstated as a Chartered Tax Adviser.

### **2.2 Fellow Member of the Institute**

- (a) A person will be eligible to apply to be admitted as a Fellow of the Institute if they meet the Voting Membership Criteria, have at least 3 years' Relevant Experience and satisfy one or more of the following criteria:
  - (i) have successfully passed the Institute's CTA1 Foundations, CTA2A Advanced and CTA2B Advanced subject assessments or equivalent from the Institute's Register of The Tax Institute Approved Providers /Subjects;
  - (ii) have been awarded a Master of Tax from the Institute's Register of The Tax Institute Approved Providers /Subjects.
- (b) A person who was a Fellow at 1 July 2012 and who complies with Clause 5 of this By-law, but who cannot meet one of the Voting Membership Criteria, may retain their status as a Fellow but are not entitled to vote at a meeting of the Institute or the Member's State Division.

### **2.3 Associate Member of the Institute**

- (a) A person will be eligible to apply to be admitted as an Associate of the Institute if they meet the Voting Membership Criteria, have a minimum of one year's Relevant Experience and satisfy one or more of the following criteria:

- (i) have successfully passed the Institute's CTA1 Foundations subject assessments or equivalent from the Institute's Register of The Tax Institute Approved Providers/Subjects;
  - (i) are a member of the Chartered Accountants Australia and New Zealand, CPA Australia or Institute of Public Accountants;
  - (ii) are an Australian legal practitioner;
  - (iii) are a voting member of another Recognised Tax Agent Association.
- (b) A person who was an Associate at 1 July 2012 will retain that status subject to Clause 5 of this By-Law and the Constitution, provided that they meet the Voting Membership Criteria.
- (c) A person who was an Associate at 1 July 2012 and who complies with Clause 5 of this By-Law, but who cannot meet one of the Membership Criteria, may retain their status as an Associate but are not entitled to vote at a meeting of the Institute or the Member's State Division.

#### 2.4 **Affiliate Member of the Institute**

- (a) A person will be eligible to apply to be admitted as an Affiliate of the Institute if they are of good fame, integrity and character and are a person having an interest in the affairs of the Institute who the National Council resolves to admit as an Affiliate, and:
- (i) would otherwise qualify for admission as an Associate under Clause 2.3.1 but do not meet the Relevant Experience requirement;
  - (ii) have successfully passed the Institute's CTA1 Foundations course or an equivalent course from the Institute's Register of The Tax Institute Approved Providers/Courses
  - (iii) are enrolled in the Institute's CTA2A Advanced course; or
  - (iv) are employed by a commonwealth or state revenue authority engaged in taxation practice or administration.

#### 2.5 **Student Member of the Institute**

A person will be eligible to apply to be admitted as a Student Member if the Institute if they are of good fame, integrity and character and meet the criteria set out in By-Law 3.

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### **3 National Council Discretion to admit a person as a Member**

The National Council may exercise its discretion to admit as a Member a person who does not meet all of the criteria as set out in these By-Laws if the National Council resolves that they be admitted to a Class of Membership pursuant to Clause 2 of this By-Law.

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### **4 Membership Rights (voting, holding of office, etc.)**

- 4.1 Subject to the Constitution and the operation of the other By-Laws including other parts of this By-Law, Chartered Tax Advisers, Fellows and Associates enjoy all of the rights and privileges of full membership of the Institute as published on the Institute's website, including the right to

join in calling and voting at a meeting of the Institute or the Member's State Division and may hold any office in the Institute.

- 4.2 Chartered Tax Advisers, Fellows and Associates are obliged to meet the CPD requirements set out in Clause 5 of this By-Law for their Class of Membership.
- 4.3 Affiliates may not hold any office in the Institute nor join in calling nor vote at a meeting of the Institute or the Member's State Division.
- 4.4 Student Members admitted under By-Law 3 are entitled to the benefits of Student Membership as published on the Institute's website. They may not hold any office in the Institute nor join in calling nor vote at a meeting of the Institute or the Student Member's State Division.

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## **5 Continuing Professional Development**

- 5.1 Chartered Tax Advisers must complete at least 30 hours of structured tax related CPD each year to maintain and improve their skills as tax professionals.
- 5.2 Fellows and Associates must complete at least 30 hours of tax-related CPD each year to maintain and improve their skills as tax professionals. A minimum of 15 hours of CPD must be structured CPD.
- 5.3 Chartered Tax Advisers, Fellows and Associates may satisfy the structured component of their CPD obligations by completing any combination of CPD programs provided by the Institute and equivalent tax-related CPD programs offered by other organisations and educational providers of appropriate or equivalent professional standing.
- 5.4 Chartered Tax Advisers, Fellows and Associates are responsible for selecting and monitoring their own CPD and will need to confirm that they continue to satisfy the CPD requirements as part of their annual membership renewal.
- 5.5 The Institute may ask a Chartered Tax Adviser, Fellow or Associate to provide details in writing of their completed CPD activities during the preceding membership year. If the Institute is not satisfied with the details provided by the Chartered Tax Adviser, Fellow or Associate, the Institute may notify the Member of that and if the Member does not meet the CPD requirement during the membership year in which the notice is given together with any shortfall of the Member in relation to the CPD requirement for previous years, the National Council may impose a condition or conditions on the Member to retain or regain their existing membership category or may cancel that membership.

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## **6 Voting Member becomes non-financial**

- 6.1 A Voting Member becomes non-financial after they have been in arrears for at least thirty days following the due date for payment of their Membership Subscription fees.
- 6.2 In the event a Voting Member becomes non-financial, then By-Law 4, Clause 4 applies.

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## **7 Miscellaneous Matters**

- 7.1 The operation of By-Law 1 is subject to the operation of By-Law 4.
- 7.2 The By-Law 1 applying immediately prior to 28 February 2017 is repealed with effect from 28 February 2017.

**BY-LAW NO. 2 OF THE TAX INSTITUTE**  
**(the "Institute")**

**USE OF WORDS INDICATING MEMBERSHIP**

With effect from 1 July 2012 the following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the "Constitution").

In this By-Law, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution.

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**1 Use of Words indicating Membership of the Institute**

- 1.1 So long as a person continues to be a Chartered Tax Adviser member, they may use the words 'Chartered Tax Adviser' or 'CTA' after their name or signature.
- 1.2 So long as a person continues to be a Fellow Member, they may use the words "Fellow of the Tax Institute" or "FTI" after their name or signature.
- 1.3 So long as a person continues to be an Associate Member, they may use the words "Associate of the Tax Institute" or "ATI" after their name or signature.
- 1.4 A person who is elected as a Life Member of the Institute may use the words "Life Member of the Tax Institute" or "FTI - Life", "CTA – Life" after their name or signature.
- 1.5 For the avoidance of doubt, if a Fellow, Associate or Life Member of the Institute is not permitted to vote at a meeting of the Institute (pursuant to By-law 1 clauses 3.3, 4.3, and By-law 7 clause 4 respectively) nothing in this By-law prohibits their use of the post-nominals outlined above.
- 1.6 The operation of By-law 2 is subject to the operation of By-law 4.
- 1.7 The By-Law 2 applying immediately prior to 1 July 2012 is repealed with effect from 1 July 2012.

**BY-LAW NO. 3 OF THE TAX INSTITUTE**  
**(the “Institute”)**  
**STUDENT MEMBERSHIP**

The following By-Law is enacted by the National Council pursuant to clause 8 of the Constitution of the Institute (the “Constitution”).

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**1 Definitions**

In these by-laws, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution.

“Member” means a person whose name is entered in the General Register as a member of the Institute.

“Student Member” means a person admitted as a Member in accordance with clause 2.

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**2 Student Member of the Institute**

The Institute may admit as a Student Member an individual who is either:

- (a) enrolled in the CTA1 Foundations course;
- (b) a full or part-time undergraduate student of a University or other tertiary education institution;
- (c) a full-time postgraduate student of a University or other tertiary education institution; or
- (d) a person or persons the National Council resolves to be admitted as a Student Member



## **BY-LAW NO. 4 OF THE TAX INSTITUTE** **(the "Institute")**

### **SUSPENSION OF MEMBERSHIP AND CESSATION OF MEMBERSHIP**

With effect from 20 April 2010 the following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the "Constitution").

The By-Law 4 applying immediately prior to 20 April 2010 is repealed with effect from 20 April 2010.

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#### **1 Overview**

- 1.1 The purpose of this By-Law is to set out the matters relating to the suspension of Membership and the cessation of Membership and related matters.

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#### **2 Cessation of Membership**

- 2.1 A Member ceases to be a Member if:
- (a) the Member dies;
  - (b) the Member resigns in writing;
  - (c) the Member becomes of unsound mind or become liable to be dealt with in any way under a law relating to mental health;
  - (d) the Member's Membership is cancelled in accordance with clause 4.1(b);
  - (e) the Member's Membership ceases in accordance with clause 4.2;
  - (f) the Disciplinary Committee imposes a sanction of termination of membership in respect of that Member pursuant to By-law 11 and that decision is not appealed within the Appeal Period;
  - (g) the Appeal Committee confirms a sanction of termination of membership imposed by the Disciplinary Committee pursuant to By-law 11 in respect of that Member pursuant to By-law 13.
  - (h) the Appeal Committee imposes a sanction of termination of membership in respect of that Member pursuant to By-law 13;
  - (i) the Member, before a court of competent jurisdiction, has pleaded guilty to, or has been found guilty of, any Serious Offence and all avenues of appeal have been exhausted.

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#### **3 Suspension of Membership**

- 3.1 A Member is suspended as a Member if:
- (a) the Member's Membership is suspended in accordance with clause 4.1(a);
  - (b) the Disciplinary Committee imposes a sanction of suspension of membership in respect of that Member and that decision is not appealed within the Appeal Period;
  - (c) the Appeal Committee confirms a sanction of suspension of membership imposed the Disciplinary Committee pursuant to By-law 11 in respect of that Member;

- (d) the Appeal Committee imposes a sanction of suspension of membership in respect of that Member pursuant to By-law 13.

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## **4 Membership dues in arrears**

- 4.1 If a Member is in arrears for at least thirty days following the due date for payment of a Subscription or for payment of other moneys due to the Institute, the National Council may at any time thereafter in its discretion:
- (a) suspend the Member from all privileges of membership including attendance or voting at any meeting of Members, the National Council, State Council or any Standing Committee (as relevant); or
  - (b) cancel the Member's Membership.
- 4.2 If a Member is in arrears for at least one hundred and eighty days following the due date for payment of a Subscription or for payment of other moneys due to the Institute, the Membership of that Member will automatically cease at the expiry of the one hundred and eighty day period.

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## **5 Continuing obligations**

- 5.1 Any Member whose Membership has been suspended or cancelled continues to remain liable for:
- (a) All money owing by the Member to the Institute as at the date of suspension, cancellation or cessation including any Subscription; and
  - (b) Subject to clause 2.2 of the Constitution, the Guarantee.

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## **6 Maintenance of the register of Members**

Whenever any person ceases to be a Member, the Institute must remove the Member's name from the Register of Members.

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## **7 Re-Admittance to Membership**

The National Council may at its discretion re-admit a Member whose Membership has been suspended or cancelled or ceased on such terms and conditions as the National Council thinks fit to apply from time to time, including without limitation the undertaking of such additional education by the person and the payment of all money owing by the Member to the Institute as at the date their Membership was suspended or cancelled or ceased and all moneys that would have become due to the Institute since that time if the person had remained a Member.

**BY-LAW NO. 5 OF THE TAX INSTITUTE**  
**(the “Institute”)**  
**Member Logo**

- 1 With effect from 1 July 2012 the following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the "Constitution").
- 2 In this By-Law, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution.
- 3 The Institute's Member Logo is available from the Institute for use by Chartered Tax Adviser, Fellow and Associate Members in accordance with this By-Law and the Member Logo Guidelines published by the Institute. The Guidelines are available to Members on the Taxation Institute Website or upon request.
- 4 Subject to clause 7 below the Institute's Member Logo may be used by Chartered Tax Adviser, Fellow and Associate Members to promote their membership of the Institute and Chartered Tax Adviser or FTI status. The use of the Institute's Member Logo will be on such terms and conditions as determined by the National Council from time to time.
- 5 Chartered Tax Adviser, Fellow and Associate Members must only use the Member Logo that has been authorised by the Institute. No alteration or redesign of the logo is permitted.
- 6 Subject to the conditions outlined in the Guidelines, Members can use the Institute's Member Logo in connection with the services they provide as tax professionals on both, hard copy and electronic stationery, promotional materials and on office signage.
- 7 The right to use the Member Logo ceases if the Member ceases to satisfy the requirements for membership as a Chartered Tax Adviser, Fellow or Associate of the Institute.
- 8 The By-Law 5 applying immediately prior to 1 July 2012 is repealed with effect from 1 July 2012.

**BY-LAW NO. 6 OF THE TAX INSTITUTE**  
**(the "Institute")**  
**MEMBER FEES**

The following by-law is enacted by the National Council pursuant to clauses 55 and 10.1 of the Constitution of the Institute ("the Constitution"). Membership application fees (if any), annual subscriptions and any other membership levies will be determined by the National Council from time to time in accordance with rule 10 of the Constitution.

Until otherwise determined by the National Council:

- (a) there will be an annual subscription payable by Members for each class of membership except for Student Members and Life Members;
- (b) members are required to pay annual subscriptions applicable on the date that they become members or renew their membership;
- (c) the National Council will determine any increase or other change in annual subscriptions when it approves the budget for the year but in any event prior to 1 March each calendar year; and
- (d) the amount of the annual subscription for each class of membership will be set on 1 July of each year for a 12 month period and published on the Institute's website.
- (e) The member's annual membership period shall run for one year from the date of joining (or most recent re-joining), and the anniversary of that joining date shall be the due date for renewal. Each subsequent annual membership period shall run for one year from the most recent renewal date. However, the Institute (in its discretion) may permit a membership to be renewed on a date other than the due date for renewal. If the Institute permits renewal on another date:
  - (i) The member's annual membership period will expire immediately before that other date, and the Institute in its discretion may make determinations altering the subscription applicable to that annual membership period;
  - (ii) The member's annual membership periods will thereafter run for a year and end on the anniversary of that other date (which will be the due date for renewal in each case).
- (f) Upon written application members are able to defer their membership for up to 2 years.

Reasons for deferral may include (but are not limited to):

- Maternity or paternity leave
- Study leave
- Overseas travel
- Unemployment
- Financial reasons

**BY-LAW NO. 7 OF THE TAX INSTITUTE**  
**(the "Institute")**  
**LIFE MEMBERSHIP**

With effect from 23 February 2010 the following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the "Constitution").

In this By-Law, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution.

- 1 The National Council may at its discretion elect as a Life Member of the Institute any Member who has rendered special and exceptional services to the Institute which would in the opinion of the National Council entitle the Member to the distinction of Life Member of the Institute.
- 2 All Life Members of the Institute are entitled to enjoy all of the privileges of membership and are not required to pay an annual subscription.
- 3 Life Members who no longer carry on business as tax professionals do not need to satisfy any compulsory professional development requirements for continuing membership.<sup>1</sup>
- 4 Notwithstanding the above, any Life Member who does not meet one of the Membership Criteria set out in By-law 1 is not entitled to vote at a meeting of the Institute or the member's State Division.
- 5 The By-Law 7 applying immediately prior to 23 February 2010 is repealed with effect from 23 February 2010.

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<sup>1</sup> Note for National Council: This exclusion from CPD should not be a problem under TASA as Item 203(a) of Schedule 1 of the Regulations states that voting members must undertake an appropriate number of CPD hours each year "having regard to the circumstances and requirements of the members". For retired members, or those no longer practicing in tax, the Institute seems well within its rights to determine that these circumstances require no CPD hours.

**BY-LAW NO. 8 OF THE TAX INSTITUTE**  
**(the "Institute")**  
**RULES FOR THE ELECTION OR APPOINTMENT OF**  
**MEMBERS OF STATE COUNCILS**

With effect from 23 February 2010 the following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the "Constitution") for the purposes of clauses 53 and 54 of the Constitution.

The By-Law 8 applying immediately prior to 23 February 2010 is repealed with effect from 23 February 2010.

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## **1 Definitions and interpretations**

In this By-Law unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution.

"Serious Offence" means:

- (a) an offence against the laws of a State, a Territory or the Commonwealth of Australia or against the laws of a foreign country that:
  - (i) is punishable by imprisonment for a period greater than 12 months; or
  - (ii) involves fraud or dishonesty and is punishable by imprisonment for at least 3 months; and
- (b) an offence that involves a breach of a Taxation Law and is punishable by imprisonment for at least 3 months.

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## **2 Election or appointment of State Councillors**

2.1 To be eligible to become or to continue as a member of a State Council a person must be a financial Associate, Fellow or CTA member of the State Division and be of good fame, integrity and character. Without limitation a person will not be eligible to hold office in the Institute if:

- (a) the person is charged with or serving a sentence for a Serious Offence;
- (b) the person has been convicted of a Serious Offence but does not serve a term of imprisonment and a period of 5 years has not elapsed since the day on which the person was convicted;
- (c) the person has been convicted of a Serious Offence and served a term of imprisonment and a period of 5 years has not elapsed since the day on which the person was released from prison; or
- (d) The person would be upon election or appointment subject to removal as a State councillor under the Constitution, procedures or by-laws
- (e) The person is not eligible to vote at a meeting of the Institute or of a State Division pursuant to By-law 1 clauses 2.3 or 3.3, or By-law 7 clause 4.

2.2 Unless otherwise determined by the National Council there will be no more than twelve and no fewer than eight State Councillors.

- 2.3 If a casual vacancy occurs on a State Council the position may be filled by that Council.
- 2.4 At the 31 December of each year, every member of State Council is deemed to retire from office but is eligible for re-election.
- 2.5 Every nomination for State Council is required to be in writing and signed by two financial members of the relevant State Division and the candidate. Nominations are required to be lodged with the relevant State Manager no later than 30 September preceding the October State Council meeting at which nominations are to be considered.
- 2.6 A retiring member of the State Council who remains eligible for election is taken to have been nominated for re-election unless prior to such meeting s/he notifies the State Manager in writing that s/he does not seek re-election in which case s/he will be taken to have retired with effect on 31 December following the meeting.
- 2.7 Upon receipt of nominations for positions of State Councillors, the current State Council must consider the suitability of the candidate. Nominees must be advised, before the election, of the involvement and time commitment expected of them during their term of office.
- 2.8 An election is to be held by ballot if the number of nominations to State Council exceeds the number of places available. The procedure for the election is set out in Part 2 of this By-Law - Rules for the conduct of State Council elections.
- 2.9 The term of office for State Councillors commences on 1 January and finishes on 31 December each year.
- 2.10 The office of State Councillor is vacated if they:
- (a) resign;
  - (b) become an undischarged bankrupt or are subject to external administration;
  - (c) cease to be a Member or are suspended for any period from membership of the Institute;
  - (d) are absent from three consecutive meetings of the State Council without the permission of State Council;
  - (e) are prohibited from being a Director by reason of an order made under the *Corporations Act 2001*;
  - (f) being a registered tax agent, have their registration terminated by the Board under section 30-30 or paragraph 40-5(1)(a) of the *Tax Agent Services Act 2009*; or
  - (g) are charged with, or convicted of, a Serious Offence; or
  - (h) are ordered by the Federal Court of Australia to pay a civil penalty under subsection 290-50(3) of Schedule 1 to the *Taxation Administration Act 1953*.

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### **3 Rules for the conduct of State Council elections**

- 3.1 If an election for filling positions on a State Council becomes necessary, the Chief Executive Officer or, if there is no Chief Executive Officer, a person appointed by the National Council shall act as a Returning Officer.
- 3.2 The Returning Officer shall conduct the election as provided in this By-Law.

- 3.3 In the absence of any specific provision here or in the Constitution relating to any matter on which a decision is to be given by the Returning Officer or the National Council then such matter shall be determined on the basis of the *Corporations Act 2001* as in force at the time of the election or, if it makes no provision, the *Commonwealth Electoral Act*.
- 3.4 The decision of the Returning Officer shall be final and binding on all parties to the election.
- 3.5 The duties of the Returning Officer are:
- (a) To appoint such Assistant Returning Officers as are considered necessary to assist in the conduct of the election and in the scrutiny and counting of votes, any such Assistant Returning Officer being included within the expression "Returning Officer" as used within these Rules.
  - (b) To arrange for the preparation of ballot papers and other forms which shall be in a form as near as practicable to that set out in Schedule "A".
  - (c) To issue by posting or other means of despatch no later than 30 October printed initialled ballot papers to Members of the State Division entitled to receive them in accordance with the roll of Members of that state together with an envelope for enclosing the ballot paper and a return, unstamped, addressed, envelope endorsed with the certificate set out in Schedule "B" for the Members to insert their ballot paper envelope (including the completed ballot papers) therein for return to the Returning Officer. A specimen form of address for the return envelope is set out in Schedule "C".
  - (d) To issue a second ballot paper to a Member entitled to vote in any of the circumstances set out hereunder, but before issuing such second ballot paper a statutory declaration shall be lodged with the Returning Officer by the Member setting out the circumstances necessitating such issue and the vote thus recorded shall be set aside in separate custody and if at the scrutiny on the closing of the ballot it is ascertained that there is no record of the Member having voted previously, such vote shall be allowed. If there is a record of the Member having otherwise voted then the Returning Officer shall ascertain which is the correct and proper vote of such Member and if the Returning Officer is satisfied as to the eligibility of the Member's vote, the proper vote shall be admitted to scrutiny and counting, but otherwise both votes shall be rejected from the counting but shall not be destroyed and shall be kept in a separate package. The circumstances in which a second ballot paper may be issued are as follows:-
    - (i) a ballot paper not being received by the Member entitled to receive same even though the Returning Officer has a record of the forwarding thereof;
    - (ii) a ballot paper being accidentally destroyed;
    - (iii) a Member spoils or makes a mistake on the ballot paper in the course of completing the ballot paper;
    - (iv) such other happenings or conditions in which it is in the opinion of the Returning Officer advisable to issue a second ballot paper so as to enable a Member to vote.
  - (e) The Returning Officer shall provide the Member a distinct form of envelope in accordance with the form set out in Schedule "D" in which to insert such vote.



- (f) To receive by any means of delivery the ballot papers so issued up until the closing of the ballot which shall be not less than 21 days after the date the ballot papers are first despatched.
- (g) To appoint a time and place for scrutiny of the votes provided however that such appointed time shall be within 14 days after the closing of the ballot.
- (h) To grant permission for the attendance of candidates and of one scrutineer, who shall be a Member of the Institute, for each candidate at the appointed place and time for checking and counting of the ballot papers but such scrutineers shall not be entitled to be present unless they have first handed to the Returning Officer an authority in writing of their appointment duly signed by the candidate similar to the form set out in Schedule "E" and shall also sign a scrutineer's declaration in the form set out in Schedule "F". In the event that both a candidate and the scrutineer authorised by that candidate are present, the scrutineer so appointed shall be the person entitled and having the necessary authority to raise any objections during scrutiny on behalf of a candidate.
- (i) To check at the time and place appointed for the scrutiny the entitlement of the Members regarding such votes in the presence of scrutineers and to reject the votes of Members not entitled to vote.
- (j) If the Returning Officer is not able to conduct the scrutiny and consequential duties of office at the appointed time and place, then the election shall not thereby be invalidated but the scrutiny shall take place at another time and place fixed by the Returning Officer as the circumstances permit or require.
- (k) To remove the ballot papers from their envelopes, open the ballot papers and to determine the formal and informal votes without limitation. A vote will be informal if the names of more than the required number of persons remain on the ballot paper.
- (l) To proceed to count the formal votes.
- (m) To declare the persons receiving the highest numbers of votes in succession elected until all vacant positions are filled.
- (n) To use a casting vote in the event of a tie.
- (o) To preserve at all times the secrecy of any votes recorded by Members and the absolute fairness of the conduct of the ballot.
- (p) To submit to the National Council any matter in dispute.
- (q) To adjourn the scrutiny and/or declaration of the result of the ballot from time to time when the Returning Officer considers it necessary to do so to enable the duties and obligations of the Returning Officer to be carried out in a proper manner.
- (r) To transmit a declaration of the result of the election to the State Chairman in the form set out in Schedule "G". The result may be published in the Institute journal or on the Institute's website.
- (s) To deliver to each candidate (or if the candidate is absent the scrutineer for such candidate) personally on the completion of the scrutiny a copy of the declaration of the result of the ballot PROVIDED HOWEVER that in the event of both a candidate and the scrutineer for that candidate being absent and/or the Returning Officer not making a declaration of the result of the Election at the completion of the scrutiny THEN the

Returning Officer shall forward to each of the candidates a copy of such declaration within 24 hours of the making of same and it shall be forwarded to the candidate at the address shown in the nomination form or such other address as the candidate shall have furnished in writing to the Returning Officer for this purpose.

- 3.6 Ballot papers shall be sent by the Returning Officer to all financial Members of the Institute resident in the State as ascertained from the roll of Members of the Institute subject to the correction at any time by the Chief Executive Officer of any error, mistake or omission and this right of correction shall include the right to issue instructions to the Returning Officer, at any time up to the date of scrutiny, to exclude from the election the names and/or vote of any members (even though their names have appeared in the original or supplementary rolls) who are found to be not entitled to vote even though ballot papers may have been issued to such members and their votes lodged with or sent to the Returning Officer. For this purpose supplementary rolls may be issued at any time before the closing date of the ballot. Copies of such original and supplementary rolls shall be available to all candidates.
- 3.7 Any formal error or defect in any advertisement, publication, declaration or other instrument made under these Rules shall not invalidate same as long as the same is substantially in accord with the Rules and the forms prescribed hereunder and the decision of the Returning Officer shall be final and binding on all parties to the election.
- 3.8 No public advertisement or derogatory public statement may be made by any candidate for election against any other candidate. Each candidate shall be entitled, at the expense of the Institute, to have forwarded to persons entitled to vote with the ballot papers a statement of qualifications or other material in support of such candidacy not exceeding 250 words in length provided that the same is delivered to the Returning Officer not less than two days prior to despatch of the ballot papers. If more than one such statement is received, the Returning Officer shall publish same in order determined by lot.

**SCHEDULE "A"**  
**THE TAX INSTITUTE**  
**(Name of) DIVISION BALLOT PAPER**  
**How to Vote**

For your vote to be formal you must vote for the candidates by deleting the names of the candidates who you do not wish to be elected. If you vote for more than (number) candidates your vote will be informal.

Place your completed ballot paper in the accompanying envelope marked "Ballot Paper Envelope" and seal the envelope. Complete the certificate on the envelope addressed to the Returning Officer and have your signature witnessed. Then place the Ballot Paper envelope in the envelope which is addressed to the Returning Officer, seal the envelope, STAMP IT and then POST IT or otherwise cause it to be delivered to the Returning Officer.

.....  
Initials of Returning Officer

(Surname), (Given Names)

(Order to be determined by lot)

**SCHEDULE "B"**  
**CERTIFICATE TO BE ENDORSED ON RETURN ENVELOPE**

VOTER CERTIFICATE

I, ..... (name) of ..... (address) am a financial member of The Tax Institute and am entitled to vote at the ballot for the (year) election of the (name of Division) State Council. I have not already voted at this election.

.....  
Signature of Member

.....  
Signature of Witness (not a candidate)

.....  
Address of Witness

**SCHEDULE "C"**  
**ADDRESS FOR RETURN ENVELOPE**

RETURNING OFFICER

THE TAX INSTITUTE

..... (State)

..... (Address)

.

.....

**SCHEDULE "D"**  
**ADDRESS FOR RETURN ENVELOPE (SECOND BALLOT PAPER)**

(SEPARATE CUSTODY)

RETURNING OFFICER

THE TAX INSTITUTE

..... (State)

..... (Address)

.....

**SCHEDULE "E"**  
**THE TAX INSTITUTE**  
**AUTHORITY OF SCRUTINEER**

I, ..... (name) a duly nominated Candidate for the Ballot for the (name) State Council ..... do hereby appoint ..... (name) of ..... (address) to be scrutineer at the Ballot to be held on the ..... day of ..... 20...

Dated at ..... (name of town) this ..... day of ..... 20

Signature .....

**SCHEDULE "F"**  
**THE TAX INSTITUTE**  
**DECLARATION OF SCRUTINEER**

I, ..... (name) of ..... (address), a Scrutineer appointed by .....

(name of candidate) a candidate for the election for the (name of State) State Council do hereby solemnly and sincerely declare that I will faithfully assist at such scrutiny and that I will not attempt to improperly discover, or by word or action directly or indirectly aid in discovering, the person by whom any vote is given; and that I will keep secret all knowledge of the person by whom any vote given, which I may obtain in the exercise of my office, unless in answer to any question which I am legally bound to answer.

Signed and declared before me this ..... day of ..... 20...

.....

A Justice of the Peace



**SCHEDULE "G"**  
**THE TAX INSTITUTE**  
**(NAME OF) DIVISION**  
**DECLARATION OF POLL**

I hereby certify the formal votes cast to be as follows: (list names and total votes) thereby resulting in the election of

..... (names).

Date .....

Signed .....

Returning Officer

**BY-LAW NO. 9 OF THE TAX INSTITUTE**  
**(the “Institute”)**  
**DEALING WITH COMPLAINTS**

The following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from 10 May 2016.

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## **1 Overview**

- 1.1 The purpose of this By-Law is to set out how the Institute will deal with complaints, what constitutes a Disciplinary Event, what constitutes an actionable complaint (which is referred to in the By-Laws as a Complaint) and how a Complaint must be lodged with the Institute.
- 1.2 If a person makes a Complaint against a Member, the Complaint will be investigated by an Investigator in accordance with the procedures set out in By-Law 10.
- 1.3 On completion of the investigation of the Complaint by the Investigator, the Investigator will provide the Investigation File to the Chair of the Disciplinary Committee.
- 1.4 Upon receipt of the Investigation File from the Investigator, the Chair of the Disciplinary Committee will empanel a Disciplinary Panel to consider the Complaint.
- 1.5 Proceedings of the Disciplinary Panel will be conducted in accordance with By-Law 11 and the Disciplinary Panel may make findings (including a finding that the Complaint is not made out) and impose sanctions in accordance with By-Law 11.
- 1.6 A member who is the subject of a Complaint and in respect of whom the Disciplinary Panel has made findings and/or imposed sanctions may appeal against the findings and/or the sanctions imposed to the Appeal Panel in accordance with the rights and procedures set out in By-Law 12.
- 1.7 Proceedings of the Appeal Panel will be conducted in accordance with By-Law 13 and the Appeal Panel may make orders (including an order that the Complaint is not made out) and findings and may impose sanctions in accordance with By-Law 13.

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## **2 Disciplinary Event**

- 2.1 Each of the following is a Disciplinary Event:
  - (a) engaging in conduct which:
    - (i) is unbecoming of a Member;
    - (ii) is prejudicial to or not in the best interests of the Institute; and/or
    - (iii) brings discredit on the Institute;
  - (b) engaging in derogatory or discriminatory conduct or harassment of any type;
  - (c) failing to observe a proper standard of professional care, skill or competence;

- (d) failing to comply with a written direction issued by the National Council in accordance with the Constitution or By-Laws of the Institute regarding good conduct or administration of the Institute;
  - (e) being the subject of an adverse finding in relation to their professional conduct, competence or recognition by anybody or authority having jurisdiction or competence to do so;
  - (f) being convicted of a Serious Offence;
  - (g) being found to have acted dishonestly in any civil proceedings in a court in Australia or elsewhere;
  - (h) involuntarily ceasing to be a director by virtue of the *Corporations Act 2001* (Cth) (**Corporations Act**) or being prohibited from being a director by reason of any order made under the Corporations Act;
  - (i) becoming bankrupt or assigning their estate or entering into a deed of arrangement for the benefit of their creditors;
  - (j) failing to comply with the Constitution or any By-Law of the Institute, including the Code of Professional Conduct (By-Law 15);
  - (k) failing to assist an Investigator to the extent required by the By-Laws in the carrying out of an investigation of a Complaint;
  - (l) acting contrary to the By-Laws, hindering or obstructing an Investigator in the carrying out of an investigation of a Complaint;
  - (m) failing to acknowledge or comply with a reasonable written direction of the Institute prior to, or in the course of, the carrying out of an investigation of a Complaint; and
  - (n) for any reason, ceasing to be a person of good fame, integrity and character.
- 2.2 The Disciplinary Events relevant to the making of, and subsequent consideration of, any Complaint will be those set out in the version of this By-Law in force on the date or dates that the actions or events that are set out in the Complaint took place.
- 2.3 The procedures provided for in this By-Law will apply to any Complaints initiated after the coming into force of this By-Law. Any changes to this By-Law will govern the procedure adopted on Complaints initiated after such changes come into force; but any subsequent changes to this By-Law will not retrospectively adversely affect the rights and liabilities of the Member. The Member will not be liable for sanctions that were inapplicable at the time of the actions or events giving rise to the Complaint.

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### **3 Requirements for an actionable Complaint**

- 3.1 An actionable complaint (Complaint) must be:
- (a) in writing;
  - (b) identify the Member against whom the Complaint is made;
  - (c) specify the alleged Disciplinary Event or Disciplinary Events;
  - (d) identify and describe in sufficient detail the factual basis of the Complaint;

- (e) be addressed to the Institute's Complaints Officer;
  - (f) be signed by the person (in the case of an entity other than an individual, signed on behalf of the entity) making the Complaint and witnessed by another person;
  - (g) have a return address, telephone number, facsimile number and email address at which the person making the Complaint can be contacted; and (h) be lodged in accordance with clause 4.
- 3.2 The Institute may make a Complaint against a Member.
- 3.3 The Complaints Officer may, in their absolute discretion, waive strict compliance with requirements (c), (e), (f), (g) and (h) of clause 3.1.
- 3.4 The Complaints Officer may, in their absolute discretion, request additional information at any time, and require the facts alleged by the person making the Complaint to be given by way of a statutory declaration.

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## **4 Lodgment of a Complaint**

- 4.1 A Complaint must be lodged in one of the following manners:
- (a) in person at the National Office of the Institute located in Sydney, New South Wales;
  - (b) by facsimile to the Institute at facsimile number 02 8223 0099;
  - (c) by registered mail to the National Office of the Institute located in Sydney, New South Wales; or
  - (d) by email to the Institute at [Complaints@taxinstitute.com.au](mailto:Complaints@taxinstitute.com.au).
- 4.2 Where the Complaints Officer assesses, and concludes, that there are sufficient grounds to constitute a Disciplinary Event and that the complaint is a Complaint, the Complaints Officer will inform the person who lodged the complaint that it is a Complaint and also advise the Complaint Number. Thereafter, the Complaint will be referred to by the Complaint Number and not by reference to the identity of the Member against whom the Complaint has been made. At that time, the Complaints Officer will inform the Member that a Complaint has been lodged concerning the Member and provide the Member with a copy of the Complaint.
- 4.3 Any resignation from the membership of the Institute sent by the Member after the Institute has advised the Member of the Complaint will not be effective pending the outcome of any final decision or sanction by the Disciplinary Committee.
- 4.4 Where the Complaints Officer concludes that the complaint is not a Complaint, that conclusion must be approved by the Chief Executive Officer of the Institute (CEO). Despite any recommendation by the Complaints Officer, if the CEO concludes that the complaint is a Complaint, the complaint is deemed to be a Complaint for the purpose of clause 4.2.
- 4.5 A decision about a complaint that is not considered to be a Complaint will be communicated to the person making the complaint together with a brief explanation of the reason why the Institute has concluded that the complaint is not a Complaint.
- 4.6 A decision about a complaint that is not considered to be a Complaint may also, at the discretion of the CEO, be communicated to the Member together with a brief explanation of the reason why the Institute has concluded that the complaint is not a Complaint.

- 4.7 Once a decision with reasons in writing that no further action is to be taken is provided to a Complainant, that Investigation File is closed and no further Appeal on this matter or Complaint will be accepted.

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## **5 Recording of Complaints received**

- 5.1 The Complaints Officer will keep a record of all complaints received for a period of 7 years and the record will include at least the following information:
- (a) the date of receipt;
  - (b) the person making the complaint;
  - (c) a description of the general nature of the complaint;
  - (d) whether the Institute concludes that the complaint is a Complaint; (e) where the Institute concludes the complaint is a Complaint:
    - (i) the Complaint Number assigned to that Complaint;
    - (ii) the Investigator allocated to investigate the Complaint as set out in By-Law 10;
    - (iii) the date of allocation to that Investigator; and
    - (iv) the date that the Investigator completes the investigation of the Complaint.
- 5.2 The Complaints Officer will provide a statistical report at least annually to the National Council summarising all complaints activity during the year. The report will include all the matters prescribed in By-Law 14, and any further matters required by the National Council from time to time. The Complaints Officer shall report to the Professional Standards Committee on an annual basis on all complaints received.

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## **6 Excluded disputes**

- 6.1 Any fee dispute that forms part of a Complaint will not be treated as forming part of the Complaint.
- 6.2 The Disciplinary Committee may reject or defer consideration of any complaint which, in the opinion of a majority of the Committee,
- (a) Involves a commercial dispute (such as breaching a restraint of trade or poaching clients), and
  - (b) Can be properly addressed in another and more suitable forum.

**BY-LAW NO. 10 OF THE TAX INSTITUTE**  
**(the “Institute”)**  
**INVESTIGATION PROCEDURES**

The following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from 27 April 2016.

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**1 Overview**

The purpose of this By-Law is to set out the procedures relating to the appointment of Investigators and the procedures under which the investigation of a Complaint in respect of a Member is to be carried out.

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**2 Appointment of an Investigator by the institute**

- 2.1 Where the Complaints Officer has concluded under By-Law 9 clause 4.2 that a complaint is a Complaint, the CEO will appoint an Investigator to carry out an Investigation of the Complaint.
- 2.2 The Institute may from time to time, in writing, signed by the CEO, appoint an employee of the Institute as an Investigator for the purposes of the By-Laws of the Institute.
- 2.3 The Institute may from time to time, in writing, signed by the CEO, appoint a third party of the Institute as an Investigator for the purposes of the By-Laws of the Institute.
- 2.4 The Institute may from time to time, in writing, signed by the CEO, appoint a Member, or a former Member, of the Institute as an Investigator for the purposes of the By-Laws of the Institute.
- 2.5 A person appointed to be an Investigator for the purposes of the By-Laws of the Institute may be removed by a notice, in writing, subject to any terms or conditions, signed by the CEO.

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**3 Carrying out of the investigation by an Investigator**

- 3.1 In carrying out an Investigation the Investigator will at all times act solely in the interests of the Institute and will have no obligation to act in the interests of the Member or the person who made the Complaint.
- 3.2 The Investigator will be entitled to any reasonable assistance in relation to the carrying out of the Investigation required from employees or contractors of the Institute.
- 3.3 The CEO will have general oversight of the conduct of the Investigation.

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**4 Obtaining information**

In the course of investigating a Complaint, the Investigator has the power to call for, and it will be the duty of every Member to provide, such information (if any) as is in their power to give as the Investigator may consider relevant to the consideration of the Complaint.

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## **5 Suspension by the Investigator of consideration of a Complaint against a Member pending other matters being resolved**

- 5.1 The Investigator, may make a recommendation to the CEO to suspend or defer further consideration of a Complaint against a Member if the Investigator believes there are reasonable grounds for doing so.
- 5.2 Such grounds include, but are not limited to, proceedings of a civil or criminal nature being brought in a competent court or tribunal relating to the issues identified in the Complaint or a sanction by the Tax Practitioners Board relating to the issues identified in the Complaint, or a sanction by the ATO relating to the issues identified in the Complaint and/or a disciplinary decision by another RTAA or RTFAA relating to the issues identified in the Complaint.

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## **6 Due process to be afforded to a Member the subject of a Complaint**

- 6.1 The Investigator must provide the Member against whom the Complaint has been made with a reasonable opportunity to give either orally or in writing any explanation or defence of the Complaint.
- 6.2 The Investigator may require any oral explanation or defence to be reduced to writing by the Member.
- 6.3 Any written explanation or defence of the relevant facts and events must be given by way of statutory declaration sworn by the Member.

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## **7 Withdrawal of a Complaint**

- 7.1 If a Complaint is withdrawn in writing by the person who made the Complaint, before the Investigation has been completed by the Investigator, then:
- (a) the Investigation will be completed at that point;
  - (b) the Investigation File will be completed with the inclusion of the information gathered up to that point and passed to the CEO for approval; and
  - (c) the Member shall be advised that the Complaint has been withdrawn and the matter is concluded.
- 7.2 Despite clause 6.1, the CEO may decide that there are sufficient grounds to continue the Investigation and has (in its absolute discretion) the right to continue to make the Complaint as if the Institute were the original Complainant.

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## **8 Preparation by Investigator of the Investigation File**

- 8.1 The Investigator will collect information which is relevant to the Complaint and such information will be included in and form part of the Investigation File.
- 8.2 In particular:
- (a) the Complaint will be included in the Investigation File;

- (b) any written explanation or defence provided by the Member will be included in the Investigation File;
  - (c) any third-party statement concerning the basis of the Complaint will be included in the Investigation File;
  - (d) any notes compiled by the Investigator concerning the basis of the Complaint will be included in the Investigation File; and
  - (e) the Investigator shall be entitled to have access to any complaints or Complaints which have been considered by the Institute on previous occasions in relation to the Member. The Investigation File may include all or any of these previous facts and matters to the extent considered relevant by the Investigator.
- 8.3 The Investigator will include in the Investigation File a recommendation as to what should happen to the Complaint. The possible recommendations are:
- (a) there are substantial grounds to conclude there is a Disciplinary Event that should proceed to a hearing under By-Law 11;
  - (b) there are substantial grounds to conclude there is a Disciplinary Event and that the matter should be determined by other means; or
  - (c) there are insufficient grounds to conclude there is a Disciplinary Event and therefore the Complaint should be dismissed without a hearing.
- 8.4 If the Investigator makes a recommendation pursuant to clause 8.3(a) or (b), the Investigator will provide the Investigation File to the Chair of the Disciplinary Committee, who shall consider the recommendation of the Investigator and make a final decision. The Chair of the Disciplinary Committee shall apprise the CEO of the recommendation of the Investigator.
- 8.5 If the Investigator makes a recommendation pursuant to clause 8.3(c), the Investigator will provide the Investigation File to the CEO, who shall consider the recommendation of the Investigator and make a final decision. The CEO may decide that the Investigation File should be referred to the Chair of the Disciplinary Committee and not be concluded, as if clause 6.2 had applied.

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## **9 Definitions and interpretation**

In this By-Law, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution, and a reference to a word or phrase will have the same meaning as in another By-Law.



**BY-LAW NO. 11 OF THE TAX INSTITUTE**  
**(the “Institute”)**  
**DISCIPLINARY COMMITTEE AND DISCIPLINARY**  
**PANEL PROCEDURES**

The following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from 25 February 2014.

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**1 Overview**

- 1.1 The purpose of this By-Law is to set out the procedures relating to the operation of the Disciplinary Committee and Disciplinary Panels in respect of a Complaint in respect of a Member.
- 1.2 The Disciplinary Committee will comprise a pool of experienced Members of the Institute who are available to be appointed to a Disciplinary Panel to hear individual Complaints matters in accordance with this By-Law. The Disciplinary Committee is a Standing Committee of the National Council that meets on an “as needs” basis. A Disciplinary Panel will be constituted for as long as necessary to hear and resolve a Complaint.

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**2 Appointment of Chair of the Disciplinary Committee**

- 2.1 The National Council may from time to time, in writing, signed by the CEO, appoint a person to be the Chair of the Disciplinary Committee for a fixed term. The term of appointment will usually be for a period of three (3) years. At the expiry of the term of office, the person will be eligible for reappointment.
- 2.2 The Chair may at any time retire from the position by notice in writing given to the Institute.
- 2.3 The National Council may from time to time, in writing, signed by the CEO, replace a person as the Chair of the Disciplinary Committee.

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**3 Appointment of Deputy Chair of the Disciplinary Committee**

- 3.1 The National Council may from time to time, in writing, signed by the CEO, appoint a person to be the Deputy Chair of the Disciplinary Committee for a fixed term. The term of appointment will usually be for a period of three (3) years. At the expiry of the term of office, the person will be eligible for reappointment.
- 3.2 The Deputy Chair may at any time retire from the position by notice in writing given to the Institute.
- 3.3 The National Council may from time to time, in writing, signed by the CEO, replace a person as the Deputy Chair of the Disciplinary Panel.
- 3.4 If the Chair is unavailable to perform any functions under the By-Laws, the Deputy Chair will carry out the functions of the Chair.

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**4 Appointment of Members of the Disciplinary Committee**

- 4.1 The National Council may from time to time, in writing, signed by the CEO, appoint a person to be a member of the Disciplinary Committee for a fixed term. The term of appointment will usually be for a period of three (3) years. At the expiry of the term of office, the person will be eligible for reappointment.
- 4.2 A member of the Disciplinary Committee may at any time retire from the position by notice in writing given to the Institute.
- 4.3 The National Council may from time to time, in writing, signed by the CEO, replace a person as a member of the Disciplinary Committee.
- 4.4 The Disciplinary Committee will consist of no less than eight (8) persons and no more than fifteen persons.
- 4.5 The Chair and the Deputy Chair are both members of the Disciplinary Committee.

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## **5 Empanelling a Disciplinary Panel**

- 5.1 The Chair of the Disciplinary Committee will consider the nature of the Complaint and empanel a Disciplinary Panel to consider the Complaint from among the members of the Disciplinary Committee.
- 5.2 Unless determined otherwise by the Chair, the Disciplinary Panel to consider that Complaint will comprise three (3) or five (5) persons.
- 5.3 In the course of empanelling the Disciplinary Panel, the Chair must check to ascertain if any conflicts of interest will exist if a particular member of the Disciplinary Committee is empanelled.
- 5.4 Upon empanelling the Disciplinary Panel and a more thorough understanding is gained of the details of the Member and the Complainant, each member of the Disciplinary Panel will disclose to the Chair any conflicts of interest with either the Complainant or the Member who is the subject of the Complaint.
- 5.5 The Chair is empowered to take whatever steps the Chair considers necessary including approaching the Member and the Complainant to recognise and waive any perceived conflict of interest.
- 5.6 If a conflict of interest relating to an empanelled Disciplinary Panel member cannot be resolved, the Chair may empanel another member of the Disciplinary Committee to replace the conflicted Disciplinary Panel member.
- 5.7 Upon being empanelled, the Disciplinary Panel will choose one of their numbers to act as Chair of the Disciplinary Panel.

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## **6 Suspension by the Disciplinary Panel of consideration of a complaint against a Member pending other matters being resolved**

- 6.1 The Disciplinary Panel, in its absolute discretion, may determine to suspend or defer further consideration of a Complaint against a Member if it believes there are reasonable grounds for doing so.
- 6.2 Such grounds include, but are not limited to, proceedings of a civil or criminal nature being brought in a competent court or tribunal relating to the issues identified in the Complaint or a

sanction by the Tax Practitioners Board relating to the issues identified in the Complaint, or a sanction by the ATO relating to the issues identified in the Complaint and/or a disciplinary decision by another RTAA or RTFAA relating to the issues identified in the Complaint.

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## **7 Alternative means of resolving a Complaint, with consent**

- 7.1 If the Disciplinary Panel believes there are reasonable grounds for doing so, the
- 7.2 Disciplinary Panel, in its absolute discretion, may deal with a Complaint against a Member on a basis that is agreed to by both the Member and the Complainant.

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## **8 Alternative dispute resolution**

If the Disciplinary Panel considering a Complaint is, in its absolute discretion, of the opinion that it is appropriate to do so, the Disciplinary Panel may recommend to the Member and the Complainant that they attempt to resolve the Complaint by conciliation or mediation or in some other way not involving disciplinary action, and, if successful, will take no further action unless subsequently the Disciplinary Panel considers that new facts or matters have arisen which alter the circumstances or render the earlier resolution of the Complaint by the Member and the Complainant inappropriate.

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## **9 Matters relating to the consideration of a Complaint**

- 9.1 If, for any reason, any member of the Disciplinary Panel so appointed is unable to attend the Hearing, or if during the course of the Hearing any member of such Disciplinary Panel is unable to continue to attend the Hearing, the remaining members of the Disciplinary Panel, provided that they are not less than two in number, may, at their discretion, proceed or continue with the Hearing.
- 9.2 In any case where the Hearing is not proceeded with by the remaining members of the Disciplinary Panel, and in any case where such remaining members of the Disciplinary Panel do hear the Complaint wholly or in part but are unable to arrive at any determination thereof, the Complaint shall be re-heard by a new Disciplinary Panel empanelled in accordance with clauses 5.1 – 5.7.
- 9.3 The Disciplinary Panel may also order that the details of the Complaint be kept confidential between the Member, the Complainant and the Disciplinary Panel.

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## **10 Due process to be afforded to a Member the subject of a Complaint**

- 10.1 The Disciplinary Panel must provide the Member against whom the Complaint has been made with a reasonable opportunity to give, either orally or in writing, any explanation or defence of the Complaint and to the prima facie case to answer. Without limiting the foregoing, the Disciplinary Panel must provide the Member with at least 28 days' written notice of the Hearing at which the Complaint will be considered, including:
- (a) the time and place of the Hearing of the Disciplinary Panel;
  - (b) what is alleged against the Member including the Disciplinary Event;
  - (c) witnesses intended to be called;
  - (d) advice to the effect that the Member has the right to give any oral or written explanation or defence that the Member thinks fit; and

- (e) a summary of the rules under which the Hearing will be conducted.
- 10.2 The Disciplinary Panel will make reasonable endeavours to accommodate the needs of all parties.
- 10.3 The Member may appear before the Disciplinary Panel in person or be represented by such person as the Member may wish. The Member will be deemed present when the Member appears by the Member's representative. The Disciplinary Panel will give the Member or the Member's representative a fair and reasonable opportunity of being heard before it. The Member must give the Disciplinary Panel 14 days' notice if the Member will be represented at the Hearing by another person and provide the name of the representative and the representative's relationship with the Member and with the Complainant.
- 10.4 The Member will be entitled to be heard before the Disciplinary Panel and will be permitted to be legally represented, to call witnesses and to cross-examine witnesses called by a person other than the Member. The Member must give the Disciplinary Panel 14 days' notice of any legal representative and witnesses the Member intends will appear at the Hearing. If the persons nominated by the Member are unavailable, or replaced, the Disciplinary Panel may, in its absolute discretion, defer the commencement of the Hearing to a time and a place that is mutually acceptable to the parties.
- 10.5 If the Member does not attend the Hearing, then, provided that the Disciplinary Panel is satisfied that notice of that Hearing was served on the Member, the Disciplinary Panel may proceed to hear the Complaint in the absence of the Member.
- 10.6 If the Disciplinary Panel proceeds with the Hearing in the absence of the Member, then the Member will not be entitled to any re-hearing of the Complaint by the Disciplinary Panel.
- 10.7 Where the Member, before a court of competent jurisdiction and/or the Tax Practitioners Board or another RTAA or RTFAA, pleaded guilty to, or has been found guilty of, any Disciplinary Event, it will be presumed, unless the contrary is established, that such a conviction or finding constitutes proof of the commission of a Disciplinary Event.

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## **11 Matters relating to the Hearing**

- 11.1 The Chair of the Disciplinary Panel is responsible for the conduct of the Hearing.
- 11.2 Proceedings of the Disciplinary Panel may be recorded. If proceedings are recorded, then the Member may request a copy of the audio recording. The Institute reserves the right to charge a fee for this recording.
- 11.3 The Disciplinary Panel may instruct a solicitor to act, or to brief counsel to act, as its legal adviser on the Hearing.
- 11.4 The CEO may appoint any person to present the Complaint before the Disciplinary Panel. This person shall be referred to as the Presenter in these Bylaws.
- 11.5 The Chair of the Disciplinary Panel may expel from a Hearing any person who is or becomes disruptive to the proceedings.
- 11.6 The standard of proof required by the Disciplinary Panel, in order to find that a Disciplinary Event in relation to the Member against whom the Complaint has been brought has occurred, is on the balance of probabilities.
- 11.7 In any Hearing before a Disciplinary Panel:

- (a) the Hearing is, subject to these By-Laws and the Constitution, within the discretion of the Disciplinary Panel;
- (b) the Hearing shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of the By-Laws and the Constitution and of a proper consideration of the matters before the Disciplinary Panel permit; and
- (c) the Disciplinary Panel is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

11.8 The Hearing will be held in private. However, the Chair of the Disciplinary Panel may, in their absolute discretion, but after giving notice and hearing any submissions from any affected persons, determine that the Hearing should be open to the public in whole or in part in the event that there are matters of significant public interest that require that the Hearing should be in public, and if neither the Member nor any other person would be significantly prejudiced as a result of the decision to open the Hearing to the public.

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## **12 Adjournments**

- 12.1 The Disciplinary Panel may, in their absolute discretion, decide whether or not to grant any application for a postponement of a Hearing that has not yet begun. After the Hearing has begun, any application for an adjournment shall be decided by the Disciplinary Panel hearing the Complaint, and subject to any conditions they fix. Written notice must be given to the Member of the date, time and place of the postponed Hearing.
- 12.2 The Disciplinary Panel hearing a Complaint may from time to time adjourn the hearing of any proceedings as it thinks fit of its own volition or upon application by the Member, and the Disciplinary Panel must send notice to the Member of the date, time and place to which the Hearing is adjourned.
- 12.3 Where any Hearing is adjourned in order that further information or evidence may be obtained, the Disciplinary Panel may give directions regarding the disclosure of such information or evidence to the Member prior to the resumption of the Hearing.
- 12.4 An application for further adjournment made before a Hearing is resumed may be determined by the Chair of the Disciplinary Panel.
- 12.5 The Disciplinary Panel has a general discretion to grant extensions of time, adjournments and postponements where the Disciplinary Panel considers it fair and proper to do so.

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## **13 Findings by the Disciplinary Panel**

- 13.1 Upon conclusion of a Hearing, the Disciplinary Panel may:
- (a) reach a decision in respect of the Complaint;
  - (b) reserve its decision for further consideration; or
  - (c) adjourn the Hearing pending further information being provided to the Disciplinary Panel.
- 13.2 If the Disciplinary Panel finds that a Complaint has been proven, it shall make a finding to that effect.

- 13.3 If the Disciplinary Panel finds that a Complaint has not been proven, it shall make a finding to that effect.
- 13.4 Where, under paragraph 13.2, a complaint is found to be proven and a finding of fact is made to that effect, the member shall be called upon to make any submissions in mitigation of penalty that they wishes to submit to the Disciplinary panel prior to determination of penalty.
- 13.5 The Disciplinary Panel must consider any submission in mitigation made under paragraph 13.4.
- 13.6 After hearing submissions in mitigation and after the Member has left the hearing room, the Disciplinary Panel must also ask the Secretary to the Panel to advise of any evidence of previous disciplinary penalties imposed on the member.
- 13.7 After considering the material presented for the purposes of paragraphs 13.5 and 13.6 The Disciplinary Panel must determine the appropriate sanction provided for under clause 14.
- 13.8 Notice of any finding made by the Disciplinary Panel must, as soon as possible, be conveyed to the Member orally (on the day of the Hearing) if practicable and confirmed in writing together with reasons for the decision.
- 13.9 Further to clause 13.8, the Disciplinary Panel shall advise the Complainant in writing of its findings and reasons as soon as possible, to the extent that the Disciplinary Panel in its absolute discretion considers appropriate.

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## **14 Sanctions that may be imposed by the Disciplinary Panel**

- 14.1 If the Disciplinary Panel makes a finding that a Complaint has been proven, then it may by notice in writing to the Member:
- (a) order the Member to undertake specific educational activity;
  - (b) order the Member to undertake other specific activity;
  - (c) order the Member be reprimanded;
  - (d) order the suspension of the membership of the Member for a specified period of time or until the happening of a specified event, or indefinitely;
  - (e) order the variation of the membership of the Member so that the Member is no longer a voting Member; or
  - (f) order the termination of the membership of the Member.
- 14.2 The Institute will report any relevant aspect of the finding/s as required by law to any relevant regulatory body including, but not limited to, the Tax Practitioners Board.
- 14.3 In making an order under this clause, the Disciplinary Panel may have regard to the status of the Member and the Disciplinary Panel's views as to the nature and seriousness of the Complaint and any other circumstances that the Disciplinary Panel considers relevant.
- 14.4 A sanction imposed by the Disciplinary Panel will not take effect until as follows:
- (a) if an Appeal is lodged, until the Appeal is decided; or
  - (b) in any other case, until the period in which an appeal may be lodged has expired.

- 14.5 If, notwithstanding a finding that a Complaint has been proven, the Disciplinary Panel is of the opinion that, in all the circumstances of the matter, no sanction is appropriate, it may make an Order that no further action be taken on the Complaint.
- 14.6 The Complaints Officer will maintain a register of all Orders made by the Disciplinary Panel.
- 14.7 Whenever the Disciplinary Panel makes an Order under this By-Law, the Disciplinary Panel may cause its Order to be published in such manner as it thinks fit, provided that, if the Disciplinary Panel has ordered that no further action be taken on the Complaint, the Order will not be published unless the Member so requests.
- 14.8 Any Order of the Disciplinary Panel made under this By-Law may be made upon such terms and conditions (if any) as the Panel may consider appropriate, including, in the case of an Order recommending exclusion, a recommendation that no application for admission or re-admission shall be entertained for such period as the Panel, in its Order, shall determine.

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## **15 Re-hearing by another constituted Disciplinary Panel**

- 15.1 If, at any time, the Chair of the Disciplinary Committee is of the opinion that it is, for any reason, impracticable for the Hearing of a Complaint to be completed by the Disciplinary Panel appointed to hear that Complaint (eg because of the continuing incapacity of a majority of the members of the Disciplinary Panel appointed to hear that Complaint), the Chair may direct that the Complaint be reheard by a new Disciplinary Panel.
- 15.2 Whenever a Complaint is re-heard by a new Disciplinary Panel pursuant to this clause, any of the members of the original Disciplinary Panel may be appointed to the new Disciplinary Panel.

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## **16 Service**

Any requirement under the By-Law that any notice is required to be given or document is required to be sent to a Member will be deemed to be met if the said notice or document is sent or delivered by post or by hand to the Member at the Member's last known address as recorded in the Institute's records.

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## **17 Costs**

- 17.1 The Institute is not liable to the Member or any other person in respect of any and all of the costs incurred by the Member in relation to the Member responding to the Complaint or defending himself or herself against the Complaint.
- 17.2 To the extent a finding is proven, the Institute is entitled to seek reimbursement from the Member about whom a Complaint is heard, for third party costs and the Institute's own costs incurred in relation to the Complaint.
- 17.3 A Member acknowledges that any statement made in any Hearing or any Finding by a Disciplinary Panel in relation to a Complaint against a Member attracts a defence of qualified privilege in favour of each member that constitutes the relevant Disciplinary Panel.

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## **18 Definitions and interpretation**

In this By-Law, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution, and a reference to a word or phrase will have the same meaning as in another By-Law.

RTAA means a Recognised Tax Agent Association recognised under the Tax Agent Services Act 2009 (TASA).





**BY-LAW NO. 12 OF THE TAX INSTITUTE**  
**(the “Institute”)**

**APPEAL AGAINST A FINDING BY OR A SANCTION IMPOSED BY A  
DISCIPLINARY PANEL**

The following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from 25 February 2014.

## **1 Overview**

The purpose of this By-Law is to set out the basis upon which a Member may lodge an appeal in writing to the Complaints Officer in respect of a finding by or a sanction imposed by the Disciplinary Panel as a result of a Complaint in respect of a Member.

## **2 Right of appeal**

- 2.1 If a Member is dissatisfied with a finding of the Disciplinary Panel in relation to a Complaint against the Member then the Member may appeal against the finding of the Disciplinary Panel.
- 2.2 If a Member is the subject of a sanction imposed by the Disciplinary Panel in relation to a Complaint against the Member, then the Member may appeal against the sanction imposed by the Disciplinary Panel.

## **3 Form and content of appeal**

- 3.1 The Member may, within 21 days of service upon him of the Order of the Disciplinary Panel, or such longer period as that Panel may allow, give notice of appeal of the terms of the Order of the Disciplinary Panel in accordance with these procedures.
- 3.2 An appeal under clause 2.1 or 2.2 must be addressed to the Complaints Officer of the Institute, be in writing and set out fully the grounds on which the Member appeals against the finding or sanctions of the Disciplinary Panel. The grounds so stated must not thereafter be amended, other than with the discretion of the Appeal Panel hearing the Appeal.

## **4 Time limit on exercise of right of appeal**

- 4.1 An Appeal under clause 2.1 or 2.2 must be received by the Institute at its National Office in Sydney within 21 days of service upon the Member of a notice in writing setting out the findings or sanctions of the Disciplinary Panel.
- 4.2 An Appeal under clause 2.1 or 2.2 is only received by the Institute at its National Office in Sydney:
- (a) in person at the National Office of the Institute located in Sydney, New South Wales;
  - (b) by facsimile to the Institute at facsimile number 02 8223 0099;
  - (c) by registered mail to the National Office of the Institute located in Sydney, New South Wales; or
  - (d) by email to the Institute at [Complaints@taxinstitute.com.au](mailto:Complaints@taxinstitute.com.au).

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## **5 Definitions and interpretation**

In this By-Law, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution, and a reference to a word or phrase will have the same meaning as in another By-Law.

**BY-LAW NO. 13 OF THE TAX INSTITUTE**  
**(the “Institute”)**  
**APPEAL PANEL PROCEDURES**

The following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from 14 October 2014.

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**1 Overview**

The purpose of this By-Law is to set out the procedures relating to the operation of the Appeal Panel, and in particular the hearing of an Appeal, in respect of an Appeal against Orders made by the Disciplinary Panel in relation to a Complaint in respect of a Member.

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**2 Procedure for an appeal by a Member against a finding or sanction (or both)**

- 2.1 Upon receipt of an Appeal from a Member in accordance with By-Law 12, the Chair of the Disciplinary Committee will consider the nature of the Appeal and empanel an Appeal Panel to consider the Appeal from among the members of the Disciplinary Committee. The Chair of the Disciplinary Committee may, in their absolute discretion, consult with the CEO and President of the Institute in considering the empanelling of an Appeal Panel.
- 2.2 Unless determined otherwise by the Chair of the Disciplinary Committee, the Appeal Panel to consider that appeal will comprise three (3) or five (5) persons.
- 2.3 No person who has been a member of the Disciplinary Panel hearing the Complaint may also be a member of the Appeal Panel hearing the Appeal in respect of the findings of and/or sanctions imposed by the Disciplinary Panel.
- 2.4 In the course of empanelling the Appeal Panel, the Chair of the Disciplinary Committee must check to ascertain if any conflicts of interest will exist if a particular member of the Appeal Panel is empanelled. Each member of the Appeal Panel will disclose to the Chair any conflicts of interest with either the Complainant or the Member who is the subject of the Appeal.
- 2.5 The Chair is empowered to take whatever steps the Chair considers necessary, including approaching the Member and the Complainant, to recognise and waive any perceived conflict of interest.
- 2.6 If a conflict of interest relating to an empanelled Appeal Panel member cannot be resolved, the Chair may empanel another member of the Disciplinary Committee to replace the conflicted Panel member.
- 2.7 The Chair of the Disciplinary Committee shall nominate one member of the Appeal Panel to be the Chair of the Appeal Panel.
- 2.8 As soon as practicable after the appointment of the Appeal Panel, the Appeal Panel must notify the Member in writing of the date, time and place fixed for the Appeal Hearing, and the Member shall be entitled to attend the Appeal Hearing.

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### **3 Due process to be afforded to a Member by the Appeal Panel**

- 3.1 The Appeal Panel must provide the Member against whom the Complaint has been made with a reasonable opportunity to give either orally or in writing any explanation of the Appeal. Without limiting the foregoing, the Appeal Panel must provide the Member with at least 28 days' written notice of the Hearing at which the Appeal will be considered, including:
- (a) the time and place of the Appeal Hearing;
  - (b) advice to the effect that the Member has the right to give any oral or written explanation or defence that the Member thinks fit; and
  - (c) a summary of the rules under which the Appeal Hearing will be conducted.
- 3.2 The Appeal Panel will make reasonable endeavours to accommodate the needs of all parties.
- 3.3 The Member may appear before the Appeal Panel in person or be represented by such person as the Member may wish. The Member will be deemed present when the Member appears by the Member's representative. The Appeal Panel will give the Member or the Member's representative a fair and reasonable opportunity of being heard before it. The Member must give the Appeal Panel 14 days' notice if the Member will be represented at the Appeal Hearing by another person and provide the name of the representative and the representative's relationship with the Member and with the Complainant.
- 3.4 The Member will be entitled to be heard before the Appeal Panel and will be permitted to be legally represented. The Member must give the Appeal Panel 14 days' notice of any legal representative the Member intends will appear at the Appeal Hearing. If the persons nominated by the Member are unavailable, or replaced, the Appeal Panel may, in its absolute discretion, defer the commencement of the Appeal Hearing to a time and a place that is mutually acceptable to the parties.
- 3.5 If the Member does not attend the Appeal Hearing, then, provided that the Appeal Panel is satisfied that notice of that Appeal Hearing was served on the Member, the Appeal Panel may proceed to hear the Appeal in the absence of the Member.
- 3.6 If the Appeal Panel proceeds with the Appeal Hearing in the absence of the Member, then the Member will not be entitled to any re-hearing of the Appeal by the Appeal Panel.
- 3.7 Where the Member, before a court of competent jurisdiction and/or the Tax Practitioners Board or another RTAA or RTFAA, pleaded guilty to, or has been found guilty of, any Disciplinary Event, it will be presumed, unless the contrary is established, that such a conviction or finding constitutes proof of the commission of a Disciplinary Event.

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### **4 Matters relating to the hearing of the Appeal**

- 4.1 The Chair of the Appeal Panel is responsible for the conduct of the Appeal Hearing.
- 4.2 Proceedings of the Appeal Panel may be recorded. If proceedings are recorded, then the Member may request a copy of the audio recording. The Institute reserves the right to charge a fee for this recording.
- 4.3 The Appeal Panel may instruct a solicitor to act, or to brief counsel to act, as its legal adviser on the Appeal Hearing.

- 4.4 The CEO may appoint any person to represent the Institute in the Appeal before the Appeal Panel, or may instruct a solicitor to present the Complaint or to brief counsel to present the Complaint, or instruct a suitably qualified employee of the Institute to brief counsel, to present the Complaint. This person shall be referred to as the Appeal Presenter in these By-laws, and may be the same person who acted as the Presenter before the Disciplinary Panel Hearing in this matter.
- 4.5 The Chair of the Appeal Panel may expel from an Appeal Hearing any person who is or becomes disruptive to the proceedings.
- 4.6 The standard of proof required by the Appeal Panel, in order to find that a Disciplinary Event in relation to the Member against whom the Appeal has been brought has occurred, is on the balance of probabilities.
- 4.7 The Appeal Hearing will be held in private. However, the Chair of the Appeal Panel may, in their absolute discretion, but after giving notice to hearing any submissions from any affected persons, determine that the Appeal Hearing should be open to the public in whole or in part in the event that there are matters of significant public interest that require that the Appeal Hearing should be in public, and if neither the Member nor any other person would be significantly prejudiced as a result of the decision to open the Appeal Hearing to the public.

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## **5 Adjourments**

- 5.1 The Chair of the Appeal Panel hearing an Appeal may, in their absolute discretion, decide whether or not to grant any application for a postponement of an Appeal Hearing that has not yet begun. After the Appeal Hearing has begun, any application for an adjournment shall be decided by the Appeal Panel hearing the Appeal, and subject to any conditions they fix. Written notice must be given to the Member of the date, time and place of the postponed Appeal Hearing.
- 5.2 The Appeal Panel hearing an Appeal may from time to time adjourn the hearing of any proceedings as it thinks fit of its own volition or upon application by the Member, and the Chair of the Appeal Panel hearing the Appeal must send notice to the Member of the date, time and place to which the Appeal Hearing is adjourned.
- 5.3 Where any Appeal Hearing is adjourned in order that further information or evidence may be obtained, the Appeal Panel may give directions regarding the disclosure of such information or evidence to the Member prior to the resumption of the Appeal Hearing.
- 5.4 An application for further adjournment made before an Appeal Hearing is resumed may be determined by the Chair of the Appeal Panel hearing the Appeal.
- 5.5 The Appeal Panel has a general discretion to grant extensions of time, adjournments and postponements where the Appeal Panel considers it fair and proper to do so.

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## **6 Findings by the Appeal Panel**

- 6.1 Upon conclusion of an Appeal Hearing, the Appeal Panel may:
- (a) reach a decision in respect of the Appeal;
  - (b) reserve its decision for further consideration; or
  - (c) adjourn the Appeal pending further information being provided to the Appeal Panel.

- 6.2 The Appeal Panel may affirm, vary or rescind any Order made by the Disciplinary Panel in respect of the Complaint or in respect of the Member and may substitute any other Order or Orders (on such terms and conditions, if any, as it thinks appropriate), which the Disciplinary Panel might have made on the Complaint.
- 6.3 Any Order of the Appeal Panel shall take effect as from the date it is made by the Appeal Panel unless the Appeal Panel, in its absolute discretion, directs that it will take effect from some other date (not being earlier than the date of the Order appealed against), as shall be specified in the Order of the Appeal Panel.
- 6.4 Notice of any finding of the Appeal Panel where a Complaint has been proven must, as soon as practicable, be conveyed to the Member orally (on the day of the Hearing) if practicable and confirmed in writing together with reasons for the decision.
- 6.5 Further to clause 6.4, the Appeal Panel shall advise the Complainant in writing of its findings and reasons as soon as possible, to the extent that the Appeal Panel in its absolute discretion considers appropriate.
- 6.6 The Complaints Officer will maintain a register of all Orders made by the Appeal Panel.
- 6.7 Whenever the Appeal Panel makes an Order under this By-Law, the Appeal Panel may cause its Order to be published in such manner as it thinks fit, provided that, if the Appeal Panel has ordered that no further action be taken on the Complaint, the Order will not be published unless the Member so requests.
- 6.8 Any Order of the Appeal Panel made under this By-Law may be made upon such terms and conditions (if any) as the Appeal Panel may consider appropriate, including, in the case of an Order recommending exclusion, a recommendation that no application for admission or re-admission shall be entertained for such period as the Appeal Panel, in its Order, shall determine.
- 6.9 No further Appeal is allowed and any Finding of an Appeal Panel is final.
- 6.10 The Institute is not liable to the Member in respect of any and all of the costs incurred by the Member in relation to the Member appealing the Finding.
- 6.11 Despite clause 6.10, the Institute may, at its sole and absolute discretion, seek from a Member who Appeals, reimbursement for all reasonable costs, whether direct or indirect, incurred by the Institute in dealing in any way with an Appeal Hearing under this By-Law No. 13. The Institute may issue enforcement and recovery proceedings against the relevant Member under this clause in any court of competent jurisdiction at any time.
- 6.12 In any Hearing before an Appeal Hearing:
- (a) the Appeal Hearing is, subject to these By-Laws and the Constitution, within the discretion of the Appeal Panel;
  - (b) the Appeal Hearing shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of the By-Laws and the Constitution and of a proper consideration of the matters before the Appeal Panel permit; and
  - (c) the Appeal Panel is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

- 6.13 A Member acknowledges that any statement made in any Appeal Hearing or any Finding by an Appeal Panel in relation to an Appeal by a Member attracts a defence of qualified privilege in favour of each member that constitutes the relevant Appeal Panel.

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## **7 Definitions and interpretation**

In this By-Law, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution, and a reference to a word or phrase will have the same meaning as in another By-Law.

RTAA means a Recognised Tax Agent Association recognised under the *Tax Agent Services Act 2009* (TASA).

RTFAA means a Recognised Tax Financial Adviser Association under the *Tax Agent Services Act 2009* (TASA).

**BY-LAW NO. 14 OF THE TAX INSTITUTE**  
**(the "Institute")**  
**PUBLICATION OF ANNUAL STATISTICS ABOUT COMPLAINTS**

The following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the "Constitution").

This By-Law has effect from 20 April 2010.

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**1 Overview**

The purpose of this By-Law is to set out the procedures relating to the publication of annual statistics in respect of complaints received by the Institute.

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**2 Publication of annual statistics**

- 2.1 The Institute will cause to be published in the form of annual statistics in its Annual Report the following information:
- (a) The kinds and frequency of complaints made to the Institute;
  - (b) The findings made as a result of those complaints;
  - (c) The action taken as a result of those findings.
- 2.2 The Disciplinary Committee will maintain sufficient records for the purpose of enabling the Institute to satisfy clause 2.1.



# BY-LAW NO. 15 OF THE TAX INSTITUTE

## (the "Institute")

### DEFINITIONS AND INTERPRETATION

The following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the "Constitution").

This By-Law has effect from 27 April 2016.

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## 1 Overview

The purpose of this By-Law is to set out the definitions and interpretation rules to apply in each of the By-laws of the Institute.

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## 2 Definitions and interpretation

In this By-Law and each of the other By-laws of the Institute, unless a contrary intention appears, a reference to a word or phrase will have the same meaning as in the Constitution and:

**Act** means the Corporations Act 2001.

**Appeal** means the appeal against the findings of the Disciplinary Committee in respect of the Complaint or the sanctions imposed by the Disciplinary Committee in respect of the Complaint or both brought in accordance with By-Law 12.

**Appeal Chairperson** means the chairperson appointed by the National Council in accordance with clause 2 of By-law 13 to chair the Appeal Committee.

**Appeal Committee** in relation to an Appeal means the appeal committee to consider the Appeal empanelled by the Appeal Chairperson in accordance with clause 5 of By-law 13.

**Appeal Deputy Chairperson** means the deputy chairperson appointed by the National Council in accordance with clause 3 of By-law 13 to act as chairperson of the Appeal Committee when the Appeal Chairperson is unavailable.

**Appeal Document** means the document satisfying the requirements of clause 3 of By-law 12 in relation to a particular Appeal.

**Appeal Panel** means the appeal panel appointed by the National Council in accordance with clause 4 of By-law 13.

**Appeal Presenter** means the person determined by the Complaints Officer to present the case prepared by the Investigator before the Appeal Committee.

**Chairperson** means the person appointed by the National Council in accordance with clause 2 of By-law 11 to chair the Disciplinary Committee.

**Code of Professional Conduct** means the Code of Professional Conduct as contained in Division 30 of TASA 2009.

**Complainant** means a means a person who has lodged a Complaint.

**Complaint** means a communication to the Institute in accordance with clause 4 of By-law 9.

**Complaint Number** means an identification number allocated to identify a Complaint in accordance with clause 5 of By-law 9.

**Complaints Officer** means the CEO of the Institute or if another person has been appointed by the Institute as the “Complaints Officer” that person.

**Complaints Register** means the record of complaints received kept in accordance with clause 6.1 of Bylaw 9.

**Deputy Chairperson** means the deputy chairperson appointed by the National Council in accordance with clause 3 of By-law 11 to act as chairperson of the Disciplinary Committee when the Chairperson is unavailable.

**Disciplinary Committee** in relation to a Complaint means the disciplinary committee to consider the Complaint empanelled by the Chairperson in accordance with clause 5 of By-Law 11.

**Disciplinary Event** means an event or action specified in clause 3 of By-law 9. **Disciplinary Panel** means the disciplinary panel appointed by the National Council in accordance with clause 4 of By-law 11.

**Finding** means a finding made by the Disciplinary Committee under By-Law 11.

**Hearing** means the hearing by the Disciplinary Committee in respect of a Complaint.

**Investigation File** means the file compiled by an Investigator in respect of a Complaint.

**Investigator** means a person appointed by the Institute in accordance with Bylaw 10.

**Membership** means membership of the Institute.

**Order** means an order made by the Disciplinary Committee under By-Law 11.

**Person** includes an entity and, for the avoidance of doubt, includes the Taxation Institute of Australia.

**Presenter** means the person determined by the Complaints Officer to present the case prepared by the Investigator before the Disciplinary Committee.

**RTAA** means a Recognised Tax Agent Association recognised under the TASA. **Serious Offence** means:

- (a) an offence against the laws of a State, a Territory or the Commonwealth of Australia or against the laws of a foreign country that:
  - (i) is punishable by imprisonment for a period greater than 12 months; or
  - (ii) involves fraud or dishonesty and is punishable by imprisonment for at least 3 months; and
- (b) an offence that involves a breach of a Taxation Law and is punishable by imprisonment for at least 3 months. **TASA** means the Tax Agent Services Act 2009.

**BY-LAW NO. 16 OF THE TAX INSTITUTE**  
**(the "Institute")**  
**CREATION OF THE EDUCATION QUALITY ASSURANCE**  
**BOARD AND DELEGATION OF POWERS**

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**1 Definitions and interpretations**

- 1.1 In this By-Law, unless a contrary intention appears, a word or phrase will have the same meaning as in the Constitution of The Tax Institute.
- 1.2 In this By-Law, unless a contrary intention appears, a word or phrase will have the same meaning as in the *Tertiary Education Quality and Standards Agency Act 2011*(*TEQSA Act 2011*).
- 1.3 'EQAB' means the Chair and members of the Education Quality Assurance Board being The Tax Institute members who have been duly appointed to that Board by the National Council of The Tax Institute.
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**2 Purpose**

- 2.1 Under the *TEQSA Act 2011*, the National Council is responsible to the Tertiary Education Quality and Standards Agency (TEQSA) for ensuring that it delivers quality teaching and learning in its award and non-award Education Programs.
- 2.2 As a licensee of the Chartered Tax Adviser (CTA) designation and being a Tax Practitioner Board (TPB) approved provider, The Tax Institute must also comply with the conditions of those accreditations.
- 2.3 The National Council wishes to establish an autonomous body, under its supervision, for the governance of its Education Programs and the conferring of higher education awards. The EQAB is responsible to the National Council to create educational policies to be approved by the National Council and then to administer and report on those policies.
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**3 Terms of reference for the EQAB**

**3.1 Statement of Purpose**

To ensure each graduate of The Tax Institute accredited courses is a skilful member of today's tax profession and to ensure compliance with the requirements of the *TEQSA Act 2011*.

**3.2 Role and Responsibilities**

- (a) The role and responsibilities of the EQAB are to:
- (i) Confer a higher education award on the graduates who have successfully completed the accredited courses.
  - (ii) Comply with all *TEQSA* requirements and the *TEQSA Act 2011*.
  - (iii) Be responsible and report to the National Council on all matters relating to and affecting the design, development, delivery, assessment and review of units and award and non-award courses.

- (iv) Devise, maintain and administer educational policies and procedures to provide a quality teaching and learning framework for the delivery of The Tax Institute's Education Programs.
- (v) Establish sub-committees to consider academic appointments, admission to courses, advanced standing, exemptions and candidate appeals on assessment decisions and admission to courses.
- (vi) With respect to candidates in an accredited course, decide all candidate disciplinary cases and report findings to the Professional Standards Committee in relation to the implications for the candidate's current or future membership.
- (vii) Consider and report to the National Council on any matter referred to the EQAB in relation to curriculum relevance and currency.
- (viii) Exercise any other functions as delegated by the National Council.

### 3.3 Policies and procedures

- (a) The Board shall devise, maintain and administer a set of written policies and procedures for the delivery of accredited courses with respect to, *inter alia*
  - (i) Criteria for teaching appointments complying with academic and professional qualifications.
  - (ii) Admission requirements including English language standards.
  - (iii) Deferral, withdrawal conditions and maximum period of candidature.
  - (iv) Recognition, exemptions, credit transfer and advanced standing.
  - (v) Reasonable adjustments, special consideration and support for students at risk.
  - (vi) Assessment, progression and conferral of higher education awards.
  - (vii) Conferral of award, grading schemes.
  - (viii) Disciplinary matters and penalties.
  - (ix) Appeals and grievance procedures.
- (b) All policies and procedures administered by the EQAB shall be submitted to the National Council for its information. Where the National Council is dissatisfied with a policy or procedure, it may request the EQAB to review the policy or procedure.

### 3.4 Membership

- (a) The EQAB will comprise 13 members appointed by the National Council one of whom shall be designated by National Council as Chair of the Board.
- (b) In order to be eligible for appointment under para (a), the person must possess at least one of the following qualifications –
  - (i) Fellow of The Tax Institute,
  - (ii) a Life Member of The Tax Institute

- (iii) Chartered Tax Adviser designee
  - (iv) Taxation academic
  - (v) Corporate learning and development professional
  - (vi) A current or past candidate of the Graduate Diploma of Applied Tax Law or the prior CTA Program.
- (c) In addition to the people identified in para (a) the following member of staff of The Tax Institute may be members of the EQAB ex officio – The General Manager, Education and Professional Standards who will also act as the Executive Officer of the Board.

### 3.5 Quorum

A quorum of the EQAB will consist of 50% of membership of the Board (5 members excluding the ex-officio member) however if a quorum is not reached the meeting may proceed with recommendations to the next meeting at which there is a quorum.

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## 4 EQAB as Delegate

- 4.1 The National Council delegates the authority to the EQAB to confer higher education awards on candidates who have successfully completed the required accredited courses.
- 4.2 Through this By-Law, the National Council also authorises the EQAB to co-opt such other members of The Tax Institute as the EQAB considers necessary to assist it in:
- (a) setting and administering The Tax Institute's educational policies including but not limited to:
    - (i) Admission requirements including English language standards.
    - (ii) Deferral, withdrawal conditions and maximum period of candidature.
    - (iii) Recognition, exemptions, credit transfer and advanced standing.
    - (iv) Reasonable adjustments, special consideration and support for students at risk.
    - (v) Assessment, progression and conferral of higher education awards.
    - (vi) Conferral of award, grading schemes.
    - (vii) Disciplinary matters and penalties including their relevance to membership of The Tax Institute.
    - (viii) Appeals and grievance procedures.
  - (b) oversight and maintenance of academic standards and effective quality assurance arrangements
  - (c) reviewing existing units and courses and recommending new units and courses.

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## 5 EQAB conduct of business

### 5.1 Term of Office

- (a) **Chair:** for a minimum period of two years, or as otherwise appointed by the National Council.
- (b) **Appointed members:** for a minimum period of two years, or as otherwise determined by the National Council.
- (c) **Ex officio members:** for the period that they hold the specified office.
- (d) **Casual vacancies:** Casual vacancies may be filled on nomination of a replacement by the remaining members of the Board and will take effect after being approved by the National Council.
- (e) **Removal:** The National Council may remove from the EQAB any member who has been absent for more than three meetings without showing cause or who has had disciplinary finding against them by the Tax Practitioners Board, The Tax Institute or by any other professional body relevant to the practice of accounting, law or taxation.

## 5.2 Meetings

- (a) The EQAB will meet in ordinary sessions for a minimum of four times (and at such other times as required). At least one face-to-face meeting will be arranged annually.
- (b) The Executive Officer of the EQAB will give members not less than one month's notice of an ordinary meeting.
- (c) The agenda for an ordinary meeting will be distributed by the Executive Officer to members of the EQAB not less than seven days prior to the ordinary meeting.
- (d) The agenda will include reports on Admissions and Enrolment; Candidate progression; Disciplinary and Appeals cases; and will have standing items considering policies and procedures as they are developed.
- (e) Standard meeting procedures will apply. Related committees and Sub-Committees of the Education Quality Assurance Board:
- (f) The Board may constitute such sub-committees as it considers convenient for the performance of its tasks including:
  - (i) Disciplinary and Student Academic Appeals Committee
  - (ii) Advanced Standing and Exemptions Committee
  - (iii) Curriculum and Course Review Committee.

## 5.3 Administration

Direct implementation responsibility – General Manager, Education and Professional Standards.

**BY-LAW NO. 17 OF THE TAX INSTITUTE**  
**(the “Institute”)**  
**ADVERSE THIRD PARTY DISCIPLINARY DECISIONS**  
**AGAINST A MEMBER**

The following By-Law is enacted by the National Council pursuant to clause 55 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from 14 October 2014.

## **1 Overview**

1.1 The purpose of this By-Law is to set out the procedures the Institute will adopt when a Member has breached Disciplinary Events (e), (g), (h) or (i) of By-Law 9, Clause 2.1.

1.2 These Disciplinary Events are:

- “(e) being the subject of an adverse finding in relation to their professional conduct, competence or recognition by any body or authority having jurisdiction or competence to do so;
- (g) being found to have acted dishonestly in any civil proceedings in a court in Australia or elsewhere;
- (h) Involuntarily ceasing to be a director by virtue of the Corporations Act or being prohibited from being a director by reason of any order made under the Corporations Act;
- (i) becoming bankrupt or assigning their estate or entering into a deed of arrangement for the benefit of their creditors;”

These Disciplinary Events will be referred to as an “adverse third party decision” in this By-Law.

1.3 The procedures adopted by the Institute in relation to an adverse third party decision will differ, depending on whether the third party decision has been made:

- (a) by the Tax Practitioners Board in relation to a breach of Divisions 30 or 40 of TASA 2009; or
- (b) by the Tax Practitioners Board in relation to another provision of TASA 2009, or by another statutory or judicial body constituted under the laws of Australia or another country; or
- (c) by another professional body of which the Member is a member, whether in Australia or elsewhere.

1.4 For the avoidance of doubt, this By-Law does not apply to members who have breached Disciplinary Event (f) listed in Clause 2.1 of By-Law 9.

## **2 Adverse third party decisions by the Tax Practitioners Board (“TPB”)**

2.1 This Clause relates to an adverse third party decision by the TPB against a Member under section 30-25 of TASA 2009 (Suspension of registration), and section 30-30 of TASA 2009

(Termination of registration). Such decisions arise from breaches of the Code of Professional Conduct in Division 30 of TASA 2009 2009. This Clause also relates to an adverse third party decision by the TPB against a Member under Division 40 of TASA 2009 2009.

- 2.2 Where the adverse third party decision by the TPB results in suspension of a Member's registration under section 30-25 of TASA 2009 2009, the Member's membership of the Institute will be suspended for the same period.
- 2.3 A person whose membership of the Institute has been suspended under Clause 2.2 may apply to the Institute for their membership to be reinstated by providing evidence to the Institute that the TPB has reinstated the person's registration. At that later date, the person applying for reinstatement as a Member of the Institute must demonstrate that they continue to meet the membership requirements set out in By-Law 1, and in particular Clause 9 of By-law 1 (Applicant to be of good fame, integrity and character).
- 2.4 Where the adverse third party decision by the TPB results in the termination of a Member's registration under section 30-30 or Division 40 of TASA 2009 2009, the Member's membership of the Institute will be terminated.
- 2.5 A person whose membership has been terminated under Clause 2.4 may reapply for membership of the Institute 3 years or more after their membership was terminated under that Clause. Such an applicant's attention is drawn to the requirements of By-Law 1, and in particular to Clause 9 of By-Law 1 (Applicant to be of good fame, integrity and character).
- 2.6 Notwithstanding Clause 2.2 and 2.4, there may be instances where suspension or termination of a Member's membership of the Institute may not be an appropriate outcome. In such cases the Institute may, in its absolute discretion, request further particulars of the matter from the TPB and the Member and will refer the matter to the Complaints Officer.
- 2.7 Where, after consideration, the Complaints Officer concludes that Clauses 2.2 or 2.4 would result in an appropriate outcome for the Member; the sanctions in those Clauses shall stand. The Chair of the Disciplinary Committee shall be apprised of the matter, and shall note their sighting of the matter and the conclusions reached by the Complaints Officer.
- 2.8 Where, after consideration, the Complaints Officer concludes that Clauses 2.2 or 2.4 would not result in an appropriate outcome for the Member; the Member's membership of the Institute shall not be suspended or terminated. The Chair of the Disciplinary Committee shall be apprised of the matter, and shall note their sighting of the matter and the conclusions reached by the Complaints Officer.
- 2.9 Where Clause 2.6 applies and the Complaints Officer is not able to reasonably conclude whether Clauses 2.2 or 2.4 result in an appropriate outcome, the Institute shall make a Complaint in relation to the Member, as outlined in Clause 3.2 of By-Law 9.
- 2.10 The purpose of the Institute making the Complaint under Clause 2.10 is to trigger the application of the procedures set out in the By-Laws to the Complaint to ensure that the Complaint is treated by the Institute in accordance with the procedures in the By-Laws.
- 2.11 The Member shall be advised of the Complaint by the Institute in accordance with the procedures set out in By-Law 9, and also of the matters set out in Clause 2.11 above.

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### **3 Specific adverse third party decisions by a statutory or judicial body**



- 3.1 This Clause relates to adverse third party decisions relating to Disciplinary Events (g), (h) and (i) listed in Clause 2.1 of By-Law 9 against a Member:
- (g) being found to have acted dishonestly in any civil proceedings in a court in Australia or elsewhere;
  - (h) Involuntarily ceasing to be a director by virtue of the Corporations Act or being prohibited from being a director by reason of any order made under the Corporations Act;
  - (i) becoming bankrupt or assigning their estate or entering into a deed of arrangement for the benefit of their creditors;
- 3.2 Where Clause 3.1 applies, the Member's membership of the Institute will be terminated.
- 3.3 A person whose membership has been terminated under Clause 3.2 may reapply for membership of the Institute 3 years or more after their membership was terminated under that Clause. Such an applicant's attention is drawn to the requirements of By-Law 1, and in particular to Clause 9 of By-Law 1 (Applicant to be of good fame, integrity and character).
- 3.4 Notwithstanding Clause 3.2, there may be instances where termination of a Member's membership of the Institute may not be an appropriate outcome. In such cases the Institute may, in its absolute discretion, request further particulars of the matter from the Member and will refer the matter to the Complaints Officer.
- 3.5 Where, after consideration, the Complaints Officer concludes that Clauses 3.2 would result in an appropriate outcome for the Member, the sanction in that Clause shall stand. The Chair of the Disciplinary Committee shall be apprised of the matter, and shall note their sighting of the matter and the conclusions reached by the Complaints Officer.
- 3.6 Where, after consideration, the Complaints Officer concludes that Clauses 3.2 would not result in an appropriate outcome for the Member; the Member's membership of the Institute shall not be terminated. The Chair of the Disciplinary Committee shall be apprised of the matter, and shall note their sighting of the matter and the conclusions reached by the Complaints Officer.
- 3.7 Where Clause 3.4 applies and the Complaints Officer is not able to reasonably conclude whether Clauses 3.2 results in an appropriate outcome, the Institute shall make a Complaint in relation to the Member, as outlined in Clause 3.2 of By-Law 9.
- 3.8 The purpose of the Institute making the Complaint under Clause 3.8 is to trigger the application of the procedures set out in the By-Laws to the Complaint to ensure that the Complaint is treated by the Institute in accordance with the procedures in the By-Laws.
- 3.9 The Member shall be advised of the Complaint by the Institute in accordance with the procedures set out in By-Law 9, and also of the matters set out in Clause 2.11 above.

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#### **4 Adverse third party decisions by a statutory or judicial body in relation to a member's professional conduct, competence or recognition.**

- 4.1 This Clause relates to adverse third party decisions made against a Member by the TPB other than under sections 30-25 or 30-30 or Division 40 of TASA 2009, or by another statutory or judicial body in relation to a Member's professional conduct, competence or recognition.

- 4.2 Where the Institute becomes aware that the TPB or another statutory or judicial body has allegedly made an adverse third party decision in relation to a Member's professional conduct, competence or recognition, the Institute shall request the Member to confirm the details of the alleged decision within 28 days of the request.
- 4.3 Where the adverse third party decision is confirmed by the Member, the Institute shall make a Complaint in relation to the Member, as outlined in Clause 3.2 of By-Law 9.
- 4.4 The purpose of the Institute making the Complaint under Clause 4.3 above is to trigger the application of the procedures set out in the By-Laws to the Complaint to ensure that the Complaint is treated by the Institute in accordance with the procedures in the By-Laws.
- 4.5 The Member shall be advised of the Complaint by the Institute in accordance with the procedures set out in By-Law 9, and also of the matters set out in Clause 4.4 above.
- 4.6 Where the adverse third party decision is disputed by the Member, or otherwise not confirmed by the Member, the Institute shall make all reasonable endeavours to clarify the matter with the TPB or other statutory or judicial body. Where an adverse third party decision is confirmed as having been made against the Member, Clauses 4.3, 4.4 and 4.5 shall then apply.

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## **5 Adverse third party decisions by a professional body**

- 5.1 Where the Member belongs to a professional body in addition to the Institute, and the Institute becomes aware that that other professional body has allegedly made an adverse third party decision in relation to the Member's professional conduct, competence or recognition which results in the cessation or suspension of the Member's membership of that other professional body, the Institute shall request the Member to confirm the cessation or suspension from membership of that other professional body within 28 days of the request.
- 5.2 Where the adverse third party decision is confirmed by the Member, the Institute shall make a Complaint in relation to the Member, as outlined in Clause 3.2 of By-Law 9.
- 5.3 The purpose of the Institute making the Complaint under Clause 5.2 above is to trigger the application of the procedures set out in the By-Laws to the Complaint to ensure that the Complaint is treated by the Institute in accordance with the procedures in the By-Laws.
- 5.4 The Member shall be advised of the Complaint by the Institute in accordance with the procedures set out in By-Law 9, and also of the matters set out in Clause 5.3 above.
- 5.5 Where the adverse third party decision is disputed by the Member, or otherwise not confirmed by the Member, the Institute shall make all reasonable endeavours to clarify the matter with the third party professional body. Where that body confirms that an adverse third party decision has been made against the Member, Clauses 5.2, 5.3 and 5.4 shall then apply.