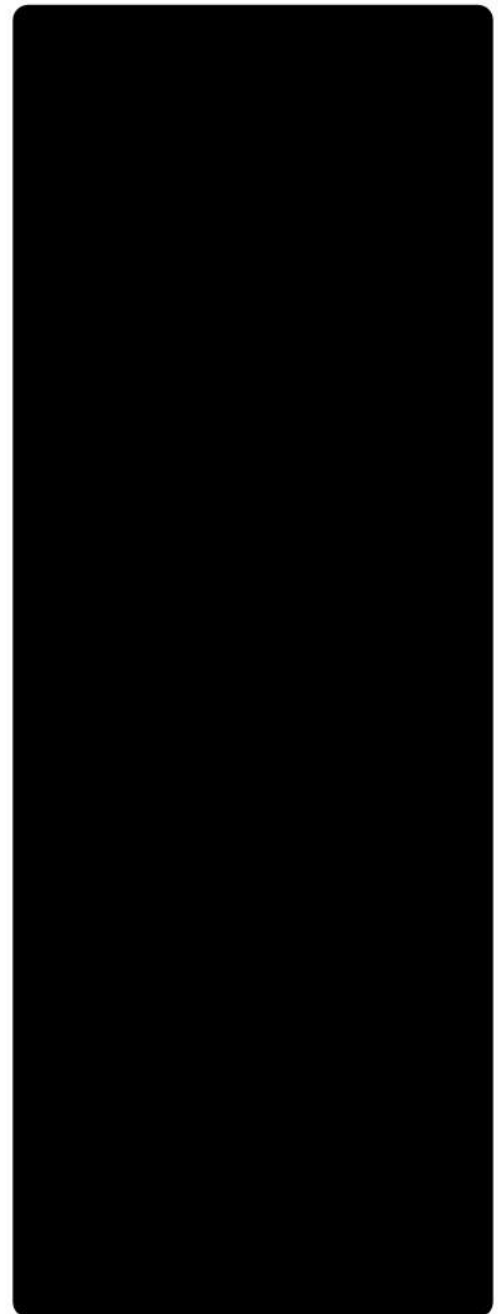
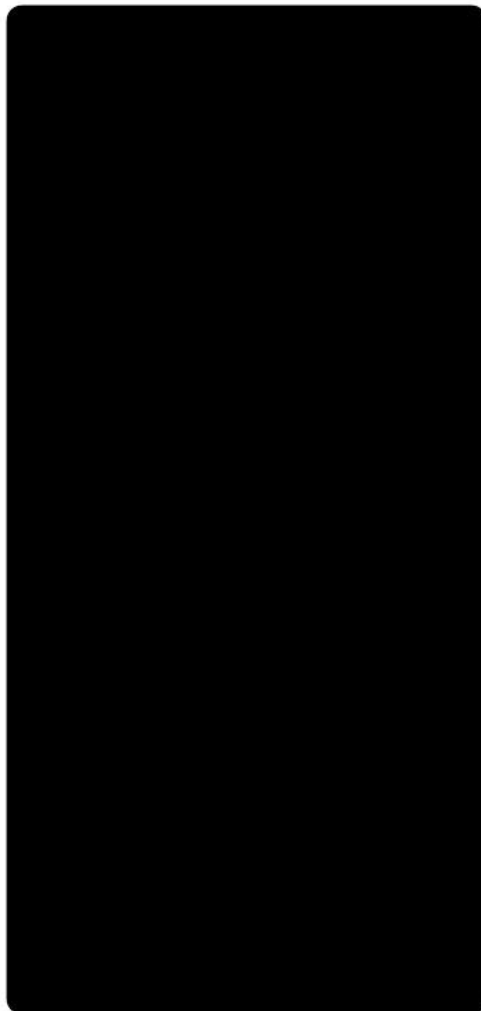
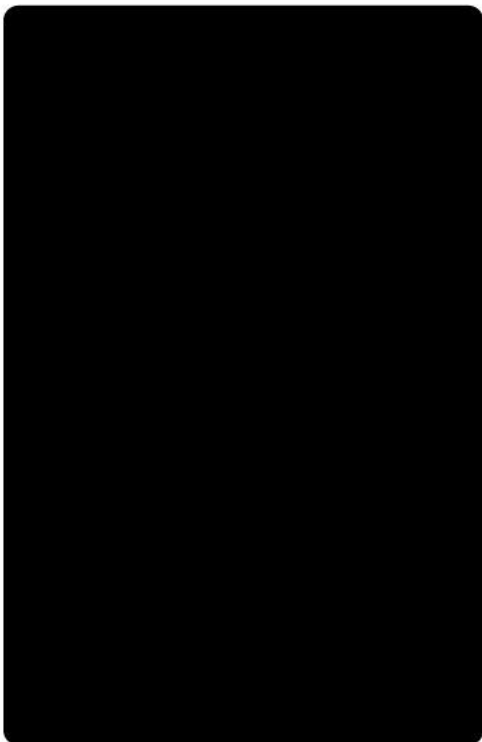


# The Tax Institute By-Laws

Date adopted: 22 May 2023



# 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.(a) 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 56 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 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 56 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 10 and that decision is not appealed within the Appeal Period;
  - (g) the Appeal Panel confirms a sanction of termination of membership imposed by the Disciplinary Committee pursuant to By-law 10 in respect of that Member pursuant to By-Law 11.
  - (h) the Appeal Panel imposes a sanction of termination of membership in respect of that Member pursuant to By-Law 11;
  - (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.
- 2.2 In addition to the powers granted to the Institute under By-Laws 10 and 11, if a Member ceases to be a Member, the Institute may at its absolute discretion and by notice to the Member (or former Member) rescind, revoke or cancel any awards or honours granted to the Member prior to the cessation of membership if the Member was found to have committed a Disciplinary Event while the former Member was a Member.
- 2.3 The Member (or former Member) may apply to the Appeal Panel to have the revocation of the awards or honours under clause 2.2 overturned in accordance with the procedures in By-Law 11 for a Revocation Notice.

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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 Panel confirms a sanction of suspension of membership imposed the Disciplinary Committee pursuant to By-law 10 in respect of that Member;
- (d) the Appeal Panel imposes a sanction of suspension of membership in respect of that Member pursuant to By-Law 11

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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 56 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 Tax 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 56 and 11 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 Clause 11 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 56 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”)**  
**DEALING WITH COMPLAINTS AND DISCIPLINARY EVENTS**

The following By-Law is enacted by the National Council pursuant to clause 56 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from 21 June 2022.

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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 9.
- 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 10 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 10.
- 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 11.
- 1.7 Proceedings of the Appeal Panel will be conducted in accordance with By-Law 12 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 12.

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**2 Disciplinary Event**

- 2.1 Each Member is required to meet the standards of professional and ethical conduct.
- 2.2 Each of the following is a Disciplinary Event in respect of a Member’s professional conduct obligations:
  - (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;
- (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.

2.3 All Members of The Tax Institute are required to comply with the Code of Professional Conduct in respect of their ethical obligations. For the avoidance of doubt, any breach of the following constitutes a Disciplinary Event in respect of a Member's ethical conduct obligations:

- (a) acting honestly and with integrity;
- (b) complying with the taxation laws in the conduct of your personal affairs;
- (c) If:
  - (i) a member receives money or other property from or on behalf of a client; and
  - (ii) (b) the member holds the money or other property on trust;
 the member must account to your client for the money or other property;
- (d) acting lawfully in the best interests of your client;

- (e) having in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent;
- (f) unless there is a legal duty to do so, not disclosing any information relating to a client's affairs to a third party without your client's permission;
- (g) ensuring that a taxation service that you provide, or that is provided on your behalf, is provided competently;
- (h) maintaining knowledge and skills relevant to the taxation services that you provide;
- (i) taking reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client;
- (j) taking reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client;
- (k) not knowingly obstruct the proper administration of the taxation laws;
- (l) advising your client of the client's rights and obligations under the taxation laws that are materially related to the taxation services you provide;
- (m) maintaining professional indemnity insurance that are appropriate to the nature of the taxation services that you provide; and
- (n) responding to requests and directions from the TPB in a timely, responsible and reasonable manner.

2.4 Where a Member also practices as a chartered accountant, CPA, barrister or solicitor, they must abide by the ethical rules of the relevant governing body and breach of such ethical rules constitutes as a Disciplinary Event.

2.5 In all other cases, Members must abide by APES 220 or such other ethical statements on the provision of Taxation Services issued by the Accounting Professional & Ethical Standards Board or its successor bodies. Any breach of APES 220 or such other ethical statements constitutes as a Disciplinary Event.

2.6 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.

2.7 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), and (g) 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 9;
    - (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 any 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.

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## **7 Adverse Third-Party Disciplinary Decisions**

- 7.1 Disciplinary Events (e), (g), (h) or (i) of Clause 2.2 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.

7.2 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.

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

8.1 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.

8.2 Where the adverse third party decision by the TPB results in:

- (a) suspension of a Member’s registration under section 30-25 of TASA 2009,
- (b) termination of a Member’s registration under section 30-30 of TASA 2009; or
- (c) termination of a Member’s registration under division 40 of TASA 2009,

the Member’s membership will, after conclusion of any appeals process relating to such TPB decision, or if no appeal has been lodged,

if the suspension or termination decision by the TPB is not overturned on appeal the Member’s membership will be suspended for the same period as determined by the TPB or the relevant appeal body, or terminated as applicable.

8.3 A person whose membership of the Institute has been suspended or terminated under this Clause 8 may:

- (a) **(if the membership was suspended)** 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; or
- (b) **(if the membership was terminated)**: apply to the Institute:
  - (i) for their membership to be reinstated by providing evidence to the Institute that the appeal and a termination decision was overturned by the TPB was successful; or
  - (ii) for a new membership of the Institute, 3 years or more after their membership was terminated under this Clause.

If this Clause 8.3 applies, the requirements of By-Law 1 will continue to apply. The Institute may, at its sole discretion not re-instate or grant the person membership.

- 8.4 Notwithstanding the above, 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.
- 8.5 Where, after consideration, the Complaints Officer concludes that a suspension or termination of membership would result in an appropriate outcome for the Member; the suspension or termination 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.
- 8.6 Where, after consideration, the Complaints Officer concludes that a suspension or termination of membership 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.
- 8.7 Where Clause 8.4 applies and the Complaints Officer is not able to reasonably conclude whether a suspension or termination of membership results in an appropriate outcome, the Institute shall make a Complaint in relation to the Member, as outlined in this By-Law 8.
- 8.8 The purpose of the Institute making the Complaint under Clause 8.7 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.
- 8.9 The Member shall be advised of the Complaint by the Institute in accordance with the procedures set out in this By-Law.

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

- 9.1 This Clause relates to adverse third party decisions relating to Disciplinary Events (g), (h) and (i) listed in Clause 2.2 against a Member:
  - (a) being found to have acted dishonestly in any civil proceedings in a court in Australia or elsewhere;
  - (b) 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;

- (c) becoming bankrupt or assigning their estate or entering into a deed of arrangement for the benefit of their creditors;
- 9.2 Where Clause 9.1 applies, the Member's membership of the Institute will be terminated.
- 9.3 A person whose membership has been terminated under Clause 9.2 may reapply for membership of the Institute 3 years or more after their membership was terminated under that Clause.
- 9.4 Notwithstanding Clause 9.2, 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.
- 9.5 Where, after consideration, the Complaints Officer concludes that Clauses 9.2 or 9.4 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.
- 9.6 Where, after consideration, the Complaints Officer concludes that Clauses 9.2 or 9.4 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.
- 9.7 Where Clause 9.6 applies and the Complaints Officer is not able to reasonably conclude whether Clauses 9.2 or 9.4 result in an appropriate outcome, the Institute shall make a Complaint in relation to the Member, as outlined in this By-Law 8.
- 9.8 The purpose of the Institute making the Complaint 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.
- 9.9 The Member shall be advised of the Complaint by the Institute in accordance with the procedures set out in this By-Law.

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

- 10.1 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.
- 10.2 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.
- 10.3 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 8.
- 10.4 The purpose of the Institute making the Complaint under Clause 3.2 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.

- 10.5 The Member shall be advised of the Complaint by the Institute in accordance with the procedures set out in this By-Law 8.
- 10.6 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 10.3, 10.4 and 10.5 shall then apply.

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

- 11.1 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.
- 11.2 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 By-Law 8.
- 11.3 The purpose of the Institute making the Complaint under Clause 11.2 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.
- 11.4 The Member shall be advised of the Complaint by the Institute in accordance with the procedures set out in this By-Law 8, and also of the matters set out in Clause 11.3 above.
- 11.5 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 11.2, 11.3 and 11.4 shall then apply.

**BY-LAW NO. 9 OF THE TAX INSTITUTE**  
**(the “Institute”)**  
**INVESTIGATION PROCEDURES**

The following By-Law is enacted by the National Council pursuant to clause 56 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from [date].

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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 8 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 10;
  - (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. 10 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 56 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from 21 June 2022.

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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 or appoint a Deputy Chair of the Disciplinary Committee to perform the functions under the By-Laws if the Chair is unable to perform such functions.

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## **3 Appointment of Members 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 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.
- 3.2 A member of the Disciplinary Committee 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 a member of the Disciplinary Committee.
- 3.4 The Disciplinary Committee will consist of no less than eight (8) persons and no more than fifteen persons.
- 3.5 The Chair and the Deputy Chair are both members of the Disciplinary Committee.

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## **4 Empanelling a Disciplinary Panel**

- 4.1 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.
- 4.2 Unless determined otherwise by the Chair, the Disciplinary Panel to consider that Complaint will comprise three (3) or five (5) persons.
- 4.3 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.
- 4.4 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.
- 4.5 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.
- 4.6 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.
- 4.7 Upon being empanelled, the Disciplinary Panel will choose one of their numbers to act as Chair of the Disciplinary Panel.

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

- 5.1 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.
- 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 Alternative means of resolving a Complaint, with consent**

- 6.1 If the Disciplinary Panel believes there are reasonable grounds for doing so, the
- 6.2 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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## **7 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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## **8 Matters relating to the consideration of a Complaint**

- 8.1 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.
- 8.2 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 clause 5.
- 8.3 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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## **9 Due process to be afforded to a Member the subject of a Complaint**

- 9.1 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.
- 9.2 The Disciplinary Panel will make reasonable endeavours to accommodate the needs of all parties.
- 9.3 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.
- 9.4 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.

- 9.5 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.
- 9.6 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.
- 9.7 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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## **10 Matters relating to the Hearing**

- 10.1 The Chair of the Disciplinary Panel is responsible for the conduct of the Hearing.
- 10.2 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.
- 10.3 The Disciplinary Panel may instruct a solicitor to act, or to brief counsel to act, as its legal adviser on the Hearing.
- 10.4 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.
- 10.5 The Chair of the Disciplinary Panel may expel from a Hearing any person who is or becomes disruptive to the proceedings.
- 10.6 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.
- 10.7 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.
- 10.8 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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## **11 Adjournments**

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 An application for further adjournment made before a Hearing is resumed may be determined by the Chair of the Disciplinary Panel.

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## **12 Findings by the Disciplinary Panel**

- 12.1 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.
- 12.2 If the Disciplinary Panel finds that a Complaint has been proven, it shall make a finding to that effect.
- 12.3 If the Disciplinary Panel finds that a Complaint has not been proven, it shall make a finding to that effect.
- 12.4 Where 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.
- 12.5 The Disciplinary Panel must also consider any evidence of previous disciplinary penalties imposed on the member.
- 12.6 After considering the material presented for the purposes of paragraphs 12.4 and 12.5 The Disciplinary Panel must determine the appropriate sanction provided for under clause 13.
- 12.7 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.
- 12.8 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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## **13 Sanctions that may be imposed by the Disciplinary Panel**

- 13.1 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;
  - (f) order the termination of the membership of the Member; or
  - (g) make any such other orders as reasonably determined by the Disciplinary Panel as appropriate.
- 13.2 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.
- 13.3 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.
- 13.4 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.
- 13.5 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.
- 13.6 The Complaints Officer will maintain a register of all Orders made by the Disciplinary Panel.
- 13.7 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.
- 13.8 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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## **14 Re-hearing by another constituted Disciplinary Panel**

- 14.1 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.

- 14.2 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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## 15 Awards and Honours

- 15.1 Notwithstanding any provision in the By-Laws but subject to By-Laws 11 and 12, if the membership of the Member is terminated under these By-Laws, then, in addition to the powers granted to the Disciplinary Panel under this By-Law 10, the Institute may at its absolute discretion and by notice to the Member (or former Member), rescind, revoke or cancel any awards or honours granted to the Member prior to the termination of membership (or former Member) (**Revocation Notice**).
- 15.2 The Member (or former Member) must immediately without delay, remove any references to the Member (or former Member) being awarded any such awards or honours granted by the Institute upon receiving a notification from the Institute under clause 15.1.
- 15.3 If the Member (or former Member) fails to remove any references as required under clause 15.2, the Institute reserves its rights as to bringing any claims or complaints to any other statutory authority, including but not limited to a complaint for misleading and deceptive conduct under the appropriate legislation.

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## 16 Service

Any requirement under this 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, by hand or by email to the Member at the Member's last known address or email 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. 11 OF THE TAX INSTITUTE**  
**(the “Institute”)**

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

The following By-Law is enacted by the National Council pursuant to clause 56 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from [date].

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## **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 in respect of a Member or a Revocation Notice.

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## **2 Right of appeal**

- 2.1 If a Member is dissatisfied with a finding of the Disciplinary Panel 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 or an order imposed by the Disciplinary Panel against the Member, then the Member may appeal against the sanction imposed by the Disciplinary Panel.
- 2.3 If the Institute provides a Member (or former Member) a Revocation Notice under clause 15 of By-Law 10 that any awards or honours granted to the Member by the Institute is rescinded, revoked or cancelled, then the Member (or former Member) may appeal against such rescission, revocation or cancellation imposed by the Institute.

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## **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 a Revocation Notice from the Institute (as applicable), or such longer period as that Panel or Institute (as applicable) may allow, give notice of appeal of the terms of the Order of the Disciplinary Panel or Revocation Notice from the Institute (as applicable) 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 or a Revocation Notice by the Institute. The grounds so stated must not thereafter be amended, other than with the discretion of the Appeal Panel hearing the Appeal.

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## **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 or a Revocation Notice by the Institute.
- 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).

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

The following By-Law is enacted by the National Council pursuant to clause 56 of the Constitution of the Institute (the “Constitution”).

This By-Law has effect from 21 June 2022.

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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 or a Revocation Notice issued by the Institute in respect of a Member.

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## **2 Procedure for an appeal by a Member against a finding, sanction or Revocation Notice**

- 2.1 Upon receipt of an Appeal from a Member in accordance with By-Law 11, 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 **(If the Appeal is in relation to an Order of the Disciplinary Panel)** No person who has been a member of the Disciplinary Panel hearing for the Complaint may also be a member of the Appeal Panel hearing for the Appeal in respect of the findings of and/or sanctions imposed by the Disciplinary Panel.
- 2.4 **(If the Appeal is in relation to a Revocation Notice)** No person who was involved in the decision making to issue the Revocation Notice may also be a member of the Appeal Panel hearing for the Appeal in respect of a Revocation Notice. 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 (if any) 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 (as applicable), 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 or to which the Revocation Notice applies to, 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 of 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 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.
- 4.6 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 Adjournments**

- 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 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:
- (a) 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; or

- (b) affirm or rescind the Revocation Notice made by the Institute or may substitute the Revocation Notice subject of the Appeal with another Revocation Notice with conditions.
- 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 or a Revocation Notice is affirmed, 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.

# BY-LAW NO. 13 OF THE TAX INSTITUTE

## (the "Institute")

### DEFINITIONS AND INTERPRETATION

The following By-Law is enacted by the National Council pursuant to clause 56 of the Constitution of the Institute (the "Constitution").

This By-Law has effect from **21 June 2022**.

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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 11.

**Appeal Chairperson** means the chairperson appointed by the National Council in accordance with clause 2 of By-Law 12 to chair the Appeal Panel.

**Appeal Document** means the document satisfying the requirements of clause 3 of By-Law 11 in relation to a particular Appeal.

**Appeal Panel** means the appeal panel appointed by the National Council in accordance with clause 2 of By-Law 12.

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

**Chairperson** or **Chair** means the person appointed by the National Council in accordance with clause 2 of By-law 10 to chair the Disciplinary Committee.

**Chair of the Appeal Panel** means the person appointed by the Chair to be the Chair of the Appeal Panel under clause 3 of By-Law 12.

**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 8.

**Complaint Number** means an identification number allocated to identify a Complaint in accordance with clause 5 of By-Law 8.



**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 5 of Bylaw 8

**Deputy Chairperson** means the deputy chairperson appointed by the National Council in accordance with clause 3 of By-law 10 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 By-Law 10.

**Disciplinary Event** means an event or action specified in clause 2 of By-Law 8.

**Disciplinary Panel** means the disciplinary panel appointed by the National Council in accordance with By-law 10.

**Finding** means a finding made by the Disciplinary Committee under By-Law 10.

**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 By-Law 9.

**Membership** means membership of the Institute.

**Order** means an order made by the Disciplinary Committee under By-Law 10.

**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.

**Revocation Notice** has the meaning given to it under By-Law 10.

**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