

**CORPORATIONS ACT 2001
PUBLIC COMPANY LIMITED BY GUARANTEE**

**CONSTITUTION OF
THE TAX INSTITUTE
ACN 008 392 372**

TABLE OF CONTENTS

STATUS AND GOVERNANCE	1
1. Company name and type	1
2. Member liability and guarantee	1
3. Replaceable rules	1
4. Objects	1
5. No distribution to Members	1
6. ASIC Licence	2
MEMBERS	2
7. Membership	2
8. Admission to Membership	2
9. Classes of Membership	3
10. Member Fees	3
11. Certificates of Membership	3
12. Conduct of Members	3
13. Suspension or termination of Membership	3
GENERAL MEETINGS	4
14. Calling of meetings of Members by a Director	4
15. Calling of general meetings	4
16. Annual general meetings	4
17. Amount of notice of meetings	5
18. Notice of meetings	5
19. Notice of adjourned meetings	5
20. Members' resolutions	5
21. Time and place for meetings of Members	5
22. Members' Meetings - Technology	5
23. Quorum	5
24. Chairing meetings of Members	6
25. Proxies and body corporate representatives	6
26. Voting at meetings of Members	7
27. Objections to right to vote	7
28. How voting is carried out	8
29. Matters on which a poll may be demanded	8
29.1. A poll may be demanded on any resolution including resolutions concerning the election of the chairperson of the meeting or the adjournment of the meeting in accordance with the Act.	8
29.2. A demand for a poll may be withdrawn.	8
30. When and how polls must be taken	8
DIRECTORS	8
31. Number of Directors	8
NATIONAL COUNCIL	8
32. Appointment	8
33. Term	9
34. Removal & Vacation of Office	9
35. Casual Vacancies	10
36. Alternate Director	10
37. Powers	11

38.	Calling National Council meetings	11
39.	Use of Technology	11
40.	Chairing National Council meetings	11
41.	Quorum at National Council meetings	11
42.	Passing of National Council resolutions	12
43.	Circulating resolutions of National Council	12
44.	Delegation	12
45.	Treasurer and Standing Committees	12
46.	Validity of Actions	12
47.	Institute's attorney	13
PRESIDENT AND VICE PRESIDENT		13
48.	Appointment.....	13
49.	Term.....	13
CHIEF EXECUTIVE OFFICER.....		13
50.	Chief Executive Officer.....	13
SECRETARY		14
51.	Appointment of Secretary	14
STATE DIVISIONS & STATE COUNCILS.....		14
52.	State Divisions	14
53.	Establishment & Management by the National Council	14
54.	Operation.....	15
BY-LAWS.....		15
55.	By-Laws.....	15
RECORDS & AUDIT		15
56.	Minutes	15
57.	Financial Records.....	15
58.	Audit	16
WINDING UP.....		16
59.	Distribution of Property.....	16
60.	Prohibition.....	16
INDEMNITY & INSURANCE		16
61.	Indemnity of Directors.....	16
62.	Indemnity of Officers or Employees	17
63.	Indemnity for legal costs.....	17
64.	Limit of indemnity	17
65.	Payment of insurance premiums.....	18
NOTICES		18
66.	Notices.....	18
DEFINITIONS & INTERPRETATION		19
67.	Definitions	19
68.	Interpretation.....	21

STATUS AND GOVERNANCE

1. Company name and type

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

2. Member liability and guarantee

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

3. Replaceable rules

The replaceable rules in the Act do not apply to the Institute.

4. Objects

- 4.1 The objects of the Institute are to:
- (a) advance public knowledge and understanding of Taxation Laws, the practices of public authorities administering Taxation Laws and the attitude of Governments to Taxation Laws;
 - (b) advance education in relation to taxation and Taxation Laws;
 - (c) encourage and facilitate the study of taxation and Taxation Laws;
 - (d) encourage research into the reform of any Taxation Law; and
 - (e) disseminate information concerning the work of the Institute.
- 4.2 The income and property of the Institute must be applied solely to promote the objects of the Institute.

5. No distribution to Members

- 5.1 The Institute must not make any distributions to Members, whether by way of dividend, bonus, surplus in winding up or otherwise.

- 5.2 Clause 5.1 does not prevent the Institute, with the approval of the National Council acting in good faith, paying:
- (a) reasonable remuneration to a Member for professional or technical services actually rendered to the Institute as an employee, contractor or consultant;
 - (b) for goods supplied by a Member to the Institute in the ordinary course of business;
 - (c) interest, at a reasonable rate on money borrowed by the Institute from a Member;
 - (d) reasonable rent for premises leased to the Institute by a Member;
 - (e) out of pocket expenses incurred by a Member for or on behalf of the Institute;
 - (f) reasonable remuneration to the President of the Institute for professional or technical services rendered to the Institute;
 - (g) any other reasonable amount of similar character to those described in paragraphs (a) to (f) of this clause.

6. ASIC Licence

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

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

MEMBERS

7. Membership

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

8. Admission to Membership

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

9. Classes of Membership

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

10. Member Fees

10.1 The Institute may require the payment of any membership application fees, annual subscriptions and other membership levies by Members in the amounts and at such times and in such manner as determined by the National Council from time to time in accordance with the By-Laws.

10.2 The National Council may in its discretion:

- (a) set different fees for different classes of membership;
- (b) determine that no membership application fees, annual subscriptions or other membership levies are payable by a Member or Members (in whole or in part) for any year; and
- (c) extend the time for payment of membership application fees, annual subscriptions and other membership levies by any Member or class of Members.

11. Certificates of Membership

11.1 The National Council may issue a certificate of membership to Members in such form and upon payment of such fees as it may prescribe from time to time.

11.2 Certificates of membership remain the property of the Institute and must be promptly returned to the Institute if requested by the National Council or if the holder of the certificate ceases to be a Member.

12. Conduct of Members

12.1 Each Member is bound by and must comply with this Constitution and any By-Laws prescribed by the National Council as amended from time to time.

12.2 A Member must notify the Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership, a class of membership or to membership of a Division.

13. Suspension or termination of Membership

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

GENERAL MEETINGS

14. Calling of meetings of Members by a Director

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

15. Calling of general meetings

15.1 The National Council must call and arrange to hold a general meeting upon receipt of a request from the Members made in accordance with any mandatory provision of the Act.

15.2 Members with more than 50% of the votes of all of the Members who are entitled by the Act to request the calling of a general meeting may call and arrange to hold a general meeting if the National Council does not call a meeting within 21 days after the request is given to the Institute.

15.3 Members with at least 5% of the votes that may be cast at a general meeting of the Institute (or such greater percentage as the Act may prescribe) may call, and arrange to hold, a general meeting. The Members calling the meeting must pay the expenses of calling and holding the meeting.

15.4 A general meeting of a Division may be called:

- (a) at any time by the National Council;
- (b) at any time by the State Council or Divisional Council of the Division;
or
- (c) by the State Council or Divisional Council of the Division at the written request of the lesser of:
 - (i) not less than one tenth of the Financial Members of the Division; and
 - (ii) fifty Financial Members of the Division.

16. Annual general meetings

The Institute must hold an annual general meeting at least once in each calendar year and within five months after the end of its Financial Year to:

- (a) receive the statements, accounts and report of the National Council and the Auditor for the preceding Financial Year;
- (b) receive the report of the chair identifying all current Directors and the date on which the term of each such member is due to expire;
- (c) consider any matter submitted to the meeting in accordance with this Constitution or the Act;

- (d) transact any other business which under this Constitution ought to be transacted at an annual general meeting of the Institute.

17. Amount of notice of meetings

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

18. Notice of meetings

18.1 Written notice of a meeting of Members must be given individually to each Member entitled to receive notice of the meeting, to the Auditor and to each Director in the manner provided in this Constitution and in accordance with the Act.

18.2 Subject to the Act, notice of a meeting of Members required to be served or given by the Institute may be served upon or given to Members by public advertisement of the notice in the official journal of the Institute, and the sending of the journal addressed to the Member as provided in clause 66.1 will be deemed to be appropriate notice.

18.3 The accidental omission to give notice of a meeting to or the non receipt of notice of a meeting by a person entitled to notice, does not invalidate any proceedings at the meeting.

19. Notice of adjourned meetings

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

20. Members' resolutions

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

21. Time and place for meetings of Members

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

22. Members' Meetings - Technology

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

23. Quorum

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

- 23.2** In determining whether a quorum is present:
- (a) subject to sub-clause (c) an individual who attends as a proxy or body corporate representative is counted;
 - (b) if a Member has appointed more than one proxy or representative, only one of them is to be counted; and
 - (c) an individual who attends both as a Member and as a proxy or representative, is counted only once.
- 23.3** Subject to clause 23.5 a meeting of the Institute's Members that does not have a quorum present within 15 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date (not being more than 14 days after such meeting), time and place the chair of the meeting specifies. If the chair of the meeting does not specify one or more of those requirements, the meeting is adjourned to:
- (a) if the date is not specified, the same day in the next week;
 - (b) if the time is not specified, the same time; or
 - (c) if the place is not specified, the same place.
- 23.4** If a quorum is not present at the resumed meeting of the Institute's Members within 15 minutes after the time for the meeting, the Members present constitute a quorum.
- 23.5** If a meeting of the Institute's Members that does not have a quorum present within 15 minutes after the time set for the meeting was a meeting convened on the requisition of the Members, the meeting is dissolved.

24. Chairperson and adjournment of meetings of Members

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

25. Proxies and body corporate representatives

- 25.1** A Member who is entitled to attend and cast a vote at meetings of Members or meetings of a Division may appoint a proxy or, if the Member is a body corporate, a representative, to attend and cast a vote at that meeting.

- 25.2** A proxy or representative appointed under clause 25.1 must be appointed in accordance with the Act.
- 25.3** The instrument appointing a proxy and the power of attorney or other authority under which it is signed or a copy certified as a true copy by a person qualified to witness statutory declarations of that power or authority must be received at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy will not be treated as valid. The Secretary shall endorse the time of receipt of every instrument appointing a proxy.
- 25.4** A vote given in accordance with the terms of an instrument of proxy or attorney is valid despite the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, provided that no intimation in writing of such death, unsoundness of mind or revocation has been received by the Institute at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used.
- 25.5** Only Members who have voting rights and are Financial Members are entitled to vote at meetings of Members, either personally or by proxy, or be reckoned in a quorum.
- 25.6** A proxy is entitled to vote on a show of hands.
- 25.7** If a Member appoints a proxy to attend and vote for the Member at a meeting and the Member is present at the meeting for which the proxy was appointed, the proxy's authority to speak and vote for the Member at the meeting is suspended while the Member is present at the meeting.

26. Voting at meetings of Members

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

27. Objections to right to vote

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

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

28. How voting is carried out

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

29. Matters on which a poll may be demanded

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

30. When and how polls must be taken

- 30.1** Subject to clause 30.2, a poll must be taken when and in the manner the chairperson of the meeting directs.
- 30.2** A poll on the election of a chairperson or on the question of an adjournment must be taken immediately without adjournment.

DIRECTORS

31. Number and Qualification of Directors

- 31.1** The Institute must have at least three Directors. At least two Directors must ordinarily reside in Australia.
- 31.2** A Director must be a Member who is eligible to be a member of a State or Divisional Council.

NATIONAL COUNCIL

32. Appointment

- 32.1** Each State Council is entitled to appoint one of its State Councillors to be a Director.
- 32.2** A State Council is entitled to appoint an additional Director for each additional two thousand Members or part thereof registered as residing in the State Division as at 30 September immediately preceding the date of appointment ("**Additional Director**").
- 32.3** If, during the term of an Additional Director, the number of Members registered as residing in the relevant State Division falls below the number required under clause 32.2 to appoint the Additional Director, the Additional Director may remain in office but during that period the State Council of that

State Division will not be entitled to appoint a replacement Director to fill the vacancy created if one of the other Directors appointed by the State Council subsequently resigns or is removed pursuant to clause 34. or becomes the President or Vice President.

- 32.4** A Director who becomes the President or Vice President continues to be a Director while he or she holds the office of President or Vice President.
- 32.5** A State Council is entitled to appoint a new Director to the National Council if a Director appointed by it becomes the President or Vice President.
- 32.6** If a vacancy occurs on the National Council in the position of a Director appointed under clauses 32.1, 32.2 or 32.5 the State Council who appointed the former Director is entitled to appoint a replacement Director for a term determined in accordance with clause 33.2 or to fill the position as a casual vacancy under clause 35.1.

33. Term

- 33.1** Subject to the other provisions of this Constitution Directors will be appointed for a term of three years commencing on 31 December in a year and ending on the third anniversary of the date of appointment.
- 33.2** If a Director is appointed by a State Council under clauses 32.1, 32.2, 32.5, 32.6 or 34.1:
 - (a) during the period from 1 January to 30 June in a year, the term of appointment of that Director ends on 31 December third occurring after the date of appointment;
 - (b) during the period from 1 July to 30 December in a year, the term of the appointment of that Director ends on 31 December fourth occurring after the date of appointment.
- 33.3** A Director is eligible for re-appointment for one further consecutive term of three years.
- 33.4** A Director is not precluded from appointment to President or Vice-President by virtue of having served as a Director for the maximum terms prescribed by this clause.

34. Removal & Vacation of Office

- 34.1** Subject to clause 32.3 a State Council may in meeting remove the Director or an Additional Director appointed by it at any time and appoint another member of the State Council in place of that Director or Additional Director.
- 34.2** A Director may at any time resign from the National Council by giving written notice of resignation to the Secretary at the Registered Office.
- 34.3** Subject to compliance with the Act, the Members in general meeting may by special resolution remove any Director before the expiration of his or her period of office and may by an ordinary resolution appoint another person in

his or her stead from the State Division the removed Director represented, for the balance of the term of appointment of the Director removed.

34.4 The office of Director shall be vacated if he or she:

- (a) resigns or is removed from office pursuant to clauses 34.1, 34.2 or 34.3;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) ceases to be a Member;
- (d) is suspended for any period from membership of the Institute;
- (e) ceases to be a director by virtue of the Act or becomes prohibited from being a director by reason of any order made under the Act;
- (f) is absent from three consecutive meetings of the National Council without permission of the National Council;
- (g) ceases to hold office as President or as Vice President other than on becoming President; or
- (h) is charged with a Serious Offence.

35. Casual Vacancies

35.1 If a vacancy occurs on the National Council as a result of clause 34.4(a)-(f), the State Council which appointed the vacating Director may treat the vacancy as a casual vacancy and appoint an interim replacement Director who shall hold office until 31 December next following the occurrence of the vacancy.

35.2 If a State Council fails to appoint a replacement Director pursuant to clause 35.1 within two months of the departure of the vacating Director, the National Council may appoint a replacement Director who shall hold office until 31 December next following the occurrence of the vacancy.

36. Alternate Director

36.1 A Director may appoint a member from his or her State Council to be his or her Alternate Director to exercise some or all of the Director's powers for any period.

36.2 If the appointing Director requests, the National Council must give the Alternate Director notice of National Council meetings.

36.3 When an Alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the appointing Director exercised the powers.

36.4 The appointing Director may terminate the Alternate Director's appointment at any time.

36.5 An appointment or termination of an Alternate Director must be in writing. A copy of the appointment must be given to the Secretary.

37. Powers

- 37.1** Subject to the Act, the National Council shall manage the business and affairs and control the funds and property of the Institute.
- 37.2** In addition to the powers and authorities expressly conferred upon the National Council by this Constitution, the National Council may exercise all such powers and do all such acts and things as may be exercised or done by the Institute and are not by this Constitution or by the Act expressly directed or required to be exercised or done by the Institute in general meeting.
- 37.3** The National Council may resolve from time to time how negotiable instruments are signed, drawn, accepted, endorsed or otherwise executed including execution by two Directors.

38. Calling National Council meetings

- 38.1** A National Council meeting may be called at any time by:
- (a) the President or Vice-President; or
 - (b) the Chief Executive Officer at the written request of a Director.
- 38.2** Not less than seven days notice in writing will be given of a National Council meeting except where, in the opinion of the President or the Vice President, a matter requires the immediate consideration of the National Council, in which event a meeting of the National Council may be called on not less than 48 hours notice in writing.
- 38.3** Notice of meetings of the National Council must specify the place, date and time of the meeting and the business to be conducted at the meeting.

39. Use of Technology

As long as all Directors consent, a National Council meeting may be called or held using any technology which allows all of the Directors participating in the meeting to hear each other at the same time. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable period before the meeting.

40. Chairing National Council meetings

- 40.1** The President or, in his or her absence or if he or she is unwilling to act, the Vice-President will chair National Council meetings.
- 40.2** If the President or the Vice-President are not present at the meeting within 15 minutes after the time appointed for the meeting or are unwilling to act, the National Council shall choose a Director present to chair all or part of the meeting.

41. Quorum at National Council meetings

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

42. Passing of National Council resolutions

42.1 A National Council resolution must be passed as an ordinary resolution.

42.2 In the case of equality of votes:

(a) the person chairing the meeting does not have a second or casting vote; and

(b) the resolution is not carried.

43. Circulating resolutions of National Council

43.2 The National Council may pass a resolution without a National Council meeting being held if 75 percent or more of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

43.3 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

43.4 The resolution is passed when the last Director constituting 75 percent or more of the Directors entitled to vote on the resolution signs.

44. Delegation

44.2 The National Council may delegate any of its powers to a State Council or a committee of any one or more Directors or the Chief Executive Officer.

44.3 The delegate must exercise the delegated powers in accordance with any directions of the National Council.

44.4 The effect of the delegate exercising a delegated power is the same as if the National Council exercised it.

44.5 The National Council may withdraw any delegated power at any time.

45. Treasurer and Standing Committees

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

45.3 Clauses 38 to 43 inclusive apply to meetings of the Standing Committees and references to the "National Council" are to be read as referring to the Standing Committee.

46. Validity of Actions

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

47. Institute's attorney

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

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

PRESIDENT AND VICE PRESIDENT

48. Appointment

48.1 No later than 31 December each year, the National Council shall in meeting:

- (a) subject to clause 48.1(b), appoint a new Vice-President from amongst the Directors;
- (b) appoint the current Vice-President to the position of President unless:
 - (i) the person currently holding office as President is re-elected by the National Council to that position; or
 - (ii) the National Council resolves otherwise, in which event the National Council shall appoint a new President from amongst the Directors; and
- (c) appoint other office holders (if any) from amongst the Directors.

48.2 Subject to clause 49, the President and Vice President may stand for re-election.

48.3 The duties and responsibilities of the President, the Vice President and other office holders (if any) will be as determined by the National Council from time to time.

49. Term

A person may hold office as President, Vice President or any other office holder appointed under clause 48.1(c) for up to a total of two consecutive years (in addition to any period served in the office to fill a casual vacancy) at any time.

CHIEF EXECUTIVE OFFICER

50. Chief Executive Officer

50.1 The National Council may appoint a person as the Chief Executive Officer of the Institute for the period and on the terms (including as to remuneration) as the National Council resolves.

50.2 The Chief Executive Officer shall:

- (a) be responsible for the day to day management and operation of the Institute;

- (b) implement the strategic direction of the Institute; and
- (c) have such other powers as the National Council may delegate to the Chief Executive Officer from time to time.

50.3 The National Council may revoke or vary:

- (a) the appointment of the Chief Executive Officer; or
- (b) any of the powers conferred on the Chief Executive Officer.

SECRETARY

51. Appointment of Secretary

51.1 The Institute must have a Secretary or Secretaries. At least one of them must ordinarily reside in Australia.

51.2 The Secretary shall be appointed by the National Council on such terms and conditions as the National Council thinks fit.

STATE DIVISIONS & STATE COUNCILS

52. State Divisions

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

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

53. Establishment & Management by the National Council

53.1 The National Council may from time to time establish a council for a State (a "State Council") or Division (a "Divisional Council") for the purpose of managing any affairs of the Institute in that State or Division.

53.2 Members of a State Council or Divisional Council shall be elected by the members of the relevant State or Division under the direction of the National Council pursuant to clause 54.

53.3 No more than one council shall be created for a State or Division.

53.4 The National Council shall from time to time delegate for such period and on such terms as it thinks fit such of its powers to State Councils and Divisional Councils and amend and revoke such delegated powers at any time in its discretion.

53.5 The operation of State Councils and Divisional Councils shall be as prescribed by the National Council from time to time.

53.6 The National Council may at any time remove a State Council or Divisional Council, or suspend the operation of a State Council or Divisional Council

for such period of time as determined by the National Council, if two-thirds of the Directors resolve that the State Council or Divisional Council is unable to carry on its affairs in accordance with the directions of the National Council and in the best interests of the Institute.

54. Operation

54.1 Without limiting clause 53, the National Council may from time to time:

- (a) appoint or provide for the election or appointment of Members to State or Divisional Councils; and
- (b) define the powers, authorities and procedures of the Divisions and State or Divisional Councils in the By-Laws,

and vary, amend, add to and remove such appointments, powers, authorities and procedures from time to time.

54.2 Power exercised by a State or Divisional Council in accordance with a delegation of the National Council is treated as exercised by the National Council.

BY-LAWS

55. By-Laws

55.1 The National Council may from time to time prescribe By-Laws of the Institute on such matters considered necessary or expedient to carry out the purposes of the Institute or for the regulation, management and control of the Institute's affairs.

55.2 By-Laws shall be adopted, amended or repealed by the National Council in meeting by a majority of no less than two thirds of the Directors.

55.3 In the event of any inconsistency between this Constitution and any By-Law, this Constitution prevails.

55.4 The National Council must publish By-Laws adopted or amended pursuant to this clause in either the Institute's journal or on the Institute's website as soon as practicable.

RECORDS & AUDIT

56. Minutes

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

57. Financial Records

The Institute must:

(a) keep written financial records and allow access to such financial records;
and

(b) prepare, disclose, report and lodge financial reports (as required),

in accordance with the Act.

58. Audit

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

WINDING UP

59. Distribution of Property

If upon the winding up or dissolution of the Institute there remains after the satisfaction of all its debts and the liabilities any property whatsoever the same shall be given or transferred to some other institution or institutions in Australia:

(a) having objects similar to the Institute;

(b) which prohibits the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Institute under or by virtue of clause 5; and

(c) (if at the time of winding up or dissolution the Institute is endorsed as an income tax exempt charity pursuant to the Tax Act) which is endorsed as an income tax exempt charity for the purposes of the Tax Act,

such institution or institutions to be determined by the National Council at or before the time of dissolution and in default thereof by the Chief Judge in Equity of the Supreme Court of New South Wales or any Judge of that Court as may have or acquire jurisdiction in the matter.

60. Prohibition

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

INDEMNITY & INSURANCE

61. Indemnity of Directors

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

(a) a liability owed to the Institute or a related body corporate;

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

62. Indemnity of Officers or Employees

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

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

63. Indemnity for legal costs

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

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clauses 61 or 62;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (other than costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the person under the Act in which the court denies the relief.

For the purposes of this clause 63:

- (a) "proceedings" includes the outcome of the proceedings and any appeal in relation to the proceedings; and
- (b) legal costs include costs incurred in any court, arbitration, mediation, tribunal or commission however constituted and however named.

64. Limit of indemnity

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

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

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

65. Payment of insurance premiums

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

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

NOTICES

66. Notices

66.1. Any notice required to be given by any clause of this Constitution or by any

By-Law shall be served in writing upon any Member or person either personally or by sending the same through the post in a prepaid letter addressed to such Member or person at his or her address as entered in the Register of Members or at his or her last known place of residence or business, by faxing to a number nominated by the Member or person or by sending it to an electronic address (if any) nominated by the Member or person. The non-receipt of such notice shall not invalidate the proceedings of any meeting referred to in the notice.

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

DEFINITIONS & INTERPRETATION

67. Definitions

In this Constitution, unless the context otherwise requires:

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

Alternate Director means a person appointed to this position pursuant to clause 36;

ASIC means the Australian Securities and Investments Commission;

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

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

By-Laws means the by-laws of the Institute prescribed, adopted or amended by the National Council from time to time in accordance with clause 55;

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

Constitution means this Constitution as amended from time to time;

Director means a director on the National Council and includes the President, Vice-President and others described and appointed in accordance with clause 32, and Alternate Directors, unless stated otherwise;

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

Divisional Council means a council for a Division;

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

Financial Year means the period of twelve months commencing from 1 January and ending on 31 December of that year;

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

Institute means the company named in clause 1;

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

Month means calendar month;

National Council means the board of Directors of the Institute;

Officer means where the context permits:

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

President means the person appointed to that office pursuant to clause 48;

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

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

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

Serious Offence means:

- (a) an offence against the laws of a State, a Territory or the Commonwealth of Australia or against the laws of a foreign country that:
 - (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 12 months.

Standing Committee means any of the Education Committee, the Membership Committee and the Technical Committee and such other committees established by the National Council from time to time;

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

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

State Councillor means a member of a State Council;

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

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

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

Vice-President means the person appointed to that office pursuant to clause 48.

68. Interpretation

- (a) Words and phrases which are given a special meaning by the Act have the same meaning in this Constitution, unless the contrary intention appears.
- (b) Words in the singular include the plural and vice versa.

BY-LAW NO. 1 OF THE TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

MEMBERSHIP

With effect from 23 February 2010 the following By-Law is enacted by the National Council pursuant to clause 55 and for the purpose of clause 8 of the Constitution of the Institute (the "**Constitution**").

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 4.

Associate means a person admitted as a Member in accordance with clause 3.

CPD means Continuing Professional Development.

Fellow means a person admitted as a Member in accordance with clause 2.

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-rata'd 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 cases¹.

Membership criteria means 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;

(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;

(c) the member or applicant has the academic qualifications required to be an Australian legal practitioner;

(d) 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 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 as in force immediately before 1 March 2010²;

(e) the member or applicant has the equivalent of 8 years of full-time experience in providing tax agent services in the past 10 years.

Tax agent service means any service:

(a) that relates to:

(i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a *taxation law; or

(ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or

(iii) representing an entity in their dealings with the Commissioner; and

(b) that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:

(i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;

(ii) to claim entitlements that arise, or could arise, under a taxation law,

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.

If the definition of **Tax agent service** contained in the Tax Agent Services Act 2009 is altered, then the definition of **Tax agent service** in this By-law will be altered to that altered definition with effect from the date upon which that altered definition takes effect.

2. Fellow Member of the Institute

2.1 A person who is a Fellow at 1 March 2010 will retain that status subject to clause 6 of this By-Law and the Constitution, provided that he or she meets one of the Membership Criteria.

2.2 From 1 March 2010 a person will be eligible to apply to be admitted as a Fellow of the Institute if he or she:

(a) Meets one of the Membership Criteria;

(b) Is of good fame, integrity and character;

(c) has passed the Advanced Tax course; and

(d) has at least 5 years relevant experience.

2.3 A person who is a Fellow at 1 March 2010 and who complies with Clause 6 of this By-law, but who cannot meet one of the Membership Criteria, may retain his or her status as a Fellow but is not entitled to vote at a meeting of the Institute or the Member's State Division³.

3. Associate Member of the Institute

3.1 A person who is an Associate at 1 March 2010 will retain that status subject to clause 6 of this By-Law and the Constitution, provided that he or she meets one of the Membership Criteria

3.2 From 1 March 2010 a person will be eligible to apply to be admitted as an Associate of the Institute if he or she:

- (a) Meets one of the Membership Criteria;
- (b) Is of good fame, integrity and character; and
- (c) has at least 3 years relevant experience or has passed the Applied Tax course.

3.3 A person who is an Associate at 1 March 2010 and who complies with Clause 6 of this By-law, but who cannot meet one of the Membership Criteria, may retain his or her status as an Associate but is not entitled to vote at a meeting of the Institute or the Member's State Division⁴.

4. Affiliate Member of the Institute

4.1 From 1 March 2010 a person will be eligible to apply to be admitted as an Affiliate of the Institute if he or she is of good fame, integrity and character⁵ and satisfies one or more of the following criteria:

- (a) has passed the Foundation Tax course;
- (b) does not have 3 years relevant tax experience but would otherwise qualify for admission as an Associate under Clause 3.2(a)⁶;
- (c) is enrolled in the Applied Tax course;
- (d) is employed by the Australia Taxation Office or a Revenue Office of the Commonwealth or a State or Territory engaged in taxation practice or administration; or
- (e) is a person having an interest in the affairs of the Institute who National Council resolves to admit as an Affiliate.

5. Membership Rights

5.1 Subject to the operation of the other by-laws including other parts of this by-law, Fellows and Associates enjoy all of the rights and privileges of full membership of the Institute, including the right to join in calling and vote at a meeting of the Institute or the Member's State Division and (subject to the Constitution) may hold any office in the Institute.

- 5.2 Fellows and Associates are obliged to meet the CPD requirements set out in Clause 6 of this By-Law for their category of membership.
 - 5.3 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.
 - 5.4 Student members admitted under By-Law No. 3 are entitled to the benefits of student membership. 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.
6. Continuing Professional Development
- 6.1 Fellows and Associates must complete at least 30 hours of CPD each year to maintain and improve their skills as tax professionals. A minimum of 15 hours of CPD must be structured CPD.
 - 6.2 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 CPD programs that are relevant to tax professionals offered by other organisations and educational providers of appropriate or equivalent professional standing.
 - 6.3 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.
 - 6.4 The Institute may ask a 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 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, National Council may impose a condition or conditions on the Member to retain or regain their existing membership category or may cancel that membership.
7. Applicant to be of good fame, integrity and character
- 7.1 An applicant for membership of the Institute must be of good fame, integrity and character.
 - 7.2 National Council may require an applicant for membership of the Institute to provide such evidence of their good fame, integrity and character as National Council may determine.
 - 7.3 National Council has the right to make other enquiries as to an applicant's good fame, integrity and character in its absolute discretion.
8. Miscellaneous Matters
- 8.1 The operation of By-law 1 is subject to the operation of By-law 4.
 - 8.2 The By-Law 1 applying immediately prior to 23 February 2010 is repealed with effect from 23 February 2010.

BY-LAW NO. 2 OF THE TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

USE OF WORDS INDICATING MEMBERSHIP

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

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

Use of Words indicating Membership of the Institute

- a) So long as a person continues to be a Fellow Member, he or she may use the words "Fellow of the Taxation Institute of Australia" or "**FTIA**" after his or her name or signature.
- b) So long as a person continues to be an Associate Member, he or she may use the words "Associate of the Taxation Institute of Australia" or "**ATIA**" after his or her name or signature.
- c) A person who is elected as a Life Member of the Institute may use the words "Life Member of the Taxation Institute of Australia" or "**FTIA-Life**" after his or her name or signature.
- d) For the avoidance of doubt, if a Fellow, Associate or Life Member of the Institute is not permitted to vote at a meeting of the Institute (pursuant to By-law 1 clauses 2.3, 3.3, and By-law 7 clause 4 respectively) nothing in this By-law prohibits their use of the post-nominals outlined above.
- e) The operation of By-law 2 is subject to the operation of By-law 4.
- f) The By-Law 2 applying immediately prior to 23 February 2010 is repealed with effect from 23 February 2010.

BY-LAW NO. 3 OF THE TAXATION INSTITUTE OF AUSTRALIA (the “Institute”)

STUDENT MEMBERSHIP

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

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.

2. Student Member of the Institute

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

- (a) enrolled in the Foundation Tax 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 TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

SUSPENSION OF MEMBERSHIP AND CESSATION OF MEMBERSHIP

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

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

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.

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's Membership is cancelled in accordance with clause 4.1(b);
- (d) the Member's Membership ceases in accordance with clause 4.2;
- (e) the Disciplinary Committee imposes a sanction of termination of Membership in respect of that Member pursuant to By-law 11 and that decision is not appealed against under By-Law 12 within the Appeal Period;
- (f) the Appeal Committee confirms a sanction of termination of Membership imposed by the Disciplinary Committee pursuant to By-law 11 in respect of that Member pursuant to By-law 13.
- (g) the Appeal Committee imposes a sanction of termination of Membership in respect of that Member pursuant to By-law 13;
- (h) the Member, before a court of competent jurisdiction, pleads guilty to, or is found guilty of, any Serious Offence and all avenues of appeal have been exhausted or no longer exist.

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 pursuant to By-law 11 and that decision is not appealed against under By-Law 12 within the Appeal Period;

(c) the Appeal Committee confirms a sanction of suspension of membership imposed the Disciplinary Committee pursuant to By-law 11 in respect of that Member pursuant to By-law 13;

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

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 and fails to pay such arrears within one month of the date of issue of a notice issued by the Institute requiring the Member to do so, the National Council may at any time thereafter in its discretion:

(a) Suspend, for a period of time, 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.

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.

6 MAINTENANCE OF THE REGISTER OF MEMBERS

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

7 RE-ADMITTANCE TO MEMBERSHIP

7.1 The National Council may, at its discretion, but having regard to the requirements of By-Law 1, re-admit a Member whose Membership has ceased in accordance with this By-Law on terms and conditions as the National Council thinks fit, including without limitation requirements that the person undertake additional education and pay all money owing by the Member to the Institute as at the date their Membership ceased and all moneys that would have become payable to the Institute had the person remained a Member up to the date of readmission.

BY-LAW NO. 5 OF THE TAXATION INSTITUTE OF AUSTRALIA (the “Institute”)

Member Logo

The Institute’s Member Logo is available from the Institute for use by Fellow Members in accordance with this By-Law and the Member Logo Guidelines published by the Institute. The Guidelines are available to Members on the Taxation Institute Website or upon request.

The Institute’s Member Logo may be used by Fellow Members to promote their membership of the Institute and FTIA 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.

Fellow Members must only use the Member Logo that has been authorised by the Institute. No alteration or redesign of the logo is permitted.

Subject to the conditions outlined in the Guidelines Fellow 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.

The right to use the Member Logo ceases if the Member ceases to satisfy the requirements for membership as a Fellow of the Institute.

**BY-LAW NO. 6 OF THE TAXATION INSTITUTE OF AUSTRALIA
(the "Institute")**

MEMBER FEES

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

Until otherwise determined by 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) annual subscriptions will be set for 12 months commencing on 1 July each year;
- (c) 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 published on the Institute's website.

BY-LAW NO. 7 OF THE TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

LIFE MEMBERSHIP

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

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

1. 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 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.¹
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.

TAXATION INSTITUTE OF AUSTRALIA

BY-LAW 8

RULES FOR THE ELECTION OR APPOINTMENT OF MEMBERS OF STATE COUNCILS

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

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

Definitions and interpretations

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

"Serious Offence" means:

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

Election or appointment of State Councillors

- 1.1 To be eligible to become or to continue as a member of a State Council a person must be a financial Associate or Fellow member of the State Division and be of good fame, integrity and character. Without limitation a person will not be eligible to hold office in the Institute if:
 - 1.1.1 the person is charged with or serving a sentence for a Serious Offence;
 - 1.1.2 the person has been convicted of a Serious Offence but does not serve a term of imprisonment and a period of 5 years has not elapsed since the day on which the person was convicted;
 - 1.1.3 the person has been convicted of a Serious Offence and served a term of imprisonment and a period of 5 years has not elapsed since the day on which the person was released from prison; or
 - 1.1.4 The person would be upon election or appointment subject to removal as a State councillor under the Constitution, procedures or by-laws
 - 1.1.5 The person is not eligible to vote at a meeting of the Institute or of a State Division pursuant to By-law 1 clauses 2.3 or 3.3, or By-law 7 clause 4.

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

2. Rules for the conduct of State Council elections

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

vote. The Returning Officer shall provide the Member a distinct form of envelope in accordance with the form set out in Schedule "D" in which to insert such vote.

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

result of the ballot PROVIDED HOWEVER that in the event of both a candidate and the scrutineer for that candidate being absent and/or the Returning Officer not making a declaration of the result of the Election at the completion of the scrutiny THEN the Returning Officer shall forward to each of the candidates a copy of such declaration within 24 hours of the making of same and it shall be forwarded to the candidate at the address shown in the nomination form or such other address as the candidate shall have furnished in writing to the Returning Officer for this purpose.

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

SCHEDULE "A"

TAXATION INSTITUTE OF AUSTRALIA

(Name of) DIVISION

BALLOT PAPER

How to Vote

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

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

.....

Initials of Returning Officer

(Surname), (Given Names)

ditto ditto

ditto ditto

ditto ditto

(Order to be determined by lot)

SCHEDULE "B"

CERTIFICATE TO BE ENDORSED ON RETURN

ENVELOPE

VOTER CERTIFICATE

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

.....

Signature of Member

.....

Signature of Witness (not a candidate)

.....

Address of Witness

SCHEDULE "C"

ADDRESS FOR RETURN ENVELOPE

RETURNING OFFICER

TAXATION INSTITUTE OF AUSTRALIA

..... (State)

..... (Address)

.....

#####

SCHEDULE "D"

ADDRESS FOR RETURN ENVELOPE (SECOND BALLOT PAPER)

(SEPARATE CUSTODY)

RETURNING OFFICER

TAXATION INSTITUTE OF AUSTRALIA

..... (State)

..... (Address)

.....

SCHEDULE "E"

TAXATION INSTITUTE OF AUSTRALIA

AUTHORITY OF SCRUTINEER

I, (name) a duly nominated Candidate for the Ballot for the (name)

State Council do hereby appoint (name) of

..... (address) to be scrutineer at the Ballot to be held on the day of

..... 20...

Dated at (name of town) this day of 20

Signature

SCHEDULE "F"

TAXATION INSTITUTE OF AUSTRALIA

DECLARATION OF SCRUTINEER

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

..... (name of candidate) a candidate for the election for the (name of State)

State Council do hereby solemnly and sincerely declare that I will faithfully assist

at such scrutiny and that I will not attempt to improperly discover, or by word or

action directly or indirectly aid in discovering, the person by whom any vote is

given; and that I will keep secret all knowledge of the person by whom any vote

given, which I may obtain in the exercise of my office, unless in answer to any

question which I am legally bound to answer.

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

.....
A Justice of the Peace

SCHEDULE "G"

TAXATION INSTITUTE OF AUSTRALIA

(NAME OF) DIVISION

DECLARATION OF POLL

I hereby certify the formal votes cast to be

as follows: (list names and total votes) thereby resulting in the election of

..... (names).

Date

Signed

Returning Officer

[WP51\R1\TIAELEC.DOC]

BY-LAW NO. 9 OF THE TAXATION INSTITUTE OF AUSTRALIA

(the "Institute")

DEALING WITH COMPLAINTS

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

This By-Law has effect from 20 April 2010.

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.

2 DEALING WITH COMPLAINTS

- 2.1 If a person makes a Complaint against a Member, the Complaint will be investigated by an Investigator in accordance with the procedures set out in By-Law 10.
- 2.2 On completion of the investigation of the Complaint by the Investigator, the Investigator will place the Investigation File before the Chairperson of the Disciplinary Committee.
- 2.3 All Complaints must be referred to and considered by the Disciplinary Committee.
- 2.4 Upon receipt of the Investigation File from the Investigator, the Chairman of the Disciplinary Committee will empanel the Disciplinary Committee to consider the Complaint.
- 2.5 Proceedings of the Disciplinary Committee will be conducted in accordance with By-Law 11 and the Disciplinary Committee may make findings (including a finding that the Complaint is not made out) and impose sanctions in accordance with By-Law 11.
- 2.6 A member who is the subject of a Complaint and in respect of whom the Disciplinary Committee has made findings and/or imposed sanctions may appeal against the findings and/or the sanctions imposed to the Appeal Committee in accordance with the rights and procedures set out in By-Law 12.
- 2.7 Proceedings of the Appeal Committee will be conducted in accordance with By-Law 13 and the Appeal Committee may make orders (including an order that the Complaint is not made out) and findings and may impose sanctions in accordance with By-Law 13.

3 DISCIPLINARY EVENT

- 3.1 Each of the following is a Disciplinary Event:
- (a) engaging in conduct which:

- (i) is unbecoming of a Member;
 - (ii) is prejudicial to or not in the best interests of the Institute; and/or
 - (iii) brings discredit on the Institute,
- (b) engaging in derogatory or discriminatory conduct or harassment of any type;
- (c) failing to observe a proper standard of professional care, skill or competence;
- (d) failing to comply with a written direction issued by the National Council in accordance with the Constitution or By-Laws of the Institute regarding good conduct or administration of the Institute;
- (e) being the subject of an adverse finding in relation to his or her professional conduct, competence or recognition by any body or authority having jurisdiction to do so;
- (f) being convicted of a Serious Offence;
- (g) in any civil proceedings in a court in Australia or elsewhere, being found to have acted dishonestly;
- (h) Involuntarily ceasing to be a director by virtue of the Act or being prohibited from being a director by reason of any order made under the Act;
- (i) becoming bankrupt or assigning his or her estate or entering into a deed of arrangement for the benefit of his or her creditors;
- (j) failing to comply with the Constitution or any By-Law of the Institute;
- (k) ceasing to meet the criteria for Membership of the Institute or of a class of Membership of the Institute;
- (l) failing to assist an Investigator to the extent required by the By-laws in the carrying out of an investigation of a Complaint;
- (m) contrary to the By-laws, hindering or obstructing an Investigator in the carrying out of an investigation of a Complaint;
- (n) failing to comply with a reasonable written direction by an Investigator in course of the carrying out of an investigation of a Complaint;
- (o) for any reason, ceasing to be a person of good fame, integrity and character.
- 3.2 The Disciplinary Events relevant to the making of and subsequent consideration of any Complaint will be those set out in the version of this By-law in force on the date or dates that the actions or events that are set out in the Complaint took place.
- 3.3 The procedures provided for in this By-law will apply to any Complaints initiated after the coming into force of this By-law. Any changes to this By-law will govern the procedure adopted on Complaints initiated after such changes come into force; but any subsequent changes to this By-law will not retrospectively adversely affect the rights and liabilities of the Member. The Member will not be liable for sanctions that were inapplicable at the time of the actions or events giving rise to the Complaint.

4 REQUIREMENTS FOR AN ACTIONABLE COMPLAINT

- 4.1 An actionable complaint must be:
- (a) In writing; and
 - (b) Identify the Member against whom the complaint is made; and
 - (c) Specify the breach of which Disciplinary Event or Disciplinary Events, the breach of which is alleged; and
 - (d) Identify and describe in sufficient detail the factual basis of the complaint; and
 - (e) Be addressed to the Complaints Officer at the Institute at its National Office located in Sydney; and
 - (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; and
 - (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 5.
- 4.2 The Institute may make a Complaint against a Member.
- 4.3 The Complaints Officer, in his or her absolute discretion, may waive strict compliance with requirements (c), (e), (g) and (h) of clause 4.1.
- 4.4 The Complaints Officer may in his or her discretion require the facts alleged by the person making the complaint to be reduced into a statutory declaration.

5 LODGEMENT OF A COMPLAINT

- 5.1 A complaint must be lodged in one of the following manners:
- (a) At the National Office of the Institute located in Sydney, New South Wales; or
 - (b) By facsimile to the Institute at facsimile number] 02 8223 0099; or
 - (c) By registered mail to the National Office of the Institute located in Sydney, New South Wales;
 - (d) By email to the Institute at Complaints@taxinstitute.com.au.
- 5.2 Where the Complaints Officer concludes 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 reference to 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.
- 5.3 Where the Complaints Officer concludes that the complaint is not a Complaint, this conclusion must be communicated to the person making the complaint together with

a brief explanation of the reason why the Complaints Officer has concluded that the complaint is not a Complaint.

6 RECORDING OF COMPLAINTS RECEIVED

6.1 The Complaints Officer will keep an electronic record of all complaints received and the electronic 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 Complaints Officer concludes the complaint is a Complaint;
- (e) Where the Complaints Officer concludes the complaint is a Complaint:
 - (i) the Complaint Number assigned to that Complaint;
 - (ii) the Investigator allocated to investigate the Complaint;
 - (iii) the date of allocation to that Investigator;
 - (iv) the date that the Investigator completes the investigation of the Complaint.

6.2 The Chairperson will review the Complaints Register at least once every 4 months to ensure that those complaints which are not treated as Complaints are not Complaints.

6.3 After each such review the Chairperson will table a report of the review at the next National Council meeting.

7 TREATMENT OF FEE DISPUTES

7.1 A complaint which involves a fee dispute where there exists a written agreement addressing fees will not be treated as forming part of a Complaint and will not be investigated.

BY-LAW NO. 10 OF THE TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

INVESTIGATION PROCEDURES

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

This By-Law has effect from 20 April 2010.

1 OVERVIEW

- 1.1 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.

2 APPOINTMENT OF AN INVESTIGATOR BY THE INSTITUTE

- 2.1 The Institute may from time to time appoint a person as an Investigator for the purposes of the By-Laws of the Institute.
- 2.2 A person appointed to be an Investigator for the purposes of the By-Laws of the Institute may be removed by the Institute by a notice in writing.

3 ALLOCATION OF A COMPLAINT TO AN INVESTIGATOR BY THE INSTITUTE

- 3.1 The Institute will maintain a system under which each communication received, which purports to be a Complaint is:
- (a) recorded as having been received by the Institute;
 - (b) considered by the Complaint Officer as to whether it constitutes a Complaint;
 - (c) if considered by the Complaint Officer to constitute a Complaint, allocated to an Investigator for the purpose of investigation by that Investigator with the intention that upon completion of the Investigation, the Investigator will place the Investigation File before the Disciplinary Committee.

4 CARRYING OUT OF THE INVESTIGATION BY AN INVESTIGATOR

- 4.1 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.
- 4.2 In carrying out an Investigation the Investigator will at all times act and proceed in a timely manner having regard to the subject matter of the Complaint.
- 4.3 The Investigator will be entitled to assistance in relation to carrying out of the Investigation from employees or contractors of the Institute.

5 OBTAINING INFORMATION AND DOCUMENTS

- 5.1 In the course of investigating a Complaint, the Investigator has the power to call for the provision by the Member of such information (if any) as is in the Member's power to give as the Investigator may consider relevant to the consideration of the Complaint.
- 5.2 In the course of investigating a Complaint, the Investigator has the power to call for the production by the Member of such documents (if any) as are in the Member's custody, control or power to produce as the Investigator may consider relevant to the consideration of the Complaint.
- 5.3 The Member must co-operate with the Investigator subject to the law and not hinder or obstruct the Investigator in the investigation of the Complaint.
- 5.4 In the course of investigating a Complaint, the Investigator has the power to call for the provision by the complainant of such information (if any) as is in the complainant's power to give as the Investigator may consider relevant to the consideration of the Complaint.
- 5.5 In the course of investigating a Complaint, the Investigator has the power to call for the production by the complainant of such documents (if any) as are in the complainant's custody, control or power to produce as the Investigator may consider relevant to the consideration of the Complaint.
- 5.6 The complainant must co-operate with the Investigator subject to the law and not hinder or obstruct the Investigator in the investigation of the Complaint.

6 CONFIDENTIALITY

- 6.1 During the course of an investigation, the Institute and its employees will take appropriate steps to ensure that the information obtained in the course of the investigation remains confidential within the Institute, subject to any other provision of the By-Laws.
- 6.2 During the course of an investigation, the Institute and its employees will take appropriate steps to ensure that the identity of the Member who is the subject of a complaint remains confidential within the Institute, subject to any other provision of the By-Laws.

7 DUE PROCESS TO A BE AFFORDED TO A MEMBER THE SUBJECT OF A COMPLAINT

- 7.1 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.
- 7.2 The Investigator may require any oral explanation or defence to be put in writing by the Member.
- 7.3 Any written explanation or defence of the relevant facts and events must be given by way of statutory declaration sworn by the Member.

8 WITHDRAWAL OF A COMPLAINT

- 8.1 If a Complaint is withdrawn in writing by the person who made the Complaint, then:

- (a) the Investigation will be completed at that time; and
- (b) the Investigation File will be completed with the inclusion of the information gathered up to that time; and
- (c) the Investigation File together with the withdrawal document will be placed before the Disciplinary Committee for recording the Complaint as “withdrawn”, unless the Disciplinary Committee determines that the Complaint should be investigated further.

9 SUSPENSION OF INVESTIGATION OF A COMPLAINT AGAINST A MEMBER PENDING OTHER MATTERS BEING RESOLVED

- 9.1 The Investigator, with the written consent of the Chairperson, in his or her absolute discretion, may determine to suspend or defer further Investigation of a Complaint against a Member, if the Investigator believes there are reasonable grounds for doing so.
- 9.2 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 Australian Taxation Office relating to the issues identified in the Complaint and/or a disciplinary decision by another RTAA relating to the issues identified in the Complaint.

10 PREPARATION BY INVESTIGATOR OF THE INVESTIGATION FILE

- 10.1 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.
- 10.2 The Investigator must include in the Investigation File a summary of the relevant facts and such recommendations as to the treatment of the Complaint, the findings (if any) that the Disciplinary Committee should make and the sanctions if (any) that the Disciplinary Committee should impose.
- 10.3 In addition the following must be included in the Investigation File:
 - (a) The Complaint;
 - (b) any written explanation or defence provided by the Member;
 - (c) Any third party statement concerning the basis of the Complaint;
 - (d) Any notes compiled by the Investigator concerning the basis of the Complaint;
 - (e) such other information as the Investigator considers appropriate.

BY-LAW NO. 11 OF THE TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

DISCIPLINARY COMMITTEE PROCEDURES

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

This By-Law has effect from 20 April 2010.

1 OVERVIEW

- 1.1 The purpose of this By-Law is to set out the procedures relating to the operation of the Disciplinary Committee in respect of a Complaint in respect of a Member.

2 APPOINTMENT OF CHAIRPERSON OF THE DISCIPLINARY COMMITTEE

- 2.1 The National Council may from time to time in writing appoint a person to be the chairperson of the Disciplinary Committee for a fixed term. The term of appointment will usually be for a period of 3 years. At the expiry of the term of office the person will be eligible for reappointment.
- 2.2 The Chairperson 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 replace a person as the Chairperson.

3 APPOINTMENT OF DEPUTY CHAIRPERSON OF THE DISCIPLINARY COMMITTEE

- 3.1 The National Council may from time to time in writing appoint a person to be the deputy chairperson of the Disciplinary Committee for a fixed term. The term of appointment will usually be for a period of 3 years. At the expiry of the term of office the person will be eligible for reappointment.
- 3.2 The Deputy Chairperson 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 replace a person as the Deputy Chairperson.
- 3.4 If the Chairperson is unavailable, the Deputy Chairperson will carry out the role of the Chairperson.
- 3.5 If both the Chairperson and the Deputy Chairperson are unavailable, the Chairperson will appoint a member of the Disciplinary Panel to carry out the role of the Chairperson.

4 APPOINTMENT OF MEMBERS OF THE DISCIPLINARY PANEL

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

5 PROCEDURE UPON DELIVERY OF THE INVESTIGATION FILE TO THE DISCIPLINARY COMMITTEE

- 5.1 Upon receipt of the Investigation File the Chairperson will consider the nature of the Complaint and empanel the Disciplinary Committee to consider the Complaint from the members of the Disciplinary Panel.
- 5.2 Unless determined otherwise by the Chairperson the Disciplinary Committee to consider a Complaint will comprise three or five persons chosen by the Chairperson from the members of the Disciplinary Panel.
- 5.3 In the course of empanelling the Disciplinary Committee from the members of the Disciplinary Panel to consider a particular Complaint the Chairperson must check to ascertain if any conflicts of interest will arise or are likely to arise if a particular member of the Disciplinary Panel is empanelled.
- 5.4 Upon the empanelling the Disciplinary Committee and obtaining a more thorough understanding of the details of the Member and the Complainant each member of the Disciplinary Committee will disclose any conflicts of interest which will arise or are likely to arise in relation to the Complainant or the Member who is the subject of the Complaint to the Chairperson.
- 5.5 The Chairperson is empowered to take whatever steps the Chairperson considers necessary including approaching the Member and the Complainant to resolve any perceived conflict of interest.
- 5.6 If a conflict of interest subsequently arises, the Chairperson will take what ever steps are necessary to resolve the matter.

6 DETERMINATION OF WHETHER A PRIMA FACIE CASE EXISTS

- 6.1 If after considering the Information File prepared by the Investigator the Disciplinary Committee, decides that there is a prima facie case to answer, the Disciplinary Committee will advise the Member of that in writing. The Disciplinary Committee will also provide the Member with a summary of the prima facie case to answer. The Complaint will then proceed to a Hearing.

- 6.2 If after considering the Investigation File prepared by the Investigator the Disciplinary Committee, decides that there is no prima facie case to answer, then it may decide that no further action should be taken at that time, and the Disciplinary Committee will advise the Member and the Complainant of that decision in writing.

7 SUSPENSION BY THE DISCIPLINARY COMMITTEE OF CONSIDERATION OF A COMPLAINT AGAINST A MEMBER PENDING OTHER MATTERS BEING RESOLVED

- 7.1 The Disciplinary Committee, 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.
- 7.2 Such grounds include, but are not limited to, any one or more of the following being proceedings of a civil or criminal nature being brought in a competent Court or Tribunal relating to the issues identified in the Complaint, a sanction by the Tax Practitioners Board relating to the issues identified in the Complaint, a sanction by the ATO relating to the issues identified in the Complaint, a disciplinary decision by another RTAA relating to the issues identified in the Complaint and the Disciplinary Committee recommending 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.

8 RESOLUTION OF A COMPLAINT BY THE DISCIPLINARY COMMITTEE ON A BASIS AGREED BY THE MEMBER AND THE COMPLAINANT

- 8.1 If the Disciplinary Committee believes there are reasonable grounds for doing so, the Disciplinary Committee, 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 (and is submitted to the Disciplinary Committee in a written form signed by both the Member and the Complainant).
- 8.2 The Disciplinary Committee may also order that the details of the Complaint and the terms of the agreement be kept confidential between the Member, the Complainant and the Disciplinary Committee.

9 MATTERS RELATING TO THE CONSIDERATION OF A COMPLAINT

- 9.1 If for any reason any member of the Disciplinary Committee so appointed is unable to attend the Hearing, or if during the course of the Hearing any member of such Disciplinary Committee is unable to continue to attend the Hearing, the remaining members of the Disciplinary Committee, provided that they are not less than two in number, may, at their discretion, proceed or continue with the Hearing.
- 9.2 In any case where the Hearing is not proceeded with by the remaining members of the Disciplinary Committee, and in any case where such remaining members of the Disciplinary Committee 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 Committee.
- 9.3 Whenever a Complaint is re-heard by a new Disciplinary Committee pursuant to this clause, any of the members of the original Disciplinary Committee may be appointed to the new Disciplinary Committee.

- 9.4 The Disciplinary Committee must act at the Hearing and in all other matters by a majority vote.
- 9.5 The Chairperson may by a written instrument make such regulations relating to matters not dealt with in this By-Law (not being inconsistent with the express provisions of the Constitution or the By-Laws) as may be considered by the Chairperson necessary for the performance by the Chairperson and by the Disciplinary Committee or both of them of their respective functions under this By-Law.

10 ALTERNATIVE DISPUTE RESOLUTION

- 10.1 If the Disciplinary Committee considering a Complaint is, in its absolute discretion, of the opinion that it is appropriate to do so, the Disciplinary Committee 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 Committee 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.

11 DUE PROCESS TO A BE AFFORDED TO A MEMBER THE SUBJECT OF A COMPLAINT

- 11.1 The Disciplinary Committee 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 Committee must provide the Member with at least twenty one 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 Committee;
 - (b) what is alleged against the Member;
 - (c) advice to the effect that the Member has the right to give any oral or written explanation or defence that the Member thinks fit.
- 11.2 The Member may appear before the Disciplinary Committee 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 only. The Disciplinary Committee will give the Member or the Member's representative a fair and reasonable opportunity of being heard before it.
- 11.3 The Member will be entitled to be heard before the Disciplinary Committee and will be permitted to be legally represented, to call witnesses and to cross-examine witnesses called by a person other than the Member.
- 11.4 If the Member does not attend the Hearing, then, provided that the Disciplinary Committee is satisfied that notice of that Hearing was served on the Member, the Disciplinary Committee may proceed to hear the Complaint in the absence of the Member.

- 11.5 If the Disciplinary Committee 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 Committee.

12 JOINDER OF COMPLAINTS AGAINST THE SAME MEMBER

- 12.1 The Chairperson may join two or more Complaints against a Member if the Chairperson considers it is appropriate to do so.
- 12.2 In such case, for the purposes of applying the provisions of this By-law, the Complaints will be treated as if they are all part of one Complaint against the Member.

13 MATTERS RELATING TO THE HEARING

- 13.1 The Hearing shall be conducted in such manner consistent with the principles of natural justice as the Chairperson conducting the Hearing may determine.
- 13.2 Proceedings of the Disciplinary Committee may be recorded. If proceedings are recorded, then the Member may request a copy of the recording and the Institute must provide a copy of the recording upon receiving an amount equal to the cost of copying the recording. A Member may cause the proceedings to be recorded or transcribed at the Member's cost. If the Member does so, the Institute may request a copy of the recording or the transcription or both (as the case may be). In such a case if a copy of the recording is requested the Member must provide a copy of the recording to the Institute upon receiving an amount equal to the cost of copying the recording. If a copy of the transcription is requested the Member must provide a copy of the transcription to the Institute upon receiving an amount equal to the cost of copying the transcription.
- 13.3 The Disciplinary Committee may instruct a solicitor to act, or to brief counsel to act, as its legal adviser on the Hearing.
- 13.4 The Complaints Officer may:
- (a) appoint any employee or member of the Institute; or
 - (b) appoint a solicitor;
 - (c) instruct a solicitor to brief counsel;
 - (d) instruct a suitably qualified employee of the Institute to brief counsel,
- to represent the Institute in placing the Complaint before the Disciplinary Committee.
- 13.5 The Disciplinary Committee may expel from a hearing any person who is or becomes disruptive to the proceedings.
- 13.6 The standard of proof required by the Disciplinary Committee, 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.
- 13.7 The Hearing will be held in private. However, the Chairperson may, in his or her absolute discretion but after giving notice to and receiving and considering 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.

- 13.8 At the beginning of the Hearing, the Chairperson, or any person to whom he or she delegates such task, will read out the Complaint against the Member and invite the Member to state whether he or she admits or denies the Complaint or any part of the Complaint and if the latter what part.
- 13.9 The Chairperson will then, except where the Chairperson considers it unnecessary to do so, explain the order of proceedings that the Disciplinary Committee proposes to adopt.
- 13.10 The person appointed by the Complaints Officer to present the Complaint will then outline the Complaint against the Member, and call any witness and produce any document in support of the Complaint.
- 13.11 At the conclusion of the case supporting the Complaint, the Member (or the Member's representative) will be entitled to address the Disciplinary Committee and to call any witness and produce any document, and the Member may give evidence.
- 13.12 The Member (or the Member's representative) may make a closing address to the Disciplinary Committee.
- 13.13 The Presenter may address the Disciplinary Committee before the close of the proceedings.
- 13.14 A witness called by the Presenter may be questioned by or on behalf of the Member and by the Disciplinary Committee. A witness so questioned may be re-examined by the Presenter.
- 13.15 A witness called by or on behalf of the Member may be questioned by or on behalf of the Presenter and by the Disciplinary Committee. A witness so questioned may be re-examined by or on behalf of the Member.
- 13.16 The Disciplinary Committee may admit any evidence, whether oral or written, whether direct or hearsay, and whether or not that evidence would be admissible in a court of law.

14 ADJOURNMENTS

- 14.1 The Chairperson may, at his or her 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 will be decided by the Disciplinary Committee hearing the Complaint, and subject to any conditions they fix. Written notice must be given to the Member and the Presenter of the date, time and place of the postponed Hearing.
- 14.2 The Disciplinary Committee 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 either the Member or the Presenter and the Chairperson hearing the Complaint must send notice to the Member and the Presenter of the date, time and place to which the hearing is adjourned.

- 14.3 Where any hearing is adjourned in order that further information or evidence may be obtained, the Disciplinary Committee may give directions regarding the disclosure of such information or evidence to the Member and the Presenter prior to the resumption of the hearing.
- 14.4 An application for further adjournment made before a hearing is resumed may be determined by the Chairperson hearing the Complaint.
- 14.5 The Disciplinary Committee has a general discretion to grant extensions of time, adjournments and postponements where the Disciplinary Committee considers it fair and proper to do so.
- 14.6 Upon conclusion of a Hearing, the Disciplinary Committee 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 Committee.

15 FINDINGS BY THE DISCIPLINARY COMMITTEE

- 15.1 If the Disciplinary Committee finds that a Complaint has been proven in full, it must make a finding to that effect.
- 15.2 If the Disciplinary Committee finds that a Complaint has been proven in part, it must make a finding to that effect and identify the part that has been proven.
- 15.3 If the Disciplinary Committee finds that a Complaint has not been proven, it must make a finding to that effect.

16 SANCTIONS THAT MAY BE IMPOSED BY THE DISCIPLINARY COMMITTEE

- 16.1 If, the Disciplinary Committee makes a finding that a Complaint has been proven in part or whole, then it may impose any one or more of the following sanctions:
- (a) Order the Member to undertake specific educational activity;
 - (b) Order the Member to undertake other specific activity or to not 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;
 - (g) Order the termination of the Membership of the Member and order that the Member not be permitted to apply for Membership of the Institute for a specified time period or until a specified date.

- 16.2 In making an order under this clause the Disciplinary Committee may have regard to the status of the Member and the Disciplinary Committee's views as to the nature and seriousness of the Complaint and any other circumstances that the Disciplinary Committee considers relevant.
- 16.3 A sanction imposed by the Disciplinary Committee will not take effect until:
- (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.
- 16.4 If, notwithstanding a finding that a Complaint has been proven in part or whole, the Disciplinary Committee 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.
- 16.5 The Complaints Officer will maintain a register of all findings made by the Disciplinary Committee and all orders made by the Disciplinary Committee.
- 16.6 Whenever the Disciplinary Committee makes a finding or an order under this By-law, the Disciplinary Committee may, subject to the law, cause its Order to be published in such manner as it thinks fit, provided that, if the Disciplinary Committee has ordered that no further action be taken on the Complaint, the Order will not be published unless the Member so requests.

17 RE-HEARING BY ANOTHER CONSTITUTED DISCIPLINARY COMMITTEE

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

18 COSTS OF THE MEMBER

- 18.1 The Institute is not liable to a Member nor any other person in respect of any and all of the costs incurred by the Member in relation to the Member responding to a Complaint or defending himself or herself against a Complaint.

BY-LAW NO. 12 OF THE TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

APPEAL AGAINST A DECISION BY OR A SANCTION IMPOSED BY THE DISCIPLINARY COMMITTEE

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

This By-Law has effect from 20 April 2010.

1 OVERVIEW

- 1.1 The purpose of this By-Law is to set out the basis upon which a Member may appeal to the Appeal Committee in respect of a finding by or a sanction imposed by the Disciplinary Committee as a result of the hearing of a Complaint in respect of a Member.

2 RIGHT OF APPEAL

- 2.1 If a Member is the subject of a finding by the Disciplinary Committee in relation to a Complaint against the Member that the Complaint has been proven in full or proven in part, then the Member may appeal against the adverse finding by the Disciplinary Committee.
- 2.2 If a Member is the subject of a sanction imposed by the Disciplinary Committee in relation to a Complaint against the Member, then the Member may appeal against the sanction imposed by the Disciplinary Committee.

3 FORM AND CONTENT OF APPEAL

- 3.1 An appeal under clause 2.1 must be addressed to the Appeal Chairperson, be in writing and set out fully the grounds on which the Member appeals against the finding by the Disciplinary Committee. The grounds so stated must not thereafter be amended, other than with the leave of the Appeal Committee hearing the Appeal.
- 3.2 An appeal under clause 2.2 must be addressed to the Appeal Chairperson, be in writing and set out fully the grounds on which the Member appeals against the sanction or sanctions imposed by the Disciplinary Committee. The grounds so stated must not thereafter be amended, other than with the leave of the Appeal Committee hearing the Appeal.

4 TIME LIMIT ON EXERCISE OF RIGHT OF APPEAL

- 4.1 An appeal under clause 2.1 must be received by the Institute at its National Office in Sydney, New South Wales within 21 days of service upon the Member of a notice in writing setting out the findings of the Disciplinary Committee.
- 4.2 An appeal under clause 2.2 must be received by the Institute at its National Office in Sydney, New South Wales within 21 days of service upon the Member of a notice in writing setting out the sanctions imposed by the Disciplinary Committee.

4.3 An appeal under clause 2.1 or clause 2.2 is only received by the Institute at its National Office in Sydney, New South Wales:

(a) If delivered by mail, when physically received at Level 2, 95 Pitt Street, Sydney NSW 2000;

(b) If delivered personally, when physically received at Level 2, 95 Pitt Street, Sydney NSW 2000 and a receipt issued;

(c) If delivered by email, when physically received at Appeals@taxinstitute.com.au and a confirmation of receipt sent to the sender by the Complaints Officer;

(d) If delivered by facsimile, when physically received at facsimile 02 8223 0099 and a confirmation of receipt sent to the sender by the Complaints Officer;

BY-LAW NO. 13 OF THE TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

APPEAL COMMITTEE PROCEDURES

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

This By-Law has effect from 20 April 2010.

1 OVERVIEW

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

2 APPOINTMENT OF CHAIRPERSON OF THE APPEAL COMMITTEE

- 2.1 The National Council may from time to time in writing appoint a person to be the chairperson of the Appeal Committee for a fixed term. The term of appointment will usually be for a period of 3 years. At the expiry of the term of office the person will be eligible for reappointment.
- 2.2 The Appeal Chairperson 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 replace a person as the Appeal Chairperson.

3 APPOINTMENT OF DEPUTY CHAIRPERSON OF THE APPEAL COMMITTEE

- 3.1 The National Council may from time to time in writing appoint a person to be the deputy chairperson of the Appeal Committee for a fixed term. The term of appointment will usually be for a period of 3 years. At the expiry of the term of office the person will be eligible for reappointment.
- 3.2 The Appeal Deputy Chairperson 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 replace a person as the Appeal Deputy Chairperson.
- 3.4 If the Appeal Chairperson is unavailable, the Appeal Deputy Chairperson will carry out the role of the Appeal Chairperson.
- 3.5 If both the Appeal Chairperson and the Appeal Deputy Chairperson are unavailable, the Appeal Chairperson will appoint a member of the Appeal Panel to carry out the role of the Appeal Chairperson.

4 APPOINTMENT OF MEMBERS OF THE APPEAL PANEL

- 4.1 The National Council may from time to time in writing appoint a person to be a member of the Appeal Panel for a fixed term. The term of appointment will usually be for a period of 3 years. At the expiry of the term of office the person will be eligible for reappointment.
- 4.2 The member of the Appeal Panel may at any time retire from the position by notice in writing given to the Institute.
- 4.3 The National Council may from time to time in writing replace a person as a member of the Appeal Panel.
- 4.4 The Appeal Panel will consist of no less than eight persons and no more than fifteen persons.
- 4.5 The Appeal Chairperson and the Appeal Deputy Chairperson are both members of the Appeal Panel.
- 4.6 Subject to clause 5.3, members of the Disciplinary Panel may be appointed to the Appeal Panel.

5 PROCEDURE UPON THE MAKING OF AN APPEAL BY A MEMBER AGAINST A FINDING MADE BY OR A SANCTION IMPOSED BY THE DISCIPLINARY COMMITTEE OR BOTH

- 5.1 Upon receipt of the Appeal Notice the Appeal Chairperson will empanel the Appeal Committee to consider the Appeal from the members of the Appeal Panel.
- 5.2 Unless determined otherwise by the Appeal Chairperson the Appeal Committee to consider that Appeal will comprise three or five persons chosen by the Appeal Chairperson from the members of the Appeal Panel.
- 5.3 No person who has been a member of the Disciplinary Committee hearing the Complaint may be a member of the Appeal Committee hearing the Appeal in respect of the findings of and/or sanctions imposed by the Disciplinary Committee.
- 5.4 In the course of empanelling the Appeal Committee from the members of the Appeal Panel to consider a particular Appeal the Appeal Chairperson must check to ascertain if any conflicts of interest will arise or are likely to arise if a particular member of the Appeal Panel is empanelled.
- 5.5 Upon the empanelling the Appeal Committee and obtaining a more thorough understanding of the details of the Appeal, the Member and the Complainant each member empanelled will disclose any conflicts of interest which will arise or are likely to arise in relation to the Complainant or the Member who is the subject of the Appeal to the Appeal Chairperson.
- 5.6 The Appeal Chairperson is empowered to take whatever steps the Appeal Chairperson considers necessary including approaching the Member and the Complainant to recognise and waive any perceived conflict of interest.
- 5.7 If a conflict of interest subsequently arises, the Appeal Chairperson will take whatever steps are necessary to resolve the matter.

- 5.8 As soon as practicable after the appointment of the Appeal Committee, the Appeal Committee 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.
- 5.9 The Appeal Committee must act at the Appeal and in all other matters by a majority vote.
- 5.10 The Appeal Chairperson may by a written instrument make such regulations relating to matters not dealt with in this By-Law (not being inconsistent with the express provisions of the Constitution or the By-Laws) as may be considered by the Appeal Chairperson necessary for the performance by the Appeal Chairperson and by the Appeal Committee or both of them of their respective functions under this By-Law.

6 MATTERS RELATING TO THE HEARING OF THE APPEAL

- 6.1 The Hearing shall be conducted in such manner consistent with the principles of natural justice as the Appeal Chairperson conducting the Hearing may determine.
- 6.2 Proceedings of the Appeal Committee may be recorded. If proceedings are recorded, then the Member may request a copy of the recording and the Institute must provide a copy of the recording upon receiving an amount equal to the cost of copying the recording. A Member may cause the proceedings to be recorded or transcribed at the Member's cost. If the Member does so, the Institute may request a copy of the recording or the transcription or both (as the case may be). In such a case if a copy of the recording is requested the Member must provide a copy of the recording to the Institute upon receiving an amount equal to the cost of copying the recording. If a copy of the transcription is requested the Member must provide a copy of the transcription to the Institute upon receiving an amount equal to the cost of copying the transcription.
- 6.3 The Appeal Committee may instruct a solicitor to act, or to brief counsel to act, as its legal adviser on the Hearing.
- 6.4 The Complaints Officer may:
- (a) appoint any employee or member of the Institute; or
 - (b) appoint a solicitor;
 - (c) instruct a solicitor to brief counsel;
 - (d) instruct a suitably qualified employee of the Institute to brief counsel,
- to represent the Institute in the Appeal before the Appeal Committee.
- 6.5 The Appeal Committee may expel from a hearing any person who is or becomes disruptive to the proceedings.
- 6.6 In every Appeal, the Member must establish on the balance of probabilities that the Disciplinary Committee erred in the findings made by it or that the sanction imposed by the Disciplinary Committee is inappropriate.
- 6.7 The Hearing will be held in private. However, the Appeal Chairperson may, in his or her absolute discretion but after giving notice to and receiving and considering 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.

- 6.8 At the beginning of the Hearing, the Appeal Chairperson, or any person to whom he or she delegates such task, will read out the Appeal Document.
- 6.9 The Appeal Chairperson will then, except where the Appeal Chairperson considers it unnecessary to do so, explain the order of proceedings that the Appeal Committee proposes to adopt.
- 6.10 The Member or the person appointed by the Member to present the Appeal will then outline the basis of the Appeal and introduce anything in support of the Appeal.
- 6.11 At the conclusion of the case supporting the Appeal, the Appeal Presenter will be entitled to address the Appeal Committee and to call any witness and produce any document and the Member may give evidence.
- 6.12 The Member (or the Member's representative) may make a closing address to the Appeal Committee.
- 6.13 The Appeal Presenter may address the Appeal Committee before the close of the proceedings.
- 6.14 A witness called by the Appeal Presenter may be questioned by or on behalf of the Member and by the Appeal Committee. A witness so questioned may be re-examined by or on behalf of the Appeal Presenter.
- 6.15 A witness called by or on behalf of the Member may be questioned by or on behalf of the Appeal Presenter and by the Appeal Committee. A witness so questioned may be re-examined by or on behalf of the Member.
- 6.16 The Appeal Committee may admit any evidence, whether oral or written, whether direct or hearsay, and whether or not that evidence would be admissible in a court of law.
- 6.17 Upon conclusion of the hearing of an Appeal, the Appeal Committee 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 Committee.

7 ADJOURNMENTS

- 7.1 The Appeal Chairperson hearing an Appeal may, at 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 Appeal Committee hearing the Appeal, and subject to any conditions they fix. Written notice must be given to the Member and the Appeal Presenter of the date, time and place of the postponed hearing.
- 7.2 The Appeal Committee 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 either the

Member or the Appeal Presenter and the Appeal Chairperson hearing the Appeal must send notice to the Member and the Appeal Presenter of the date, time and place to which the hearing is adjourned.

- 7.3 Where any hearing is adjourned in order that further information or evidence may be obtained, the Appeal Committee may give directions regarding the disclosure of such information or evidence to the Member and the Appeal Presenter prior to the resumption of the hearing.
- 7.4 An application for further adjournment made before a hearing is resumed may be determined by the Appeal Chairperson hearing the Appeal.
- 7.5 The Appeal Committee has a general discretion to grant extensions of time, adjournments and postponements where the Appeal Committee considers it fair and proper to do so.

8 COURSES OF ACTION AVAILABLE TO THE APPEAL COMMITTEE

- 8.1 On any Appeal, the Appeal Committee may affirm, vary or rescind any Order of finding made by the Disciplinary Committee in respect of the Complaint or in respect of the Member and may substitute any other order or orders and/or finding or findings (on such terms and conditions, if any, as it thinks appropriate), which the Disciplinary Committee might have made on the Complaint.
- 8.2 Any order of the Appeal Committee shall take effect as from the date it is made by the Appeal Committee unless the Appeal Committee, 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 Committee.
- 8.3 Notice of any order made by the Appeal Committee must, as soon as practicable, be served on the Member and given to National Council, save that in any case where the Appeal Committee has either rescinded the Order of the Disciplinary Committee and not substituted any other order, the name of the Member must not be included in the notice given to National Council.
- 8.4 The Complaints Officer will maintain a register of all orders made by the Appeal Committee.
- 8.5 Whenever the Appeal Committee makes an order under this By-law, the Appeal Committee may, subject to the Privacy Act, cause the order of the Appeal Committee to be published in such manner as it thinks fit, provided that, if the Appeal Committee has ordered that no further action be taken on the Complaint, the order of the Appeal Committee will not be published unless the Member so requests.

9 COSTS OF THE MEMBER

- 9.1 The Institute is not liable to the Member nor any other person in respect of any and all of the costs incurred by the Member in relation to the Member appealing against any finding by the Disciplinary Committee and/or against any sanction imposed by the Disciplinary Committee.

BY-LAW NO. 14 OF THE TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

PUBLICATION OF ANNUAL STATISTICS ABOUT COMPLAINTS

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

This By-Law has effect from 20 April 2010.

1 OVERVIEW

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

2 PUBLICATION OF ANNUAL STATISTICS

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

BY-LAW NO. 15 OF THE TAXATION INSTITUTE OF AUSTRALIA (the "Institute")

DEFINITIONS AND INTERPRETATION

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

This By-Law has effect from 20 April 2010.

1 OVERVIEW

- 1.1 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.

2 DEFINITIONS AND INTERPRETATION

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

Act means the Corporations Act 2001.

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

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

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

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

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

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

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

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

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

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

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

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

Complaints Register means the record of complaints received kept in accordance with clause 6.1 of By-law 9.

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

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

Disciplinary Event means an event or action specified in clause 3 of By-law 9.

Disciplinary Panel means the disciplinary panel appointed by the National Council in accordance with clause 4 of By-law 11.

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

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

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

Investigator means a person appointed by the Institute in accordance with By-law 10.

Membership means membership of the Institute.

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

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

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

RTAA means a Recognised Tax Agent Association recognised under the TASA.

Serious Offence means:

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

TASA means the Tax Agent Services Act 2009.

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