

NEW ZEALAND SOCIETY OF ACTUARIES INC.

DISCIPLINARY PROCEDURE

1. Definitions

In these regulations, unless the context otherwise requires:

“Actuary” means a Fellow of the New Zealand Society of Actuaries, a retired Fellow of the New Zealand Society of Actuaries or other person holding an equivalent qualification.

“Code” means the Code of Professional Conduct adopted from time to time under Rule 16 of the Rules of the Society;

“Council” means the Council of the Society;

“Professional Conduct Committee” means the Committee established by the Council under Rule 17 of the Rules of the Society;

“Secretary” means the person who from time to time holds office as Secretary of the Society under Rule 6(d) of the Rules of the Society;

“Senior Actuary” means an actuary of not less than 10 years’ post-qualification practice;

“Society” means the New Zealand Society of Actuaries (Incorporated);

“Tribunal” means the Professional Conduct Tribunal constituted under regulation 2(3).

2. Bodies referred to in the disciplinary procedure

- (1) The Investigating Team will consist of two persons, being an Actuary and a lay person, who are appointed by the Professional Conduct Committee to investigate a complaint.
- (2) The Adjudication Panel will consist of three persons, being two Actuaries and a lay person, who are appointed by the Professional Conduct Committee to exercise the functions and powers of the Adjudication Panel in respect of a complaint.
- (3) The Professional Conduct Tribunal will consist of three persons who will be appointed from time to time by the Council, being:
 - (a) a Chairperson, who shall not be an Actuary, but will be a person of high standing in his or her profession;

- (b) two members, who will be Senior Actuaries.
- (4) The Appeals Committee will consist of three persons who will be appointed from time to time by the Council, being:
 - (a) a Chairperson, who shall be a Judge or retired Judge or a barrister or solicitor of at least seven years' standing;
 - (b) two members, who will be Senior Actuaries.
- (5) In relation to the investigation or hearing of any complaint, no person shall be a member of any of the bodies referred to in this regulation if he or she has any financial, personal or other interest that is likely to affect his or her independence or judgement in dealing with that complaint.
- (6) For the purposes of regulation 2(5), a person's membership of the Society will not of itself be a ground for disqualification from dealing with a complaint.
- (7) The Society empowers the Adjudication Panel, Professional Conduct Tribunal and Appeals Committee to impose sanctions on its members against whom a complaint has been upheld and in doing so those bodies act on behalf of the Society

3. General provisions about procedures of the Adjudication Panel, the Tribunal, and the Appeals Committee carrying out decision-making functions under regulations

- (1) Every body that carries out decision-making functions under these regulations –
 - (a) must, as soon as practicable after reaching its decision, give the actuary complained about a copy of its decision together with written reasons for such decision;
 - (b) must, as soon as practicable after reaching its decision, notify the complainant of the outcome (whether or not it also decides to give the complainant a copy of its decision);
 - (c) must observe the rules of natural justice;
 - (d) may adjourn any hearing or meeting to any time or place;
 - (e) except as otherwise provided in these regulations, may regulate its own procedure as it sees fit.
- (2) If the body is not unanimous in its decision, then the decision of the majority of the body is the decision of the body, but any dissenting member may issue dissenting views.
- (3) No body may implement any sanction imposed by it until the expiry of any period for challenging or appealing against its decision.

4. How to make a complaint

- (1) A person may complain to the Secretary about the conduct of a member of the Society in accordance with this regulation.
- (2) The complaint must be made in writing and include the complainant's name, contact details, and details of the matter of complaint.
- (3) The Secretary will give any reasonable assistance that is necessary in the circumstances to enable a person who wishes to make a complaint to put the complaint in writing.

5. Adjudication Panel

- (1) The Secretary will, as soon as practicable after receiving a complaint, refer it to the Professional Conduct Committee and inform the President of the Society.
- (2) The Professional Conduct Committee will, as soon as practicable after receiving the complaint from the Secretary, appoint an Adjudication Panel.
- (3) The Adjudication Panel will, as soon as practicable after appointment, carry out an initial investigation of the complaint and either:
 - (a) request the Professional Conduct Committee to establish an Investigating Team, refer the complaint to the Investigating Team and advise the person complained about that it has done so, or
 - (b) dismiss the complaint on a ground referred to in regulation 7.

6. Professional Conduct Committee can initiate complaint against a member

The Professional Conduct Committee on its own motion may appoint an Adjudication Panel and an Investigating Team to inquire into any matter if it has reason to believe that a member of the Society may have breached the Code. In any such instance the matter inquired into will be deemed to be a complaint for the purposes of the ensuing provisions of these regulations, subject to any necessary modifications.

7. Grounds for not referring complaint to Investigating Team

The Adjudication Panel may dismiss a complaint without referring it to the Investigating Team if the complainant informs it that he or she no longer wishes to pursue the complaint, or if the Adjudication Panel decide that:

- (a) the subject matter of the complaint is trivial; or
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complaint is based on a misunderstanding; or

- (d) there is no applicable ground of discipline under the provisions of the Code; or
- (e) an investigation of the complaint is no longer practicable or desirable given the time elapsed since the matter giving rise to the complaint.

8. Investigating Team to prepare report for Adjudication Panel

- (1) The Investigating Team will, as soon as practicable after receiving a complaint, investigate the matter and prepare a written report for the Adjudication Panel. The written report will contain the views of the Investigating Team as to whether or not the complaint has substance. If, in the view of the Investigating Team, the complaint has substance, the written report must specifically set out how the conduct of the person complained about may be in breach of the Code.
- (2) If, in the course of investigating the complaint, the Investigating Team discover conduct by the person complained about relating to the complaint but not set out in the complaint, the Investigating Team may consider this conduct as part of the complaint, if the Investigating Team considers that this conduct may breach the Code.
- (3) The Investigating Team may request the person complained about or the complainant to provide to the team any documents or information that are in the possession of the person and that are relevant to its investigation.
- (4) The Investigating Team may request the person complained about or the complainant to meet with the Investigating Team, at that person's own cost, for the purpose of gathering information about the complaint.
- (5) The Investigating Team may explore an alternative disputes resolution process with the person complained about or the complainant within such period as the Investigating Team considers appropriate.

9. Investigating Team must give person complained about opportunity to reply

Before finalising its report for the Adjudication Panel the Investigating Team must give the person complained about a reasonable opportunity, but no more than 28 days, to make representations on the matter. Unless impracticable in the circumstances, this will include opportunity to comment on a draft version of the Investigating Team's report within such period as the Investigating Team considers appropriate in the circumstances.

10. Adjudication Panel to consider report and decide whether or not to uphold complaint

- (1) As soon as practicable after receiving the report of the Investigating Team and any other information requested, the Adjudication Panel will meet to consider the report.
- (2) Before reaching a final view on any complaint, the Adjudication Panel must give a reasonable opportunity to the person complained about and the Investigating Team to add any further comments that they may wish to make on the Investigating Team's report or any other aspects of the complaint.
- (3) If the Adjudication Panel proposes to take into account any further information that is or may be prejudicial to the defence of the person complained about, the Adjudication Panel shall first disclose that information to that person and give him or her a reasonable opportunity to rebut or comment on it.
- (4) Where the Adjudication Panel decides to uphold the complaint, it may give advice to the person complained about and/or impose one, some or all of the following sanctions on the person complained about:
 - (a) admonition (which may be either private or public);
 - (b) a requirement that the person complained about undertake, at his or her expense, a course of remedial education as may be specified by the Adjudication Panel.
 - (c) direction of the member to take such remedial action (other than payment of a sum of money) as the Adjudication Panel deems appropriate in the circumstances.
- (5) If the Adjudication Panel, in the course of considering or upholding a complaint, considers that the alleged or (as the case may be) established misconduct of the person complained about, or other possible misconduct identified as a result of its investigation into the complaint, is or are of such a nature that they may call for a more severe sanction than the Adjudication Panel is entitled to impose under subregulation (4) of this regulation, then the Adjudication Panel shall refer the complaint to the Tribunal together with its written reasons for doing so.
- (6) Where a complaint is referred to the Tribunal, the provisions of regulation 12 will apply.

11. Challenges to decisions of Adjudication Panel

- (1) If the person complained about is dissatisfied with the decision of the Adjudication Panel or any part of that decision, he or she may challenge that decision, or that part of the decision, by application to the Tribunal.
- (2) Any such challenge must be made in writing to the Secretary within 14 days after the date of the decision of the Adjudication Panel.
- (3) Details of the grounds of the challenge must be provided in writing to the Secretary within 28 days after the date of the decision of the Adjudication Panel.
- (4) The provisions of regulation 12 will apply to a challenge lodged with the Tribunal under this regulation.

12. Hearings of Professional Conduct Tribunal

- (1) The Tribunal must –
 - (a) fix a time and place for the hearing of any matter which is referred to it under regulation 10(6) or which is the subject of a challenge under regulation 11; and
 - (b) give at least 14 days written notice to the complainant and the person complained about of the time and place of the hearing.
- (2) The notice of the hearing must include information about how the hearing will be conducted and who may be heard at the hearing.
- (3) The Tribunal must conduct hearings with as little formality as it considers is consistent with a fair and efficient process and a just and speedy determination of the matter before it.
- (4) Hearings will be conducted in public unless, or to the extent that, the Tribunal otherwise directs.
- (5) If there has been a failure to comply with any requirement of these rules the Tribunal may, either on its own motion or on request by the person complained about or the complainant, waive that requirement or specify an amended requirement.
- (6) The following persons are entitled to be heard at a hearing of the Tribunal:
 - (a) the person complained about;
 - (b) the complainant;
 - (c) a representative of the person complained about;
 - (d) witnesses (if permitted by the Tribunal);
 - (e) either or both members of the Investigating Team;
 - (f) any other person with the permission of the Tribunal.

- (7) The Tribunal may accept, admit, and call for such evidence and information as it thinks fit, whether strictly legal evidence or not.
- (8) The Tribunal may engage counsel, who may be present at a hearing of the Tribunal, to advise it on matters of law, evidence, and procedure.
- (9) The Tribunal may hold a hearing and decide any matter before it, whether or not the complainant or the person complained about appears at the hearing.
- (10) In any hearing before it the Tribunal must make its own decision on the matter, but is entitled to give such weight as it sees fit to any findings and decision of the Adjudication Panel and views of the Investigating Team.
- (11) The Tribunal must decide whether or not the conduct complained about (including conduct considered part of the complaint under regulation 8(2)), breaches the Code, and, if so, what (if any) sanction is to be imposed under regulation 13.
- (12) The Tribunal must ensure that evidence given before it is recorded in such manner as it sees fit.

13. Sanctions that may be imposed by Professional Conduct Tribunal

If the Tribunal upholds the complaint, in whole or in part, it may impose on the person complained about any one or more of the following sanctions:

- (a) a monetary penalty in a sum not exceeding \$10,000;
- (b) suspension from membership of the Society for a period not exceeding five years;
- (c) expulsion from the Society;
- (d) any of the sanctions enumerated in regulation 10(4).

14. Costs

In any case to which regulation 13 applies the Tribunal may direct that the person complained about pay part or all of the costs and expenses of and incidental to the hearing by the Tribunal.

15. Publication

Each of the Adjudication Panel, the Tribunal and the Appeals Committee may, if in its opinion it is proper to do so in the public interest or in the interest of particular individuals or entities, direct the publication or circulation to individuals or entities of a notice including the name of the person complained about, the matter complained about and details of the outcome of any deliberation or hearing before it, in such manner as it sees fit.

16. Right of appeal to Appeals Committee

- (1) If the person complained about is dissatisfied with the decision of the Tribunal or any part of that decision, he or she may appeal against that decision, or that part of the decision, by appeal to the Appeals Committee.
- (2) Any such appeal must be notified in writing to the Secretary within 14 days after the date of the decision of the Tribunal.
- (3) A full notice of appeal must be provided in writing to the Secretary within 28 days after the date of the decision of the Tribunal. This notice must contain details of the grounds of the appeal sufficient to give a full explanation of the issues involved to the Appeals Committee, the Tribunal, and any other party to the proceedings before the Tribunal, along with the outcome sought and the address to which the appellants wish correspondence on the appeal to be sent.
- (4) The Secretary must provide to each of the members of the Appeals Committee and to the person complained about, as soon as practicable after receiving the notice of appeal –
 - (a) a copy of the decision under appeal;
 - (b) a copy of the other documents and information held by the Tribunal that are relevant to the decision including (unless the Appeals Committee otherwise directs) a record of the evidence given at any hearing on the decision under appeal.
- (5) Every appeal shall be by way of rehearing but, unless the Appeals Committee directs otherwise, it shall not be permissible to recall witnesses who gave evidence before the Tribunal or to introduce new evidence.
- (6) The Appeals Committee is entitled to give such weight as it sees fit to any findings and decision of the Adjudication Panel and the Tribunal.
- (7) The Appeals Committee may confirm, alter or quash the decision of the Tribunal (including any decision on costs), and render the decision that it considers should have been rendered in the first instance.
- (8) Where the Appeals Committee confirms, in whole or in part, the decision under appeal, or otherwise finds against the person complained about, it may direct that that person pay part or all of the costs and expenses of and incidental to the appeal.

17. Decision to expel is subject to confirmation by Council

- (1) Any decision of the Tribunal under regulation 13(c) or of the Appeals Committee to expel a person will be subject to confirmation by the

Council at a meeting called in accordance with rule 9 of the Society's rules.

- (2) In deciding whether or not to confirm any decision to expel a person the Council must have regard to the findings and reasoning of the Tribunal and the Appeals Committee (if the decision of the Tribunal has been appealed).

18. Recovery of monetary penalties and costs

- (1) Any penalty imposed under regulation 13(a) or costs award made under regulation 14 or regulation 16(8) shall be payable to the Society and may be recovered by the Society as a debt due to it in any court of competent jurisdiction whether or not the person remains a member of the Society.
- (2) If the person complained about, being a member of the Society, fails to pay any such penalty or costs within 28 days of the imposition of the penalty or costs award he or she shall be liable to be expelled from the Society if the Council so determines.

19. Failure to comply with disciplinary procedure

The person complained about will be liable for expulsion from the Society in the event that he or she, without proper excuse or justification –

- (a) does not comply with or resists (otherwise than by any procedure or means permitted by these regulations) any non-monetary sanction imposed by the Tribunal or Appeals Committee; or
- (b) obstructs or fails to co-operate in any substantial respect with any investigation or hearing being conducted under these regulations.