



## NZSA Disciplinary Procedures 2022

### 1. Commencement and Application

- 1.1. These Procedures shall apply for all new complaints lodged on or after **DATE**.
- 1.2. Any complaint lodged prior to that date shall be heard according to the provisions of the Disciplinary Procedures in place at that time unless the Complainant and Respondent agree and elect to have the complaint heard according to these Procedures, unless it is impractical to do so.

### 2. Definitions

<b>Code</b>	means the Code of Professional Conduct adopted from time to time under Rule 16 of the Rules of the Society
<b>Complainant</b>	means the person or body lodging a complaint of Misconduct against a Member
<b>Council</b>	means the Council of the Society
<b>Member</b>	means a Member of the Society
<b>Misconduct</b>	means Misconduct as described in Section 11
<b>Procedures</b>	means the procedures set out in this Disciplinary Procedures
<b>Professional Conduct Committee (PCC)</b>	means the Committee established by the Council under Rule 17 of the Rules of the Society
<b>Professional Standard</b>	means a Professional Standard issued by the Society
<b>Respondent</b>	means the Member against whom a complaint is lodged
<b>Sanctions</b>	means the sanctions that may be imposed by an Investigation Team or Appeals Board as set out in section 13
<b>Secretary</b>	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
<b>Senior Actuary</b>	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 of not less than 10 years' post-qualification practice
<b>Society</b>	means the New Zealand Society of Actuaries (Incorporated)

### 3. Bodies Involved in the Disciplinary Procedures



## 3.1. Professional Conduct Committee (PCC)

- 3.1.1. The Professional Conduct Committee is responsible for the oversight of the professional conduct of members of the Society, including the provision of guidance on professional conduct to members.
- 3.1.2. The Convenor of the PCC shall be appointed by Council.
- 3.1.3. Members of the PCC shall number at least 4 (including the Convenor) and must be Senior Actuaries ratified by Council.
- 3.1.4. The Convenor may co-opt suitably qualified people from time to time to assist the PCC in any matters, including the Disciplinary Procedures.
- 3.1.5. The PCC may assist any party in the disciplinary process regarding procedural matters.

## 3.2. Investigation Panel and Investigation Team

- 3.2.1. Council shall appoint 5 or more Senior Actuaries to be members of the Investigation Panel from which may be appointed to an Investigation Team to determine a complaint.
- 3.2.2. The Council shall appoint one member of the Investigation Panel to be the Convenor of the Panel.
- 3.2.3. Any member of the Investigation Panel may resign from his or her position by written notice to the Council and may be removed or replaced at the discretion of the Council.
- 3.2.4. For the purposes of determining a complaint, an Investigation Team shall be appointed by the Convenor of the Investigation Panel and shall include:
  - at least one appropriately skilled and qualified lay participant who is not a Member (of the Society), and
  - at least three members of the Investigation Panel (who shall include the Convenor of the Investigation Panel unless he or she is unable to serve by reason of conflict of interest or otherwise).
- 3.2.5. If the Convenor of the Investigation Panel is a member of the Investigation Team established to determine a particular complaint, he or she shall be Chair of that Investigation Team. If the Convenor of the Investigation Panel is not appointed to the Investigation Team, the Investigation Team shall appoint one of their own members to be Chair of that Investigation Team.

## 3.3. Appeals Panel and Appeals Board

- 3.3.1. Council shall appoint 5 or more Senior Actuaries to be members of the Appeals Panel from which they may be appointed to an Appeals Board to determine an Appeal.
- 3.3.2. The Council shall appoint one member of the Appeals Panel to be the Convenor of the Panel.



- 3.3.3. Any member of the Appeals Panel may resign from his or her position by written notice to the Council and may be removed or replaced at the discretion of the Council.
- 3.3.4. For the purposes of determining an Appeal, an Appeals Board shall be appointed by the Convenor of the Appeals Panel and shall include:
  - at least one appropriately skilled and qualified lay participant who is not a Member (of the Society), and
  - at least three members of the Appeals Panel (who shall include the Convenor of the Appeals Panel unless he or she is unable to serve by reason of conflict of interest or otherwise).
- 3.3.5. If the Convenor of the Appeals Panel is a member of the Appeals Board established to determine a particular Appeal, he or she shall be Chair of that Appeals Board. If the Convenor of the Appeals Panel is not appointed to the Appeals Board, the Appeals Board shall appoint one of their own members to be Chair of that Appeals Board.

## 4. Disciplinary Process

The disciplinary Process operates in 4 stages:

- 4.1. **Complaint Lodgement Stage:** The identification of possible Misconduct, possible assistance with the wording of the complaint, and the lodgement of the complaint with the appropriate body
- 4.2. **Gatekeeping Stage:** The process of either dismissing the complaint or the establishment of prima facie evidence of Misconduct
- 4.3. **Investigation Stage:** The formal investigation by the Investigation Team
- 4.4. **Appeals Stage:** The appeals process

## 5. Complaint Lodgement Stage

- 5.1. Complaints must be in writing and include the Complainant's name, contact details, and details of the matter of complaint.
- 5.2. Complaints should be directed to the Convenor of the PCC or any member of the PCC.
- 5.3. If the complaint concerns a member of the PCC then that member must have no part in the Procedures apart from that of Respondent.



- 5.4. If the complaint concerns the Convenor of the PCC then Council must appoint an acting convenor for the duration of the complaint process.
- 5.5. The PCC may assist the Complainant in formulating the complaint.
- 5.6. The PCC may assist the Complainant in identifying possible Misconduct.
- 5.7. The PCC shall advise the Complainant of this Disciplinary Process and that their complaint will be passed on to a sub-committee of the PCC for the Gatekeeping Stage.
- 5.8. The PCC shall advise the Complainant that their identity will be passed on to the Respondent unless the Complainant is able to provide sound reasons for the complaint to be anonymous within 10 working days. The Complainant shall be advised that an anonymous complaint may not be able to be proceeded with if natural justice cannot be followed.

### 6. Gatekeeping Stage

- 6.1. A sub-committee of at least 3 members of the PCC will consider the complaint to determine whether there is a prima facie case of Misconduct.
- 6.2. The sub-committee may co-opt other Senior Actuaries with experience of the matters being complained about to assist in the determination.
- 6.3. The sub-committee may seek legal assistance or guidance during the Gatekeeping Stage.
- 6.4. The sub-committee shall notify the Respondent of the complaint and give them 20 working days to provide a written response to the complaint.
- 6.5. The sub-committee may explore an alternative disputes resolution process with the Respondent and/or the Complainant within such period as the sub-committee considers appropriate.
- 6.6. The sub-committee must either dismiss the complaint or determine that there is a prima facie case of Misconduct.
- 6.7. Possible grounds for dismissing a complaint may include:
  - the subject matter of the complaint is trivial; or
  - the complaint is frivolous or vexatious or is not made in good faith; or
  - the complaint is based on a misunderstanding; or
  - there is no applicable ground of Misconduct; or



- an investigation of the complaint is no longer practicable or desirable given the time elapsed since the matter giving rise to the complaint: or
- the matter has been resolved to the satisfaction of the Complainant and the Respondent by alternative disputes resolution.

6.8. If the complaint is not dismissed then the Investigation Stage proceeds.

6.9. The sub-committee must inform the Complainant and the Respondent of its determination with details of the reasons for making that determination.

6.10. The Complainant may appeal against the decision of the sub-committee to dismiss the complaint in which case the Convenor of the Appeals Panel will be requested to appoint an Appeals Board to consider the matter. The sub-committee will advise the Complainant of the process to be followed to appeal. The appeal shall be dealt with in accordance with the process set out in Appeals Stage.

6.11. Any such appeal must be lodged in writing to the Chair of the sub-committee with details of the reason for the appeal within 28 days of the advice of the sub-committee's determination.

6.12. The Respondent shall not have a right to appeal a determination of the sub-committee that there is a prima facie case of Misconduct.

6.13. The PCC reserves the right to proceed to the Investigation Stage even if the complaint is withdrawn by the Complainant.

6.14. Where a complaint is initiated by the Professional Conduct Committee the determination as to whether there is a prima facie case of Misconduct shall be made by the Convenor of the Appeals Panel (see section 10.2).

### **7. Investigation Stage**

7.1. The Investigation Stage is initiated by the PCC sub-committee advising the Convenor of the Investigation Panel of a prima facie case of Misconduct.

7.2. The Convenor of the Investigation Panel will convene an Investigation Team.

7.3. If the complaint concerns a member of the Investigation Panel then that member must have no part in the Disciplinary Process apart from that of Respondent.

7.4. The Chair of the Investigation Team will be provided by the sub-committee full details of the complaint together with the reasons why the complaint has not been dismissed.



- 7.5. The Investigation Team will, as soon as practicable after receiving a complaint, investigate the matter.
- 7.6. If, in the course of the investigation of the complaint, the Investigation Team discover possible Misconduct by the Respondent relating to the complaint but not set out in the complaint, the Investigation Team may consider this conduct as part of the complaint, if the Investigation Team considers that this conduct may breach the Code. The Respondent will be given the opportunity to respond to any new allegations of Misconduct.
- 7.7. The Respondent or the Complainant must provide to the Investigation Team any documents or information that are in the possession of the person and that are relevant to its investigation.
- 7.8. The Respondent or the Complainant must, if requested by the Investigation Team meet with the Investigation Team, at that person's own cost, for the purpose of gathering information about the complaint.
- 7.9. At the conclusion of the investigation the Investigation Team will prepare a written report. The report will contain the determination of the Investigation Team as to whether or not the complaint has substance. If, in the view of the Investigation Team, the complaint has substance, the written report must specifically set out how the conduct of the Respondent is in breach of the Code and detail the Sanctions to be imposed on the Respondent. The report will be provided to the Complainant and the Respondent.
- 7.10. The Complainant and/or the Respondent may appeal the determination of the Investigation Team with 28 days of receipt of the report by application to the Convenor of the Appeals Panel. The Investigation Team will advise the Complainant and the Respondent of the process to be followed to appeal.
- 7.11. If there is no appeal then the determination of the Investigation Team shall be final.

## **8. Appeals Stage**

- 8.1. Any appeal must be in writing and state the reasons for the appeal ("notice of appeal").
- 8.2. An appeal (as provided for in these Procedures) must be directed to the Convenor of the Appeals Panel.
- 8.3. The Convenor will convene an Appeals Board to hear the appeal.



- 8.4. If the complaint concerns a member of the Appeals Panel then that member must have no part in the Procedures apart from that of Respondent.
- 8.5. A hearing before Appeals Board shall be held to facilitate the determination of the appeal. At least 28 days' notice shall be given to the Respondent, the Complainant, the Chair of the Investigation Team and any other party to the proceedings of any hearing listed before an Appeal Board.
- 8.6. In advance of any hearing before an Appeal Board and subject to any directions to the contrary by the Chair of the Appeals Board, the Respondent, the Complainant, the Chair of the Investigation Team and any other party to the proceedings, shall receive copies of:
- the notice of appeal;
  - the determination and written report of the Investigation Team; and
  - upon request, any documentary evidence or written submission that was put before and considered by the Investigation Team.
- 8.7. The following persons are entitled to be heard at a hearing of the Appeals Board:
- the Respondent;
  - the Complainant;
  - a representative of the Respondent and/or the Complainant;
  - witnesses (if permitted by the Appeals Board);
  - members of the Investigation Team; and
  - any other person with the permission of the Appeals Board.
- 8.8. The Appeals Board must decide whether or not the conduct complained about (including conduct considered part of the complaint by the Investigation Team), breaches the Code, and, if so, whether Sanctions are to be ratified, modified or additional Sanctions are to be imposed.
- 8.9. The determinations of the Appeals Board are final.

## 9. General provisions about procedures

- 9.1. Every body that carries out decision-making functions under these Procedures
- must, as soon as practicable after reaching its determination, inform the Respondent and the Complainant of its decision together with written reasons for such decision;
  - must observe the rules of natural justice;
  - may adjourn any hearing or meeting to any time or place;
  - except as otherwise provided, may regulate its own procedure as it sees fit.



- 9.2. 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. In the event of a tied vote the Chair of the body shall have a casting vote.
- 9.3. Any member of a body which carries out a decision-making function under these Procedures who has any financial, personal or other interest in the complaint that is likely to affect their independence or judgment or lacks expertise necessary to carry out the function shall not take part in Procedures and their role shall be delegated to another member of the same body.
- 9.4. No body may implement any sanction imposed by it until the expiry of any period for challenging or appealing against its decision.

#### **10. Professional Conduct Committee can initiate complaint against a Member**

- 10.1. The Professional Conduct Committee on its own motion may initiate a complaint against a Member if it has reason to believe that there may be grounds for Misconduct.
- 10.2. If the Professional Conduct Committee initiates a complaint, or if the Professional Conduct Committee has been consulted regarding a possible breach of the Code which results in a complaint being laid (even though the Professional Conduct Committee has not laid the complaint), then the Gatekeeping Stage shall be conducted by the Convenor of the Appeals Panel, in the same manner as set out in section 6.
- 10.3. If a complaint made according to Section 10.2 gets to the Appeals Stage then the Convenor of the Appeals Panel shall be excluded from the Appeals Board.

#### **11. Misconduct**

- 11.1. A Member may be subject to Sanctions under these Procedures if the Member has engaged in Misconduct.
- 11.2. Misconduct is defined as any acts or omissions by a Member that do not meet the standards as reasonably determined and expected by the Society. The standards and expectations of the Society are set out in the Society's Code of Conduct.
- 11.3. Examples of Misconduct may include (but are not limited to):
  - acts or omissions that are contrary to the Society's collective values, principles and objectives;
  - acts or omissions that have the potential to bring into disrepute or damage the reputation of the profession, the Society or Members;



- aiding, abetting, counselling, procuring, inducing or attempting to induce another Member to engage in Misconduct;
- knowingly being involved in, or a party to, Misconduct engaged in by another Member;
- a failure to comply with requirements regarding a Member Disclosure Matter;
- non-compliance with the Rules, Code of Conduct, a Professional Standard, requirements imposed by applicable legislation (including subordinate standards or rules) and any policies, procedures or guidelines of the Society (as in force from time to time);
- Noncompliance with any Sanction imposed by an Investigation Team or Appeals Board;
- Obstruction or failure to co-operate in any substantial respect with any investigation or hearing being conducted under these Disciplinary Procedures;
- Criminal conviction;
- Finding of misconduct by another professional body that the Member was a member of.

11.4.A Member may be found to have engaged in Misconduct due to acts or omissions that occur:

- during his or her work as a Member;
- in other external contexts (such as a Member's personal life) where those acts or omissions can be considered to reflect or have a potential impact on the profession or the Society; and
- in any location.

## 12. Member Disclosure Matters

12.1. A Member Disclosure Matter is a matter where a Member:

- is or has been convicted of a criminal offence;
- has been found to have acted fraudulently or dishonestly by any court, tribunal or professional body;
- has been found by any court or tribunal to have engaged in misleading or deceptive conduct;
- has been the subject of an adverse determination by a regulatory body or professional association;
- is, has been or has become bankrupt or insolvent; or
- has breached a determination or failed to comply with any Sanction imposed by an Investigation Team or Appeals Board.

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

12.3. A Member must disclose any Member Disclosure Matters to the Society in writing:



- if the event occurs after the commencement of these Procedures, within seven days after the occurrence of the event; or
- if the event occurred before the commencement of these Procedures and has not previously been dealt with by the Society, within 60 days of the date of commencement.

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

### 13. Sanctions

13.1. Sanctions means potential orders, actions, penalties or initiatives that may be implemented if a Member is found to have engaged in Misconduct.

13.2. If an Investigation Team or an Appeals Board determine that the Respondent has engaged in Misconduct, they may order one or more of the following forms of Sanction:

- a written warning or letter of concern directed to the Respondent;
- a Reprimand (either public or confidential)
- suspension from membership with the Society for such a period as the Investigation Team or Appeals Board shall specify but with a maximum term of three years;
- a direction to undertake specific action including education, retraining or supervised practice as the Investigation Team or Appeals Board shall specify;
- restrictions on engaging in particular professional activities, as determined by the Investigation Team or Appeals Board, for such a period as the Investigation Team or Appeals Board shall specify;
- payment of a financial penalty to the Society or other persons of an amount the Investigation Team or Appeals Board shall specify;
- expulsion as a Member;
- a requirement for the Respondent to enter an enforceable undertaking with the Society (for example, an undertaking not to practise in a specified area of professional practice for a particular period or to undergo training of a specified kind). If the Respondent breaches such an undertaking, this breach may constitute Misconduct and may result in further proceedings against the Respondent under these Procedures; and
- a contribution to the costs of the proceedings including (but not limited to) an order for the Respondent to make such contribution to the Society's or the Complainant's costs of the proceedings.



13.3. Any Sanction for suspension of Membership or expulsion must be ratified by Council.

#### 14. Publication

- 14.1. Each of the Investigation Team and the Appeals Board 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.
- 14.2. Unless directed by the Chair of the Investigation Team or the Chair of the Appeals Board, the deliberations of the PCC sub-committee, Investigation team and Appeals Board, including records and minutes shall be kept confidential.
- 14.3. A complaint that does not proceed beyond the Gatekeeping Stage shall not be made publicly available, unless the PCC determines that it is in the public interest for the complaint to be made publicly available and disclosed.
- 14.4. The Respondent, Complainant or any other relevant party may make an application to the Chair of the Investigation Team or the Chair of the Appeals Board (as appropriate) requesting the non-publication (in whole or in part) of information relating to the complaint. Any application for non-publication must be made within 20 days of receipt of the determination. The decision to grant non-publication is at the discretion of the Chair of the Investigation Team or the Chair of the Appeals Board (as appropriate).



New Zealand Society of Actuaries (Inc)

PROPOSED