

CPA Australia Ltd By-Laws

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Part 1. Definitions and Interpretation

1.1 Dictionary

In these By-Laws words and phrases defined in the Constitution have the corresponding meaning and the following words and phrases shall have the respective meanings set out:

Administrative Matter	means any actual or alleged breach of any of the provisions or any other matter set out in Part A of column 1 of Schedule 8.
Annual Period	means any rolling period of twelve (12) months duration inclusive from midnight on the commencing date until midnight on the anniversary of that date.
Appeals Committee	means an Appeals Committee from time to time appointed by the Board pursuant to the power in Clause 81(u) of the Constitution in the manner prescribed in By-Law 5.13 and includes, where the context permits, each member thereof for the time being.
Approved Practice Entity	has the meaning ascribed in By-Law 9.2.
Associate	means a Member holding that status pursuant to these By-Laws.
By-Laws	means these By-Laws made by the Board under authority of Clauses 46 and 81(a) of the Constitution.
Certified Practising Accountant	means a Member holding that status pursuant to these By-Laws.
Circulating Resolution	Means a resolution made in accordance with Clause 105 of the Constitution.
Complainant	means any person other than an officer of CPA Australia initiating a Complaint.
Constitution	means the CPA Australia Ltd (CPA Australia) Constitution.
CPA Program	means the professional licentiate education program consisting of several technical segments (each equivalent to a one-semester post-graduate higher education subject) in the areas of accounting, finance and business advice conducted by CPA Australia and required to be undertaken by persons aspiring to the

status of Certified Practising Accountant in the manner from time to time prescribed by the Board.

Disciplinary Committee

means a Disciplinary Committee from time to time appointed by the Board pursuant to the power in Clause 81(u) of the Constitution in the manner prescribed in By-Law 5.10 and includes, where the context permits, each member thereof for the time being.

Disciplinary Procedures

means, in respect of the actual or alleged conduct of any Member whether acting as an accountant or otherwise, any one or more of the following:

- (a) initiating a Complaint;
- (b) investigating including sourcing or obtaining evidence, reviewing and considering;
- (c) preparing reports, recommendations and/or notices of referral to a Tribunal;
- (d) deciding whether or not a Member has a case to answer in respect of a Complaint; and/or
- (e) deciding whether or not a Complaint is or at any time becomes an Unviable Complaint.

Dispute

means any disagreement between a Member and another person including another Member which in the opinion of a PCO does not concern a Complaint in respect of which a Member has a case to answer.

Expert Advisory Panel

means an Expert Advisory Panel from time to time appointed by the Board pursuant to the power in Clause 81(u) of the Constitution in the manner prescribed in By-Law 5.7(b) and includes each member for the time being thereof.

Fellow

means a Member holding that status pursuant to these By-Laws.

Guidelines

means the guidelines from time to time published by the Board to Members (either generally or selectively) in respect of the permitted style of display and use of any of the Intellectual Property of CPA Australia.

ICM

means any person from time to time holding the office of Investigating Case Manager of CPA Australia and reporting to the office of MPC.

KPIs

means the key performance indicators (or any of them) from time to time adopted by the Board for the purpose of measuring the performance from time to time of officers of CPA Australia and Tribunals engaged in regulating the professional conduct of Members including the undertaking of Disciplinary Procedures.

MPC

means any person from time to time holding the office of

Manager Professional Conduct of CPA Australia.

Mentor Program	means the program for providing, under supervision of a mentor, practical workplace experience in relevant competencies likely to enhance the development of significant skills in accounting, finance and business advice required to be undertaken by persons aspiring to the status of Certified Practising Accountant in the manner from time to time prescribed by the Board.
National Chair Panel	means the pool of potential candidates from time to time satisfying the criteria in By-Law 5.11 for appointment to chair a Tribunal other than an OPT or one constituted by an ICM and, where the context permits, includes each member thereof for the time being.
National Disciplinary Panel	means the pool of potential candidates from time to time satisfying the criteria in By-Law 5.10(c) for appointment to a Tribunal other than one constituted by an ICM and, where the context permits, includes each member thereof for the time being.
Non-Administrative Breach	means any actual or alleged breach of any of the provisions set out in Part B of column 1 of Schedule 8.
OPT	means a One Person Tribunal from time to time appointed by the Board pursuant to the power in Clause 81(u) of the Constitution in the manner prescribed by By-Law 5.19 and includes, where the context permits, each member thereof for the time being.
PCO	means any person from time to time holding the office of Professional Conduct Officer of CPA Australia and reporting to the office of MPC.
Prescribed Amount	means the sum of A\$7,500.00 (exclusive of GST).
Professional Conduct Reporting Committee	means the Professional Conduct Reporting Committee from time to time appointed by the Board pursuant to the power in Clause 81(u) of the Constitution in the manner prescribed in By-Law 5.8(d) and includes, where the context permits, each member thereof for the time being.
Public Practice Program	means the program conducted by the Practice Management Distance Learning Unit of CPA Australia and a face to face workshop. Both components are required to be successfully completed prior to a member being eligible to apply for a Public Practice Certificate.

Public Practice Certificate	means a certificate issued pursuant to By-Law 9.3 permitting a Member to provide Public Accounting Services and includes where the context requires a Limited Public Practice Certificate.
Returning Officer	means, where the context admits, an Authority within the meaning of and appointed pursuant to By-Law 7.1 or, if none, the Company Secretary save in the case of a Divisional Council in respect of which the Returning Officer shall be the Divisional Director of the relevant Division unless the Company Secretary, at the request of the Board, appoints another person.
Serious Conduct	means any actual or alleged breach of any of the provisions set out in Part C of column 1 of Schedule 8.
Specialist Designation	has the meaning ascribed in By-Law 3.6 and Specialist Designation List has a corresponding meaning.
Structural Profile	in respect of a Practice Entity includes the following: (a) the address of all places at or from which Public Accounting Services are provided; (b) names of all Members Affiliated and relationship; (c) names and respective tertiary qualifications of all non-Members Affiliated and relationship; (d) particulars of the extent and manner by which any Affiliate exercises Control over the Practice Entity; (e) such other particulars from time to time specified by the Board; and (f) details of any changes in any of the above.
Tribunal	means a properly constituted OPT, Disciplinary Committee or Appeals Committee or any ICM (but only when making a permitted Determination).
Unviable Complaint	means a Complaint that: (a) concerns a matter occurring more than 5 years prior to the date of the Complaint; or (b) concerns a Member who for any reason ceases to be a Member; or (c) is unsupportable on the available evidence; or (d) is or at any time becomes one primarily concerning a fee dispute (whether as to quantum or otherwise); or (e) is or at any time becomes (and for so long as it remains) one being considered by or pending judgement or final decision before any Court or other quasi-judicial panel or tribunal in any jurisdiction.

1.2 Interpretation

In these By-Laws unless specified to the contrary:

- (a) the Forms and Schedules are incorporated in and form part of these By-Laws;
- (b) a reference to the singular includes the plural and vice versa;
- (c) a reference to a given gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined for the purposes of these By-Laws have a corresponding meaning;
- (e) words or phrases defined in section 9 of the Law have the corresponding meaning unless the context otherwise requires;
- (f) use of the word including and similar expressions are not, nor are they to be interpreted as, words of limitation;
- (g) a reference to a person includes a natural person, a body corporate, any other organisation whether incorporated or not and other entities recognised by law;
- (h) a reference to a statute, regulation, proclamation or ordinance includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another governmental authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (i) a reference to any provision in or having force under authority of the Constitution, By-Laws, Code of Professional Conduct or Technical Standards includes any effective modification or re-enactment of, or provision substituted for, that provision;
- (j) a reference to any governmental or statutory body includes any body which replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as such body;
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (l) a reference to writing means legible writing in visible form in the English language and includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes fax transmission;
- (m) where any obligation is imposed on, or any benefit enures for, two or more persons, the obligation binds or enures for the benefit of (as the case may be) those persons jointly and each of them severally;
- (n) a reference to time is to local time in the place in which the relevant Division is located or where the relevant act is to be performed;
- (o) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (p) if the time for performing an obligation under this agreement expires on a day which is not a Business Day, then time is extended until the next Business Day;

- (q) if a Member is not attached to a Division, a reference to a Division or Divisional Council or Director shall be construed as a reference to the Board;
- (r) the language in all parts of these By-Laws shall be in all cases construed in accordance with its fair and common meaning; and
- (s) the Index and any headings are for ease of reference only and do not affect the interpretation of these By-Laws.

Part 2. Notices

2.1 Any notice, consent or other communication under the Constitution or these By-Laws may (unless some other method of service be specified in any particular case) be made or given by a person or the solicitor for that person provided that it:

- (a) is in writing in the English language and addressed to the intended recipient; and
- (b) is signed by the sender (if a natural person) or by an authorised representative of the sender; and
- (c) is given to the addressee by:
 - (i) delivery in person; or
 - (ii) post to, or leaving at, the addressee's address for service; or
 - (iii) by facsimile; or
 - (iv) (if the addressee is a Member), email transmission;
 - (v) by publication in "IN THE BLACK", on the CPA Australia website or by newspaper advertisement; or
 - (vi) if permitted or required by any specific provision of the Constitution or By-Laws or the Law to be served in some different manner from (i) to (v) inclusive above, being served in the manner so prescribed; and
- (d) is regarded as being given by the sender and received by the addressee:
 - (i) if by delivery in person or by being left at the party's address for service, upon delivery;
 - (ii) if by post, in the case of CPA Australia, upon actual receipt, and in every other case (regardless of whether by Registered Post or otherwise), three (3) Business Days from and including the date of posting by prepaid post in respect of an address for service in the same country within which the notice is posted and fifteen (15) Business Days in respect of any other address; or
 - (iii) if by facsimile, when legibly received by the addressee's facsimile number, with receipt being evidenced by a report generated by the sender's machine confirming uninterrupted transmission; or
 - (iv) if by publication in "IN THE BLACK" on the date of issue of the relevant edition or if on the CPA Australia website, on the date it is initially published or by newspaper advertisement, on the date of publication; or

- (v) if by email, when CPA Australia’s electronic mail system generates a message confirming transmission of the email notice to the Member’s email address in the Register or otherwise advised unless either the Member informs CPA Australia within one Business Day after that transmission that the Member has not received the entire notice or CPA Australia receives notification that the email has not been successfully delivered to the Member;

but if the delivery or receipt occurs on a day which is not a Business Day or at a time after 5.00pm (both the day and time being in the place of receipt) it is regarded as having been received at 9.00am on the next following Business Day.

2.2 For the purposes of this By-Law 2, a person’s address for service shall be:

- (a) in the case of CPA Australia, the office in the State or Territory or other place of the Division (if any) to which the Member is attached and if the Member is under exclusive control of the Board, the national office;
- (b) in the case of a Member, their preferred mailing address or if there be none current, any other address appearing in the Register; and
- (c) in the case of any other person, the address or fax number last notified to the sender and, if the person is a corporation, shall also include its registered office.

Part 3. Register and Classes of Membership

3.1 Register

The Board shall maintain the Register categorised by classes of Members and Lists of Members provided by the Constitution.

3.2 Privacy

A Member may at any time upon request gain access to the information that CPA Australia holds about the Member in accordance with the Privacy Act 1988 (Cwth) and the National Privacy Principles.

3.3 Associate

- (a) Every applicant for admission or readmission to membership as an Associate shall:
 - (i) make application in writing in the form from time to time prescribed for the purpose to be accompanied by the prescribed application fee (if any) and the prescribed subscription;
 - (ii) provide evidence in form and substance satisfactory to the Board of having attained the relevant educational qualifications from time to time specified by the Board including in Professional Schedule 1 of the Technical Standards;

- (iii) without limiting paragraph (ii), provide evidence satisfactory to the Board of having passed an examination approved by the Board (whether generally or in any particular case) in the subject of company law; and
 - (iv) produce, unless the Board shall in any particular case dispense with this requirement, sufficient items of identification described in Schedule 6 to aggregate 100 points.
- (b) The membership of a Member admitted or re-admitted to membership as an Associate after 1 January 2004 and before 1 July 2007 shall be automatically forfeited at the expiration of eight (8) years after the date upon which the Member was admitted if the Member has not by that time advanced to the status of Certified Practising Accountant or such other time period determined by the Board from time to time.
- (c) The membership of a Member admitted or re-admitted to membership as an Associate after 1 July 2007 shall be automatically forfeited at the expiration of six (6) years after the date upon which the Member was admitted if the Member has not by that time advanced to the status of Certified Practising Accountant or such other time period determined by the Board from time to time.

3.4 Certified Practising Accountant

Every applicant for admission or readmission to membership as, or advancement in status to, a Certified Practising Accountant shall:

- (a) make application in writing in the form from time to time prescribed for the purpose to be accompanied by the prescribed application fee (if any) and the prescribed subscription;
- (b) satisfy the criteria for admission as an Associate;
- (c) provide evidence satisfactory to the Board of having successfully completed the CPA Program by:
 - (i) direct participation; or
 - (ii) being granted such credits or dispensations approved by the Board in its discretion (whether generally or in any particular case) in respect of the applicant having undertaken a corresponding program conducted by one of the bodies of accountants listed in Schedule 1 or such other professional education program as the Board may from time to time approve;
- (d) without limiting By-Law 3.4(c), provide evidence satisfactory to the Board of having passed examinations approved by the Board (whether generally or in any particular case) in the subjects of taxation and audit;
- (e) provide evidence satisfactory to the Board of either:

- (i) being a member of good standing of one of the bodies of accountants listed in Schedule 1; or
 - (ii) satisfactory completion of the Mentor Program under supervision of a mentor being a Member of at least Certified Practising Accountant status or a member of corresponding status of one of the bodies of accountants listed in Schedule 2;
- (f) provide evidence satisfactory to the Board of attainment of the level of proficiency from time to time set by the Board in English language skills; and
- (g) possess such other qualifications or comply with such other conditions as the Board may prescribe either generally or in any particular case.

3.5 Fellow

Every applicant for admission to membership as, or advancement in status to, a Fellow shall:

- (a) make application in writing in the form from time to time prescribed for the purpose to be accompanied by the prescribed application fee (if any) and the prescribed subscription;
- (b) have achieved the status of or satisfy the criteria for admission as a Certified Practising Accountant;
- (c) provide evidence satisfactory to the Board of having for a period of at least five (5) years within the last seven (7) years immediately preceding the application either:
 - (i) held a responsible executive position relating to accounting, finance or business advice; or
 - (ii) been engaged full-time in providing Public Accounting Services;
- (d) provide evidence satisfactory to the Board, including specific details, of having had not less than fifteen (15) years experience in accounting, finance or business advice; and
- (e) possess such other qualifications or comply with such other conditions as the Board may prescribe either generally or in any particular case.

3.6 Specialist Designations

- (a) A Member holding current a Public Practice Certificate may, for such period and upon such terms from time to time approved by the Board, use after the Member's name one or more Specialist Designations comprising:
 - (i) Auditing Specialist;
 - (ii) External Reporting Specialist;

- (iii) Financial Planning Specialist;
- (iv) Information Technology Specialist;
- (v) Insolvency and Reconstruction Specialist;
- (vi) Management Accounting Specialist;
- (vii) Taxation Specialist; and
- (viii) Treasury Specialist;

provided always a Member shall not be entitled to be granted permission to use more than one Specialist Designation unless the area of work relevant to any further Specialist Designation is closely related, in the opinion of the Board, to the Specialist Designation or Designations already held.

- (b) Every applicant for permission to use a Specialist Designation shall:
 - (i) make application in writing in the form from time to time prescribed for the purpose to be accompanied by the prescribed application fee (if any) and the prescribed subscription (if any);
 - (ii) hold the status (and as a continuing requirement, continue to so hold) of Certified Practising Accountant or Fellow and be entered in the Register on the Active Membership list;
 - (iii) provide evidence satisfactory to the Board of having either:
 - A. (aa) successfully completed an accredited specialist sequence of a minimum of four full-time equivalent semester length postgraduate units in a relevant discipline conducted by a tertiary institution as approved by the Board; and
 - (bb) achieved appropriate experience in the area of work relevant to the Specialist Designation for a period of at least three (3) years immediately preceding the application; or
 - B. obtained expertise through exceptional experience in the area of work relevant to the Specialist Designation for a period of at least ten (10) years immediately preceding the application; and
 - (iv) possess such other qualifications or comply with such other conditions as the Board may prescribe either generally or in any particular case.
- (c) The right to use a Specialist Designation shall, unless renewed as provided in By-Law 3.6(d) or withdrawn pursuant to By-Law 3.6(g), expire

at the end of the Continuing Professional Development triennium applicable to the Member next occurring after:

- (i) the date of grant or last renewal of use; or
 - (ii) the date of coming into operation of this By-Law 3.6.
- (d) A Member desirous of renewing their right to use a Specialist Designation shall no later than thirty (30) Business Days prior to the date of expiry:
- (i) make application in writing in the form from time to time prescribed for the purpose to be accompanied by the prescribed application fee (if any) and the prescribed subscription (if any);
 - (ii) provide evidence satisfactory to the Board of having complied with the requirements of By-Law 3.6(e) and (f)(ii); and
 - (iii) comply with such other conditions as the Board may prescribe either generally or in any particular case.
- (e) Any Member shall, for so long as they have permission to use a Specialist Designation, be placed and remain upon a Specialist Designation List maintained for the purpose. A Member shall only be entitled to remain on the Specialist Designation List (and be entitled to use the relevant Specialist Designation) for so long as the Member shall remain engaged in the practical application of relevant skills by performing work (including without reward) in the area of work relevant to the Specialist Designation held (or each of them if more than one) for an average of at least three (3) hours for every Business Day in each Continuing Professional Development triennium applicable to the Member.
- (f) A Member appearing on the Specialist Designation List must:
- (i) advise the Board immediately upon ceasing to be eligible to hold the Designation;
 - (ii) in undertaking required Continuing Professional Development activities, expend at least 50% of the required hourly commitment in each period in undertaking Continuing Professional Development activities referable to and appropriate for maintaining expertise in the area of work relevant to their Specialist Designation; and
 - (iii) retain records in respect of their compliance with criteria for remaining on such List for at least twelve (12) months after the end of the relevant triennium and produce to the Board upon request such information as may be specified for the purpose of assessing compliance by the Member with the requirements of the Designation.
- (g) The Board shall have power to remove from the Specialist Designation List at any time any Member who may cease for any reason to qualify for

remaining upon such List, whether or not the Member has so advised the Board.

- (h) The Board delegates (non-exclusively) the powers set out in the preceding paragraphs of this By-Law 3.6 to an officer of CPA Australia from time to time nominated by the Board for the purpose. A Member aggrieved by a decision of the Board (including its delegate) to reject an application for permission to use a Specialist Designation or to remove a Member from the Specialist Designation List shall have the right of appeal to an Appeals Committee exercisable pursuant to By-Law 5.13(s) in the same manner as an appeal from a Determination of a Disciplinary Committee and upon the same terms contained in By-Laws 5.12 and 5.13 as can be applied to the context (including the power to make a Determination in respect of costs and expenses reasonably incurred by CPA Australia in the investigation and Determination of the matter), but without publication as provided by By-Law 5.14.

3.7 Retired Membership List

For the purposes of Clause 12 of the Constitution, a Member may be placed upon the Retired Membership List if the Member:

- (a) has attained the age of fifty-five (55) years and (as a continuing requirement) is not engaged in full-time gainful employment;
- (b) has made application in writing in the form from time to time prescribed for the purpose; and
- (c) possesses such other qualifications or complies with such other conditions as the Board may prescribe either generally or in any particular case;

and upon entry in the Register on the Retired Membership List a Member shall:

- (d) be absolved from complying with:
 - (i) (unless By-Law 4.1(b) applies), any Continuing Professional Development requirements of membership; and
 - (ii) (unless By-Law 9.5(a) applies), any requirement to hold current a policy of professional indemnity insurance; and
- (e) if placed upon the Retired Membership List prior to 19 April 1977, be released from any requirement to pay an annual membership subscription.

3.8 Membership designations

A Member shall be entitled to use after the name of the Member words and letters of designation referable to the Members status in manner following:

- (a) an Associate may use only the post-nominal **ASA**;

- (b) a Certified Practising Accountant may use only the post-nominal **CPA**; and
- (c) a Fellow may use only the post-nominal **FCPA**.

3.9 Migration between Divisions

A Member may continue to use any designation to which the Member is entitled notwithstanding the Member may:

- (a) migrate (whether temporarily or permanently) between different Divisions or countries; and/or
- (b) perform work (including without reward) in the areas of accounting, finance or business advice in any Division or country other than the Division or country in which the Member was admitted to membership.

3.10 Use of designations of other bodies of accountants

Any Member being also a member of any body of accountants specified in Schedule 3 may, in conjunction with any designation used by authority of By-Law 3.8, also use after their name words or letters permitted by such other body of accountants indicating their membership of the same.

Part 4. Continuing Professional Development

4.1 Every Member entered in the Register on:

- (a) the Active Membership List in any class, or
- (b) the Retired Membership List but who:
 - (i) in any Annual Period provides Public Accounting Services (whether or not for reward), or
 - (ii) holds a Public Practice Certificate,

must, in each triennium, undertake at least one hundred and twenty (120) hours of Continuing Professional Development of which at least twenty (20) hours must be undertaken in each year of the triennium.

4.2 Each Member undertaking Continuing Professional Development must:

- (a) make a contemporaneous permanent record of the precise nature of the same including date, time expended and topics covered;
- (b) retain such record for at least twelve (12) months after the end of the relevant triennium; and

- (c) produce such record to an officer of CPA Australia for inspection upon request.

4.3 For the purposes of this Clause the triennium commencement date shall (save in the case of Members admitted prior to 31 December 1998, for whom the triennium commencement date shall be 1 January 1999) be determined by their date of admission. Members admitted as Associates prior to 30 June in any year shall be deemed to have commenced their triennium on 1 January of that year; whilst Members admitted as Associates after 30 June in any year shall be deemed to have commenced their triennium on 1 January of the following year.

4.4 The Board shall, in respect of any Member who shall for any reason fail to undertake the required amount of Continuing Professional Development activities in any period or who fails to produce a record of their Continuing Professional Development activities in a triennium on request of an officer of CPA Australia for inspection (without prejudice and in addition to the provisions of By-Law 3.6(g) applying to Members on the Specialist Designation List failing to achieve the diversity of Continuing Professional Development required by By-Law 3.6(f)(ii)):

- (a) if of Associate status, suspend their membership; and
- (b) if of Certified Practising Accountant or Fellow status, downgrade their membership to Associate status;

until, upon application to the Board, the membership or status of such Member be reinstated, which the Board may do upon receiving evidence satisfactory to the Board of rectification of the Member's failure to comply with required Continuing Professional Development activities and upon such terms and conditions as the Board may prescribe either generally or in any particular case.

4.5 A Member suffering:

- (a) a suspension of membership or lowering of status and/or removal of any Specialist Designation by reason of failure to comply with any Continuing Professional Development requirement referred to in this Part 4; or
- (b) forfeiture of membership by reason of:
 - (i) resignation;
 - (ii) failure to pay their subscription in accordance with Clause 21 of the Constitution; or
 - (iii) in the case of an Associate, failure to comply with the requirements contained in either By-Law 3.3(b) or 3.3(c);

shall, unless in the opinion of the Board special circumstances warrant dispensation in any individual case, only be eligible to make application (which the Board may approve or not in its discretion upon consideration of all the circumstances) for reinstatement of status and/or a Specialist Designation or to membership (as appropriate) within five (5) years after the date of such lowering of status or forfeiture if:

- (c) the former Member is able to satisfy the Board that, within the twelve (12) months immediately prior to their application for reinstatement, the former Member has completed forty (40) hours of Continuing Professional Development (which shall be disregarded in calculating compliance with the requirement for Continuing Professional Development following any reinstatement);
- (d) it is a condition of reinstatement (if any) that the former Member complete ten (10) hours of Continuing Professional Development within the first six (6) months following reinstatement;
- (e) in the case of forfeiture for failure to pay subscription, the former Member pays all subscription and other arrears and an application for membership fee; and
- (f) the former Member also satisfies any other requirement for reinstatement from time to time imposed by the Board either generally or in any particular case;

provided always any application for reinstatement after the fifth anniversary of the date of such lowering of status or forfeiture shall be treated as a new application for membership in respect of which the Board may impose such conditions it considers expedient either generally or in any particular case.

- 4.6 The Board delegates (non-exclusively) the powers set out in By-Laws 4.4 and 4.5 inclusive to the MPC severally with every ICM. A Member aggrieved by a decision of the Board (including its delegate) to suspend or downgrade the status of membership of a Member or to reinstate the same upon satisfactory terms or at all to By-Laws 4.4 and/or 4.5 shall have the right of appeal to an Appeals Committee exercisable pursuant to By-Law 5.13(s) in the same manner as an appeal from a Determination of a Disciplinary Committee and upon the same terms contained in By-Laws 5.12 and 5.13 as can be applied to the context (including the power to make a Determination in respect of costs and expenses reasonably incurred by CPA Australia in the investigation and Determination of the matter), but without publication as provided by By-Law 5.14.
- 4.7 For the purposes of clause 27(5) of the Constitution, a Member suffering a suspension of membership shall, unless in any particular case otherwise resolved by the Board, be permitted during the period of suspension to continue to receive the Journal, make use of any library maintained by CPA Australia and access information relating to Continuing Professional Development requirements.

Part 5. Regulation of Professional Conduct

5.1 Delegation of Powers

The Board, pursuant to the powers contained in Clause 81(u) of the Constitution, delegates (non-exclusively and in addition to any other specific delegation of power described elsewhere in these By-Laws) such of the powers conferred by Clauses 26, 27 and 34 of the Constitution described below to each of the following persons committees and Tribunals to be exercised by each of them non-

exclusively and concurrently with the Board and every other like power from time to time in force:

- (a) to every PCO, the power to undertake, or commission from an ICM by way of sub-delegation, Disciplinary Procedures;
- (b) to every ICM, the power to:
 - (i) undertake, or commission from an Expert Advisory Panel by way of sub-delegation, Disciplinary Procedures;
 - (ii) refer a Complaint to an OPT or Disciplinary Committee for Determination; and
 - (iii) make a Determination in respect of:
 - A. a Complaint concerning an Administrative Matter after forming an opinion for the purposes of Clause 27(1) of the Constitution whether the person while a Member whether acting as an accountant or otherwise engaged in or suffered any of the matters complained of and impose any one or more of the penalties set out under Clause 27(2) of the Constitution (save and except only those penalties described in paragraphs (a) and (b) of that Clause); and
 - B. payment of costs and expenses reasonably incurred by CPA Australia in the investigation and determination of the matter;
- (c) to the MPC, the power to:
 - (i) supervise, undertake, or commission from an Expert Advisory Panel by way of sub-delegation, Disciplinary Procedures;
 - (ii) refer a Complaint to an OPT or Disciplinary Committee for Determination;
 - (iii) investigate and create reports and undertake such further activities as from time to time specified by the Board; and
 - (iv) make a Determination in respect of:
 - A. a Complaint concerning an Administrative Matter after forming an opinion for the purposes of Clause 27(1) of the Constitution whether the person while a Member whether acting as an accountant or otherwise engaged in or suffered any of the matters complained of and impose any one or more of the penalties set out under Clause 27(2) of the Constitution (save and except only those penalties described in paragraphs (a) and (b) of that Clause); and
 - B. payment of costs and expenses reasonably incurred by CPA Australia in the investigation and determination of the matter;
 - C. suspension of the membership of any Member in the circumstances prescribed and in accordance with Clause 27(3); and/or
 - D. any application by a person whose name has been removed from the Register under the Constitution for reinstatement in the circumstances prescribed in and in accordance with Clause 34 of the Constitution in the

capacity of a committee of one constituted for the purpose;

- (d) to an Expert Advisory Panel, the power to undertake Disciplinary Procedures or commission the same by way of sub-delegation from an ICM;
- (e) to the Professional Conduct Reporting Committee, the power to supervise the conduct of Disciplinary Procedures and any Tribunal in the manner set out in By-Law 5.8.
- (f) to an OPT, the power to:
 - (i) undertake Disciplinary Procedures or commission the same by way of sub-delegation from an ICM;
 - (ii) refer a Complaint to a Disciplinary Committee for Determination;
 - (iii) make a Determination in respect of:
 - A. a Complaint concerning an Administrative Breach or Non-Administrative Breach after forming an opinion for the purposes of Clause 27(1) of the Constitution whether the person while a Member whether acting as an accountant or otherwise engaged in or suffered any of the matters complained of and impose any one or more of the penalties set out under Clause 27(2) of the Constitution (save and except only that penalty described in paragraph (a) of that Clause); and/or
 - B. payment of costs and expenses not exceeding the Maximum Costs reasonably incurred by CPA Australia in the investigation and determination of the matter;
- (g) to a Disciplinary Committee, the power to:
 - (i) undertake Disciplinary Procedures or commission the same by way of sub-delegation from an ICM;
 - (ii) make a Determination in respect of:
 - A. any Complaint after forming an opinion for the purposes of Clause 27(1) of the Constitution whether the person while a Member whether acting as an accountant or otherwise engaged in or suffered any of the matters complained of and impose any one or more of the penalties set out under Clause 27(2) of the Constitution;
 - B. any re-hearing of a Complaint on appeal from an ICM pursuant to By-Law 5.13(r); and/or
 - C. payment of costs and expenses not exceeding the Maximum Costs reasonably incurred by CPA Australia in the investigation and determination of the matter;
- (h) to an Appeals Committee, the power to:
 - (i) undertake Disciplinary Procedures or commission the same by way of sub-delegation from an ICM;
 - (ii) make a Determination in respect of:
 - A. any Complaint after forming an opinion for the purposes of Clause 27(1) of the Constitution whether the person while a Member whether acting as an accountant or otherwise engaged in or suffered any of the matters

- B. complained of and impose any one or more of the penalties set out under Clause 27(2) of the Constitution; any re-hearing of a Complaint on appeal from the Determination of a Disciplinary Committee pursuant to By-Law 5.13(s); and/or
- C. in the event the appeal is unsuccessful, payment of costs and expenses not exceeding the Maximum Costs reasonably incurred by CPA Australia in connection with the hearing of the appeal.

5.2 Initiation of a Complaint

- (a) A Complaint, other than one made by an officer of CPA Australia, shall be initiated by the Complainant forwarding to CPA Australia particulars of the matter complained of in writing in such form (including ensuring compliance with the Privacy Act 1988 (Cth)) from time to time approved by the MPC.
- (b) A Complaint by an officer of CPA Australia may be initiated informally or formally in any form from time to time approved by the MPC.
- (c) Upon receipt a Complaint shall be referred to a PCO who shall open a file and undertake or commission Disciplinary Procedures in relation to the Complaint. The PCO shall cause an acknowledgement of receipt to be forwarded to the Complainant within 14 days of opening the file.
- (d) As soon as expedient after receipt of a Complaint (and if considered reasonable in the circumstances, in conjunction with undertaking any Disciplinary Procedures) the PCO shall notify the Member concerned and provide such details as considered by the PCO to be desirable.
- (e) A Complainant may by notice at any time withdraw a Complaint. Withdrawal shall not in any way effect the Disciplinary Process nor the Complaint, however, if an ICM is of the opinion the Member concerned has a case to answer and the Complaint does not become an Unviable Complaint.

5.3 Conduct of Disciplinary Procedures

The following procedures shall apply to the process of investigating and sourcing and obtaining evidence in respect of the actual or alleged conduct of any Member whether acting as an accountant or otherwise:

- (a) A Complaint shall be dismissed and the file in respect of the Complaint closed (and the Complainant and Member concerned notified in writing accordingly) without proceeding before a Tribunal if at any time a PCO, ICM or member of the Expert Advisory Panel decides the Member has no case to answer in respect of the Complaint or that the Complaint is or at any time becomes an Unviable Complaint otherwise than because the matter is being considered by or pending judgement or final decision before a Court, in which event the file shall be held in abeyance pending

such judgement or final decision. A PCO shall not dismiss a Complaint and close the file in respect of the Complaint for reason the PCO has decided a Member has no case to answer in respect of the Complaint or that the Complaint is or at any time becomes an Unviable Complaint, however, unless the matter has first been reviewed by an ICM.

- (b) The grounds upon which a Member shall be considered to have no case to answer in respect of a Complaint shall be:
 - (i) if there is insufficient evidence on the balance of probabilities to support the Complaint; or
 - (ii) if the Member has offered a satisfactory and sufficient explanation with respect to the matters complained of.
- (c) A Member about whom a Complaint has been made shall be afforded an opportunity of providing a satisfactory and sufficient explanation with respect to the matters complained of. If a Member shall fail to provide a satisfactory and sufficient explanation in writing with respect to the matters complained of within ten (10) Business Days (or such further period as an ICM may agree in any particular circumstance) of receipt or deemed receipt of a request by an officer of CPA Australia, the Member shall be deemed to have a case to answer in respect of the Complaint.
- (d) A Complainant or Member may be requested to provide further information in respect of the Complaint at any time and from time to time. A Complainant declining or failing to provide further information within 20 Business Days of a request shall be deemed to have withdrawn their Complaint.
- (e) Information furnished by a Member pursuant to By-Law 5.3(c) or (d) may contain personal information and sensitive information within the meaning in the Privacy Act 1988 (Cwth). This information is collected for the primary purpose described in Clause 1C(1) of the Constitution, and the secondary purpose of CPA Australia dealing with the Complaint in the manner set out in these By-Laws. A Member, by the act of furnishing such information to CPA Australia is, unless and until, in any particular instance, the Member specifically advises CPA Australia in writing to the contrary, given to consent to CPA Australia providing to a Complainant a copy or written summary of all and any information furnished by the Member to CPA Australia regarding a Complaint.
- (f) A Member must, within ten (10) Business Days (or such further period as may be allowed in any particular circumstance) of receipt or deemed receipt of a request by an officer of CPA Australia, provide all particulars requested as directed whether in writing or by personal attendance at the office of CPA Australia nominated for the purpose and produce any and all information recorded on any media in the possession power or control of the Member relating to the matters in issue in the Complaint. Such a request may be made concurrently with affording the Member an opportunity of providing a satisfactory and sufficient explanation with respect to the matters complained of in the manner set out in By-Law 5.4(c). The Member may, where personal attendance is required, be

permitted to attend by prior arrangement by means of telephone hook-up, conference call or other instantaneous communication, which may be recorded. Any failure of a Member to comply with such a request strictly within the time specified shall be a breach of this By-Law and dealt with concurrently with the Complaint.

- (g) A person undertaking Disciplinary Procedures shall be entitled to obtain and rely upon evidence by transcript of oral statements or upon statutory declaration or by affidavit or declaration made in accordance with the Federal Court Rules then having force.
- (h) If, in the opinion of the person undertaking Disciplinary Procedures, a Member has a case to answer in respect of a Complaint, the matter shall be referred to the appropriate Tribunal for Determination and the Member and Complainant notified accordingly unless By-Law 5.3(i) applies.
- (i) If, in the opinion of the person undertaking Disciplinary Procedures, a Member has a case to answer in respect of a Complaint considered capable of being remedied and concerning compliance with the requirements of membership of CPA Australia regarding any of the matters following:
 - (i) payment of any monies owing to CPA Australia on any account whatsoever excepting only in respect of costs the subject of a Determination;
 - (ii) Quality Assurance;
 - (iii) Continuing Professional Development;
 - (iv) the holding of a Public Practice Certificate;
 - (v) professional indemnity insurance within the meaning in By-Law 9.5; and
 - (vi) the Practice Entity through or by which the Member provides Public Accounting Services;

then the person undertaking Disciplinary Procedures may, in their discretion, withhold referring the matter to the appropriate Tribunal for Determination so long as the Member concerned promptly enters into (by signing and returning to CPA Australia within ten (10) Business Days, or such further period as may be allowed in the circumstances, of receipt or deemed receipt of an offer or request so to do), and continues to strictly perform, a written undertaking in the form approved by the MPC to remedy all matters complained of within such time period approved by the MPC.

5.4 PCOs

- (a) PCOs shall perform, as delegates of the Board, the activities described in By-Law 5.1(a) in the manner set out in By-Laws 5.2, 5.3 and this By-Law 5.4.
- (b) A PCO may at any time commission by sub-delegation to an ICM the whole or any part of the Disciplinary Procedures in respect of a Complaint.
- (c) A PCO shall provide such advice or assistance as from time to time requested by any of an ICM, Expert Advisory Panel, OPT, Disciplinary Committee or Appeals Committee.
- (d) Each PCO shall report to the MPC and maintain such records and provide such reports as the MPC shall from time to time require.

5.5 ICMs

- (a) ICMs shall perform, as delegates of the Board, the activities described in By-Law 5.1(b).
- (b) An ICM may at any time and from time to time commission by sub-delegation to the Expert Advisory Panel the whole or any part of the Disciplinary Procedures in respect of a Complaint.
- (c) Each ICM shall report to the MPC and maintain such records and provide such reports as the MPC shall from time to time require.
- (d) An ICM shall take responsibility for and deal with every Complaint in respect of which it is considered a Member has a case to answer (and which that is not an Unviable Complaint) until resolved by dismissal or Determination and the relevant file closed and in so doing shall, amongst other things:
 - (i) provide (or seek from an external service provider) advice or assistance as from time to time requested by any of a PCO, Expert Advisory Panel, OPT, Disciplinary Committee or Appeals Committee;
 - (ii) refer every Complaint relating to a Non-Administrative Breach to an OPT for Determination;
 - (ii) refer every Complaint relating to Serious Conduct to a Disciplinary Committee for Determination;
 - (iii) deal expeditiously with any Complaint relating to an Administrative Matter by making a Determination after making and/or reviewing a report and granting the Member concerned the right to be heard with respect to the Complaint in such manner from time to time prescribed by the MPC; and

- (iv) in conjunction with the Chair of the National Disciplinary Panel, appoint and arrange hearings by and attendances and assist with deliberations at any Tribunal and cause publication of Determinations made.

5.6 MPC

- (a) The MPC shall perform, as delegate of the Board, the activities described in By-Law 5.1(c).
- (b) The MPC may at any time and from time to time commission by sub-delegation to the Expert Advisory Panel the whole or any part of the Disciplinary Procedures in respect of a Complaint.
- (c) The MPC may allocate, in the discretion of the MPC, the undertaking of Disciplinary Procedures between PCOs, ICMs, the Expert Advisory Panel and external service providers.
- (d) The MPC shall maintain such records and provide such reports as the Board shall from time to time require.

5.7 Expert Advisory Panel

- (a) The Expert Advisory Panel shall perform, as delegate of the Board, the activities described in By-Law 5.1(d).
- (b) The Expert Advisory Panel shall at all times comprise at least five (5) but no more than nine (9) persons (at least two (2) of whom must be Members) from time to time appointed by the Board. Persons appointed to the Expert Advisory Panel shall hold office (subject to re-appointment) for a period of two (2) years and appointments shall be made to reflect a mix of competence and expertise in the areas following:
 - (i) Public Accounting Services including audit;
 - (ii) legal;
 - (iii) Disciplinary Procedures;
 - (iv) compliance;
 - (v) broad Membership knowledge; and
 - (vi) knowledge of the Constitution, By-Laws, Code of Professional Conduct, Technical Standards and ethical standards.
- (c) Members of the Expert Advisory Panel shall be remunerated at the rates from time resolved by the Board.

- (d) The Expert Advisory Panel shall consult and advise any PCO, ICM or Tribunal as from time to time requested in respect of Disciplinary Procedures.
- (e) The Expert Advisory Panel shall maintain such records and provide such reports as the Board shall from time to time require.

5.8 Professional Conduct Reporting Committee

- (a) The Professional Conduct Reporting Committee shall perform, as delegate of the Board, the activities described in By-Law 5.1(e).
- (b) The mission of the Professional Conduct Reporting Committee shall be to ensure Members comply with mandatory professional standards through the maintenance and continuous enhancement and development of a best practice procedure for expeditiously resolving Complaints and regulating the professional conduct of Members generally.
- (c) The objectives of the Professional Conduct Reporting Committee shall be to:
 - (i) continuously monitor effectiveness of the procedure described in By-Law 5.8(b); and
 - (ii) assist Members maintain the quality of their professional activities.
- (d) The Professional Conduct Reporting Committee shall at all times comprise at least three (3) but no more than five (5) persons from time to time appointed by the Board including the Chair for the time being of the National Disciplinary Panel who shall also act as Chair of the Professional Conduct Reporting Committee. Persons appointed to the Professional Conduct Reporting Committee shall, apart from the Chair of the National Disciplinary Panel, hold office (subject to re-appointment) for a period of two (2) years.
- (e) The Professional Conduct Reporting Committee shall possess and undertake the responsibilities following:
 - (i) consult as from time to time considered desirable with the MPC, the National Disciplinary Panel, or any Tribunal in respect of strategic initiatives;
 - (ii) monitor the conduct of Disciplinary Procedures and performance of PCOs, ICMs and Tribunals and report to the Board as to those matters at least twice yearly, including making recommendations with respect to matters arising;
 - (iii) set training and accreditation requirements from time to time for ICMs; and
 - (iv) continuously review the Constitution, By-Laws, Code of Professional Conduct and Technical Standards with respect to the

experience and conduct of Disciplinary Procedures and Tribunals and, if considered desirable in light of the objectives set out in By-Law 5.8(c), make recommendations to the Board to effect appropriate amendments.

- (f) Members of the Professional Conduct Reporting Committee shall be remunerated at the rates from time resolved by the Board.
- (g) The Professional Conduct Reporting Committee shall maintain such records and provide such reports as the Board shall from time to time require.

5.9 OPT

- (a) An OPT shall perform, as delegate of the Board, the activities described in By-Law 5.1(f).
- (b) An OPT shall be appointed on a case by case basis (with the consent of the nominee in each case) by the ICM in conjunction with the Chair National Disciplinary Panel from persons being Members who are also members of the National Disciplinary Panel.
- (c) A Member acting as an OPT shall be remunerated at the rate from time resolved by the Board.
- (d) An OPT may at any time commission by sub-delegation to an ICM the whole or any part of the Disciplinary Procedures in respect of a Complaint.
- (e) An OPT shall deal expeditiously with any Complaint referred to the OPT by making a Determination after reviewing a report on the matter and presiding over a hearing upon notice to the Member concerned. The Determination of an OPT shall be Final.

5.10 Disciplinary Committee

- (a) The Disciplinary Committee shall perform, as delegate of the Board, the activities described in By-Law 5.1(g).
- (b) A Disciplinary Committee shall be appointed on a case by case basis (with the consent of the nominees in each case) by the ICM in conjunction with the Chair National Disciplinary Panel from persons who are National Disciplinary Panel members, at least two (2) of whom shall (if applicable) be appointees of the relevant Division (if any) to which the Member concerned is attached. The quorum for a Disciplinary Committee hearing and Determination shall be three (3) persons comprising one member of the National Chair Panel (who shall chair proceedings) plus two members of the National Disciplinary Panel.
- (c) The National Disciplinary Panel shall at all times comprise at least five (5) persons but no more than ten (10) plus the product of four (4) and the

number of Divisions from time to time. Persons appointed to the National Disciplinary Panel shall hold office (subject to re-appointment) for a period of two (2) years. The National Disciplinary Panel shall comprise persons from time to time:

- (i) being Members or non-Members;
 - (ii) appointed by the Board upon the recommendation of each Divisional Council, which may each recommend two (2) Members and two (2) non-Members for appointment to the National Disciplinary Panel from time to time; and
 - (iii) otherwise appointed by the Board as possessing, in the opinion of the Board, skills complementary to the other members of the National Disciplinary Panel.
- (d) The Board shall from time to time appoint a person being a Member to act as Chair of the National Disciplinary Panel. Such appointee shall hold office (subject to re-appointment) for a period being the lesser of two (2) years from the date of their appointment as Chair or as a member of the National Disciplinary Panel. The duties of the Chair shall include:
- (i) in conjunction with the ICM, appointing hearings and nominating members of the National Disciplinary Panel to hear and Determine Complaints;
 - (ii) providing to the Board an annual report of the activities of the National Disciplinary Panel;
 - (iii) serving as a member of the National Chair Panel;
 - (iv) serving as Chair of the Professional Conduct Reporting committee; and
 - (v) such other duties from time to time resolved by the Board.
- (e) Members of the National Disciplinary Panel (including the Chair) shall be remunerated at the rates from time resolved by the Board.
- (f) A Disciplinary Committee may at any time commission by sub-delegation to an ICM the whole or any part of the Disciplinary Procedures in respect of a Complaint.
- (g) A Disciplinary Committee shall deal expeditiously with any Complaint referred to it by making a Determination after reviewing a report on the matter and presiding over a hearing upon notice to the Member concerned.

5.11 National Chair Panel

- (a) The National Chair Panel shall at all times comprise at least three (3) but no more than ten (10) persons from time to time appointed by the Board

including the person from time to time holding office of Chair of the National Disciplinary Panel. Persons appointed to the National Chair Panel shall hold office (subject to re-appointment) for a period of two (2) years.

- (b) The Board may from time to time appoint a person being a Member to act as Chair of the National Chair Panel. Such appointee shall hold office (subject to re-appointment) for a period being the lesser of two (2) years from the date of their appointment as Chair or as a member of the National Chair Panel. The duties of Chair shall include:
 - (i) acting as Chair of each Appeals Committee (except in the case of a conflict of interest); and
 - (ii) such other duties from time to time resolved by the Board.
- (c) Members of the National Chair Panel (including the Chair, if any) shall be remunerated at the rates from time resolved by the Board.

5.12 Appeals Committee

- (a) The Appeals Committee shall perform, as delegate of the Board, the activities described in By-Law 5.1(h).
- (b) An Appeals Committee shall be appointed on a case by case basis (with the consent of the nominees in each case) by the ICM in conjunction with the Chair National Disciplinary Panel from persons who are National Disciplinary Panel members, at least two (2) of whom shall (if applicable) be appointees of the relevant Division (if any) to which the Member concerned is attached. The quorum for an Appeals Committee hearing and Determination shall be three (3) persons comprising the Chair of the National Chair Panel or his or her nominee or, if no Chair be appointed, a member of the National Chair Panel (who shall chair proceedings) plus at least two members of the National Disciplinary Panel.
- (c) An Appeals Committee may at any time commission by sub-delegation to an ICM the whole or any part of the Disciplinary Procedures in respect of a Complaint.
- (d) An Appeals Committee shall deal expeditiously with any Complaint referred to it by making a Determination after reviewing a report on the matter and presiding over a hearing upon notice to the Member concerned.

5.13 Conduct of Tribunals

- (a) A Tribunal shall always be constituted of an uneven number of persons and conducted under direction of a Chair.
- (b) No person may serve upon more than one Tribunal concurrently.

- (c) No person may serve upon more than one Tribunal in respect of the same Complaint.
- (d) Every Tribunal, other than one constituted by an ICM, shall be assisted by a PCO and/or ICM, and a PCO or ICM (or counsel other than in the case of an OPT) may present the case to answer against the Member concerned. For the removal of doubt, nothing in By-Laws 5.13(b) or (c) prohibit the same PCO or ICM from assisting more than one Tribunal concurrently nor more than one Tribunal in respect of the same Complaint.
- (e) Referral of a Complaint to a Tribunal shall be effected by service upon the Member concerned at least fifteen (15) Business Days prior to the proposed hearing date of:
 - (i) a notice in such form from time to time approved by the MPC specifying details of:
 - A. the time, date and place appointed for the hearing;
 - B. the proposed composition of the Tribunal; and
 - C. particulars of the case to answer the subject of the Complaint by reference to the particular provisions of the Constitution, By-Laws, Code of Professional Conduct or Technical Standards alleged to have been breached by the Member; together with
 - (ii) a copy of the evidentiary and any other materials intended to be placed before the Tribunal in support of the allegations in the Complaint.
- (f) Service upon a Member of all materials referred to in By-Law 5.13(e) may not be effected by facsimile but shall be effected:
 - (i) if by delivery in person (which for the purposes of this By-Law 5.14 shall include leaving the materials with a person apparently above the age of 16 years):
 - A. at the residential address of that Member; or
 - B. in the apparent employment of an entity with which that Member is Affiliated apparently occupying (exclusively or otherwise) any business premises),

by a person licensed to serve process in the place in which service is to be effected; and
 - (ii) if by post, by any system of secure mail delivery which requires a signed receipt from the addressee upon delivery;

and, in the absence of any prior acknowledgement or other response from or appearance by the Member at the appointed hearing, the matter cannot

proceed to be heard unless the Tribunal is satisfied on the balance of probabilities that the materials have been brought to the attention of the Member concerned.

- (g) A Member concerned with the independence, objectivity, or conduct, whether actual or perceived, of any member of any Tribunal appointed to hear a Complaint concerning the Member must give notice of such objection to the ICM, specifying the grounds, at least ten (10) Business Days prior to the appointed hearing. If the ICM considers the objection sustained the Tribunal shall be re-cast and, if necessary, a new hearing date appointed without penalty to the Member. If the ICM considers the objection unsustainable, however, the matter shall proceed as originally advised.
- (h) A Member wishing to be heard before the Tribunal dealing with a Complaint concerning the Member must, at least five (5) Business Days prior to the appointed hearing date, notify the ICM of:
 - (i) their wish to be heard, specifying whether by personal attendance (and, if so, by whom including the name and occupation of any agent proposed to make oral submissions on their behalf) or by written submission or both;
 - (ii) the content of any written submission proposed to be presented to the Tribunal, providing a copy; and
 - (iii) the name and occupation of any witness proposed to be called upon by the Member to give evidence on their behalf including a summary of the nature and relevance of such evidence.

Failure of a Member to strictly comply with the requirements of this By-Law 5.13(h) may render the Member liable to pay the costs of any adjournment ordered by a Tribunal for reason of late notification of required information.

- (i) A Tribunal may proceed to hear a Complaint and make a Determination whether or not the Member concerned is in attendance. A Tribunal shall always, however, afford the Member concerned the right of being heard by written submission and/or orally by themselves or an agent including (save in the case of an ICM or OPT where no legal representation shall be permitted) legal counsel following presentation of the case to answer against the Member concerned by a PCO, ICM or (save in the case of an OPT) counsel. The Tribunal may also allow the Member to be heard by prior arrangement by telephone hook-up, conference call or other instantaneous communication, which may be recorded. The person presenting the case to answer shall have the right of reply. Any Tribunal, including an ICM or OPT, may at any time seek guidance in their deliberations from a legal counsel.
- (j) A Tribunal shall have regard to the following in forming an opinion for the purposes of making a Determination:

- (i) the Tribunal shall enjoy the same powers and authorities and be governed by the same rules with respect to investigating and sourcing and obtaining evidence in respect of the actual or alleged conduct of any Member whether acting as an accountant or otherwise as is applicable to Disciplinary Procedures;
- (ii) the Tribunal shall apply the rules of natural justice and reach a Determination on the evidence before it upon the balance of probabilities;
- (iii) the Tribunal may call upon any non-Members considered relevant to its deliberations to attend before it by consent for questioning;
- (iv) the Tribunal may, provided at least five (5) Business Days prior notice has been given, call upon any Member (including the Member the subject of the Complaint) considered relevant to its deliberations to attend before it for questioning and to produce any and all information recorded on any media in the possession power or control of the Member relating to the matters in issue in the Complaint specified in such notice. The Tribunal may allow such Member to attend by prior arrangement by means of telephone hook-up, conference call or other instantaneous communication, which may be recorded. Any failure of a Member to comply with such a request shall be a breach of this By-Law and such conduct shall be made subject of a Complaint accordingly;
- (v) the Tribunal may in its absolute discretion receive and consider such further or other evidence or Complaints in respect of the Member concerned that may by howsoever means come to its attention;
- (vi) unless in the discretion of the Tribunal there are considered to be:
 - A. unusual or exceptional circumstances (such as, for example, in the case of a second or further offence); or
 - B. mitigating circumstances;

any penalty (not exceeding the Maximum Fine) shall be imposed and any costs and expenses (not exceeding the Maximum Costs) ordered to be paid shall be calculated by reference to the model scale of penalties and costs set out in column 2 of Schedule 8;

- (k) A Member may in writing at any time:
 - (i) consent to a Complaint in respect of a Non-Administrative Breach being treated and dealt with by an ICM for Determination as an Administrative Matter;
 - (ii) admit the whole or any part of a Complaint;
 - (iii) consent to a Determination including the imposition of any penalty; and

- (iv) submit particulars of any mitigating circumstances (which shall exclude the Member's period of Membership) in respect of the Complaint;

and the same shall be taken into account by a Tribunal in making a Determination including imposing any penalty and assessing costs and expenses to be paid to CPA Australia in respect of the matter.

- (l) A Tribunal may at any time in its discretion (including as to costs thereby incurred) adjourn, re-convene or cancel any hearing or remit the matter to another Tribunal.
- (m) A Tribunal may hand down its Determination immediately following the close of submissions with or without retiring to deliberate, or may reserve its Determination for handing down on a future date to be advised. A Tribunal may also make a Determination by Circulating Resolution (whether or not, in the Tribunal's discretion, preceded by a meeting, telephone hook-up, conference call or other instantaneous communication between members of the Tribunal) where:
 - (i) a Member has consented to a Determination pursuant to By-Law 5.13(k), or
 - (ii) has advised pursuant to By-Law 5.13(h) the Member will not, whether by him or herself or an agent, be making a personal appearance before the Tribunal.
- (n) The Determination of a Tribunal shall be by majority ruling in respect of which the Chair shall not have any casting vote, possessing a deliberative vote only.
- (o) The proceedings before a Tribunal shall be recorded as follows:
 - (i) Save in the circumstances mentioned in paragraph (ii) below, all proceedings before a Tribunal shall be recorded in a medium of the Tribunal's choosing and, where considered appropriate in the opinion of the Tribunal or ICM, transcribed. The cost of making the recording and/or transcript shall be apportioned in the discretion of the Tribunal but must be fully borne by the Member concerned where the Member has requested (as a Member may) to be provided with a copy.
 - (ii) In the case of a proceeding undertaken by Circulating Resolution or a Tribunal constituted by an ICM, no transcript of proceedings shall be recorded but the Chair of the Tribunal shall write a summary record of the proceeding.
- (p) A written record of every Determination made by a Tribunal shall be prepared by or under the direction of the Chair of the Tribunal setting out:
 - (i) a recital of the charges comprising the case to answer set out in the Complaint;

- (ii) whether or not the charges were admitted by the Member;
 - (iii) principal facts established to the satisfaction of the Tribunal; and
 - (iv) the finding of the Tribunal (setting out in summary form reasons for such finding) including any penalty imposed.
- (q) A copy of every Determination made together with any transcript of the proceeding shall be placed on the file maintained by CPA Australia in respect of the Member concerned and details published in the manner prescribed in By-Law 5.14.
- (r) Any Member aggrieved by a Determination of an Administrative Matter by an ICM shall have the right of appeal (to be exercised by notice to be received by the ICM concerned within 20 Business Days after the date of the Determination complained of) by referral to a Disciplinary Committee where the matter shall be re-heard from the beginning (*de novo*) with power to the Disciplinary Committee, whose Determination shall be Final, to obtain and receive additional evidence and advice, and any penalty or costs and expenses imposed shall be stayed accordingly pending such referral, which shall be effected in the manner prescribed in By-Law 5.13(e) with the additional requirement a copy of the record of proceedings before the ICM also be served upon the Member concerned.
- (s) Any Member aggrieved by a Determination of a Disciplinary Committee shall have a right of appeal (to be exercised by notice to be received by the ICM concerned within 20 Business Days after the date of the Determination complained of) by referral to an Appeals Committee where the matter shall be re-heard from the beginning (*de novo*) with power to the Appeals Committee, whose Determination shall be Final, to obtain and receive additional evidence and advice, and any penalty or costs and expenses imposed shall be stayed accordingly pending such referral, which shall be effected in the manner prescribed in By-Law 5.13(e) with the additional requirement a copy of the transcript of proceedings before the National Disciplinary Tribunal also be served upon the Member concerned.
- (t) No appeal shall lie in respect of a Determination:
 - (i) that is Final;
 - (ii) in respect of the imposition or quantum of costs and expenses; or
 - (iii) to which the Member has consented.

5.14 Publication

An ICM must cause a note of every Determination and a brief record of the proceeding to be published on CPA Australia's website and in the Journal including, unless the penalty imposed is admonishment, the name of the Member unless the Determination is subject to a re-hearing by way of appeal or there are exceptional circumstances including the matters following:

- (a) whether there are any questions relating to the independence, conduct or outcomes of the proceeding;
- (b) whether it is likely that publication of the name of the Member may cause significant detriment to his or her future livelihood which the Tribunal considers is harsh or may cause additional penalty to the Member having regard to the nature of the conduct under consideration;
- (c) whether the Member has taken any actions (for example, making restitution) to compensate for or to mitigate the loss or damage to third parties; and
- (d) the extent to which the Member has assisted in the Disciplinary Procedures;

provided always:

- (e) if the conduct in respect of which the penalty is being imposed involves fraud, deception or dishonesty or could cause loss and damage to third parties who would not be aware of the conduct but for publication of the Member's name, then the Tribunal must always publish the Member's name regardless of any mitigating factors; and
- (f) in circumstances where the Member's name has already been published by any other party (whether in any proceeding in a Court or by any governmental or semi-governmental authority or howsoever otherwise) in connection with or in any way related to substantially the same conduct as was under consideration by the Tribunal, then the Tribunal must consider that publication by the Tribunal of the Member's name will not, of itself, be harsh or cause any additional penalty to the Member.

5.15 Mediation

- (a) If a PCO or ICM is of opinion a Dispute has arisen between a Member and any other person including another Member (***Disputing Parties***), the PCO or ICM as appropriate may recommend to the Disputing Parties the Dispute be resolved by Mediation.
- (b) Mediation shall be conducted in accordance with the procedure set out in this By-Law 5.15 and shall be voluntary and confidential between the Disputing Parties.
- (c) CPA Australia shall not be responsible for the conduct or costs of Mediation nor selection of the mediator.
- (d) Upon receiving the written consent of each of the Disputing Parties to:
 - (i) submit the Dispute to Mediation upon the basis of the provisions of this By-Law 5.15 by which the Disputing Parties must agree to be bound;

- (ii) negotiate in good faith with the other Disputing Parties in selection of a mutually acceptable mediator;
- (iii) accept as mediator the person appointed pursuant to By-Law 5.15(e) in the circumstances set out; and
- (iv) comply with any direction or requirement of the mediator including execution of a formal appointment, release and/or indemnity and a decision as to costs of the Mediation;

the PCO shall circulate to the Disputing Parties a list of suggested mediators considered by the MPC to be competent to conduct the Mediation.

- (e) the Disputing Parties must jointly appoint a mediator (whether from the circulated list or otherwise) within ten (10) Business Days of service on the Disputing Parties of the list of suggested mediators failing which a mediator is to be appointed by the then President of the Bar Council or such similar body representing the legal advocacy profession in the place in which the Dispute arose on the application of any of the Disputing Parties;
- (f) the Mediation will be held in the nearest capital city to the place in which the Dispute arose unless the Disputing Parties otherwise agree;
- (g) the Mediation must be conducted in accordance with the Australian Commercial Disputes Centre Mediation Guidelines;
- (h) if the Dispute is not resolved within twenty (20) Business Days after the mediator has been appointed, or any other time to which the Disputing Parties agree in writing, the Mediation ceases;
- (i) unless the Disputing parties agree otherwise in respect of any Mediation, they must pay and bear an equal share of the mediator's costs;
- (j) if the Dispute is resolved under Mediation then the Disputing Parties must sign the terms of the agreement which will become final and binding on them; and
 - (i) written statements prepared for the mediator or for a Disputing Party; and
 - (ii) any discussion between the Disputing Parties and between them and the mediator during Mediation;

cannot be used in any subsequent proceedings in connection with the Dispute.

- (k) Subject to By-Law 5.15(l), no party may commence legal proceedings in relation to any Dispute undergoing Mediation until:
 - (i) the Mediation has ceased pursuant to By-Law 5.15(h); or

- (ii) a decision has been made by the mediator and ten (10) Business Days has elapsed since the date of that decision.
- (l) Should any Disputing Party reasonably consider that injunctive, declaratory or other interlocutory relief (including for specific performance) is necessary or desirable in order to protect or preserve its rights in respect of any matter subject of a Dispute undergoing Mediation, that Disputing Party may apply to a Court for such equitable remedies at any time, whereupon the Mediation shall cease.

Part 6. Reports & Performance

6.1 The Board shall be provided with regular reports by the Chair of the National Disciplinary Panel and such other persons as the Board may from time to time require in such form and substance from time to time specified by the Board for the purpose of monitoring (including by assessing measurable outcomes against relevant KPIs [if any]):

- (a) the success in regulating the conduct of Members in achievement of the relevant objects for which CPA Australia is established; and
- (b) the performance of officers of CPA Australia and Tribunals engaged in regulating the professional conduct of Members;

with the object of:

- (c) driving continuous improvement in the delivery of services relating to the regulation of the professional conduct of Members;
- (d) enhancing the public perception of Members by publishing performance reports to demonstrate transparency;
- (e) enhancing by better targeting Member education; and
- (f) reducing the number of Complaints.

6.2 Without limiting the provisions of By-Law 6.1, the MPC shall if so requested by the Board cause the Board to receive on a bi-monthly basis or such other basis as the Board may determine a report containing, for the prior two month period and year to date, such details of:

- (a) work volume against available resources; and
- (b) actual performance against relevant KPIs (if any);

with respect to the regulation of professional conduct of Members allocated between Divisions, nature of Complaint and/or such component parts of activities undertaken by officers of CPA Australia and Tribunals as the Board may from time to time specify.

Part 7. Election Procedure

7.1 Election Authority

The Board may from time to time appoint the Australian Electoral Commission, a similar statutory authority, a share registry or such other organisation as the Board may from time to time determine in any jurisdiction in the Commonwealth of Australia or elsewhere (**Authority**) to conduct, in accordance with the procedures (save only those concerning Scrutineers) set out in the following provisions of this By-Law 7, any elections required by the Constitution to be conducted in order to give effect to an appointment. In the absence of any appointment of an Authority, By-Laws 7.2 to 7.4 following shall apply.

7.2 Procedures Common to all Elections

Any election required by the Constitution to give effect to an appointment shall be conducted in manner following (**Election Rules**):

- (a) Nominations for candidates shall be called by the Company Secretary (upon the instruction of a Chairman or other authorised person as appropriate or as provided by the Constitution) by notification to Members entitled to vote in the relevant election (including in the case of nominations for the position of Divisional Councillor and otherwise in the Company Secretary's discretion, by advertising the same upon that part of the website maintained by CPA Australia that is designed for Members and not accessible by the general public) prior to the date of a requirement to make an appointment or hold a meeting for the purpose (solely or amongst others) of the election (**Election Event**). The prior notice period shall be a date reflecting the minimum period (**Notification Period**) specified for the purpose in By-Law 7.3.
- (b) Nominations of candidates must be:
 - (i) in writing in the English language;
 - (ii) signed by at least two (2) Members entitled to vote;
 - (iii) countersigned by the candidate;
 - (iv) accompanied by statements signed by the candidate:
 - A. setting out personal particulars of the candidate (and no more) described in Part A of Schedule 4; and
 - B. outlining the matters (and no more) described in Part B of Schedule 4;
 - C. for nominations to Branch Council, Divisional Council or as an office bearer the statement shall be fifty (50) words and no more;
 - D. for nominations to the Board, the number of words is at the discretion of the nominee; and
 - (v) lodged with the Returning Officer before the date specified in the notice calling for nominations being no later than a date reflecting the minimum period prior to the Election Event (**Lodging Period**) specified for the purpose in By-Law 7.3.
- (c) If the number of candidates nominated for election does not exceed the number of vacancies, no election shall be held and such nominees shall be declared elected by the Company Secretary (who shall procure a

record of the same) after receiving the report of the Returning Officer (if not the Company Secretary) and such result shall be announced by the Chairman (subject to receiving the Company Secretary's record of the same) at the relevant meeting, whereupon vacancies shall be declared filled accordingly. The Chairman shall sign the Company Secretary's record which shall be retained as conclusive evidence of the election.

- (d) If the number of candidates exceeds the number of vacancies, a secret ballot shall be conducted and counted by the Returning Officer in the manner provided in this By-Law 7.2(e) to (m) inclusive. The Returning Officer may conduct the ballot under the supervision of one or more **Scrutineers** being Members appointed by the Company Secretary for the purpose (at the remuneration from time to time determined by the Board and upon other terms in the Company Secretary's discretion).
- (e) Every Member entitled to vote shall be given notice (**Prescribed Notice**) of the closing date for casting votes in the election being, if no period be prescribed by the Constitution, a date reflecting the period so described in By-Law 7.3.
- (f) The Prescribed Notice may be given in such manner (whether orally and/or by ordinary prepaid post and/or electronically) approved by the Company Secretary and shall include:
 - (i) a ballot paper in or to the effect of Form 1 annexed headed sufficiently to identify the nature of the election and listing in alphabetical order of family name all candidates opposite a box in which numeric preferences may be placed;
 - (ii) an instruction to voters (amongst any others considered by the Company Secretary to be expedient) that:
 - A. voting is not compulsory;
 - B. in order to cast a valid vote, a voter shall place the number 1 opposite the name of their preferred candidate to signify first preference and may also place ascending consecutive numbers opposite respective names of other candidates in descending order of preference; and
 - C. that ballot papers returned that are incomplete, incorrectly completed or received later than a date reflecting a time (being the minimum period prior to the Election Event (**Closing Date**) specified in By-Law 7.3), will be declared invalid and not considered;
 - (iii) a rendering of the statement of personal particulars and any other matters provided by each candidate pursuant to (and to the extent only in compliance with) By-Law 7.2(b)(iv) in form and substance approved by the Company Secretary (and in the event of a difference of opinion between the Company Secretary and a candidate, by the determination, which shall be final, of the President or the President's nominee) having regard to:
 - A. not unduly favouring any one or more candidates;
 - B. not defaming nor making derogatory remarks concerning CPA Australia or any Member or other person; and

- (iv) an envelope or other container (in which the completed ballot paper is to be returned to the Returning Officer) endorsed with the words “Voting Paper” and provision for endorsement by the voter with identifying personal information required by the Returning Officer in a format permitting removal without breaking the seal of the envelope or, in the event of electronic voting approved by the Company Secretary, such secure electronic format providing a mechanism capable, in the Company Secretary’s opinion, of achieving the same secure, secret and effective purpose.
- (g) Any Member desirous of altering a previously submitted ballot paper may do so prior to the Closing Date by seeking from the Returning Officer a replacement ballot paper or permission to withdraw and re-lodge a ballot paper submitted (with authority) electronically. The Returning Officer shall only issue a replacement ballot paper or grant such permission (if at all in the discretion of the Returning Officer) after first cancelling the original ballot paper previously submitted. Any Member who has lost their ballot paper may have issued to them a substitute ballot paper upon providing to the Returning Officer a written declaration to that effect.
- (h) Each candidate may by themselves or a duly appointed alternate observe the counting of ballots provided always the identity of voters shall remain secret.
- (i) Unless the Returning Officer forms, on reasonable grounds, a contrary opinion, the Returning Officer shall accept the Member’s identification referred to in By-Law 7.2(f)(iv) and, in the presence of the Scrutineers (if any) separate the form of identification from the envelope or other method of conveyance of the completed ballot paper (**Container**) and retain each in discrete places. The Returning Officer shall then count each and, upon being satisfied of numerical equality, shall destroy all identification. The Returning Officer shall then separate each Container from each completed ballot paper and retain each in discrete places. The Returning Officer shall then count each and, upon being satisfied of numerical equality, shall destroy all Containers.
- (j) Upon standing possessed of all completed ballot papers the Returning Officer shall, in the presence of the Scrutineers (if any), examine each completed ballot paper for validity and reject (in consultation with any Scrutineers) any deemed invalid, which shall not be counted for the purposes of the election.
- (k) The candidate receiving the greatest first preferences shall be elected so long as, out of the sum total of valid (in the opinion of the Returning Officer in consultation with any Scrutineers) votes counted, that candidate has received more than one half (an **absolute majority**) of first preferences.
- (l) if no candidate has received an absolute majority of first preferences then:
 - (i) the candidate receiving the fewest first preferences shall be excluded and each ballot paper counted to that excluded

candidate shall be counted to the candidate (if any) next in order of each respective voter’s preference, and the candidate receiving the greatest preferences shall be deemed provisionally elected (subject only to confirmation at the Election Event) so long as they have received an absolute majority of votes; but

- (ii) if no candidate then has an absolute majority of votes, the process of excluding the candidate with the fewest preferences and counting the votes to that excluded candidate to the candidate (if any) next in order of each respective voter’s preference shall be repeated until one candidate shall have an absolute majority of votes, whereupon that candidate shall be deemed provisionally elected (subject only to confirmation at the Election Event); and
- (iii) if two or more candidates receive an equal number of votes, then the casting vote of the President or the nominee of the President shall determine (for the purposes of election only) which one of them:
 - A. has to be excluded; or
 - B. shall be elected,
 as the case may be.
- (m) Subject to the specific Election Rules described in this By-Law 7, the Company Secretary shall determine conclusively all questions of detail concerning any election.
- (n) On completion of counting valid (in their unfettered opinion) votes, the Returning Officer and any Scrutineers shall provide a written report of the result to the Company Secretary (if not the Returning Officer) whereupon the procedures described in By-Law 7.2(c) shall apply, subject only to the application (if any) of By-Law 7.2(l)(iii).

7.3 Notice Periods

For the purposes of By-Law 7.2 the following time periods (when expressed in days, concluding at 5pm on the last day in the place notice is to be given) shall apply:

	Divisional Councillors	Office Bearers	Directors
Notification Period	90 days	Nil (automatic pursuant to the Constitution)	90 days
Lodging Period	60 days	Board: 15 minutes;	60 days
		Division: 7 days	
Prescribed Notice	30 days	As declared by the Chairman of the relevant	30 days

		meeting	
Closing Date	5 days	As declared by the Chairman of the relevant meeting	5 days

7.4 Retention of Ballot Papers

Immediately after an Election Event the Returning Officer shall close up under the seals of the Returning Officer and any Scrutineers all ballot papers and proxy forms received in respect of the election and retain the same in safe custody for a period of one month after the relevant Election Event and then destroy them. All signature slips, envelopes and other documents received by the Returning Officer from Members during the course of the election shall be destroyed immediately after the Election Event.

7.5 Representative Councillors

Election of Representative Councillors pursuant to Clause 77 of the Constitution shall be conducted in accordance with the procedures from time to time adopted (in their absolute discretion) by the relevant Divisional Council or a body, group or Committee under Clause 77(1)(c) of the Constitution as the case may be.

7.6 Divisional Councillors

Election of Divisional Councillors pursuant to Clause 83 of the Constitution shall be conducted in accordance with the Election Rules provided always (subject to maximum tenure provisions) a Divisional Councillor retiring pursuant to Clause 82(2) of the Constitution shall be deemed to have been validly nominated for re-election for the ensuing term unless they have notified the relevant Divisional Director to the contrary prior to 5pm on 31 January in the relevant year.

7.7 Office Bearers

Election to the offices described in Clause 96 of the Constitution shall be conducted in accordance with the Election Rules subject to the following amendments and additions:

- (a) By-Law 7.2(f)(iv) shall be replaced by the requirement that completed ballot papers shall be handed to the Returning Officer at the conclusion of the ballot.
- (b) By-Laws 7.2(g) and (h) shall have no application.
- (c) A candidate may be nominated for more than one position but upon election to one position all other nominations shall automatically lapse.
- (d) Immediately prior to the holding of the ballot and in the discretion of the Chairman, each candidate shall be allowed a period not exceeding five (5) minutes in which to outline reasons why they are seeking election to office and policies they would pursue if elected.

7.8 Board

Election of Directors pursuant to Clause 72 of the Constitution shall be conducted in accordance with the Election Rules subject to the following amendments and additions:

- (a) In respect of Directors described in Clause 72(1)(a) of the Constitution, By-Law 7.2(a) shall be read and construed with the words “entitled to vote in the relevant election” omitted and each Division shall be entitled to nominate up to three (3) candidates.
- (b) In respect of Directors described in Clause 72(1)(b) of the Constitution, By-Law 7.2(a) shall be read and construed with the words “notification to Members entitled to vote in the relevant election” replaced with the words “advertising or otherwise seeking nominations in such manner as the Company Secretary may in the discretion of the Company Secretary determine”.
- (c) Save in the case of a casual vacancy to be filled pursuant to Clause 72(6) of the Constitution, the Board shall, pursuant to Clause 100 of the Constitution, appoint a **Nominating Committee** prior to expiry of the Lodging Period with the following powers and authorities:
 - (i) the Nominating Committee shall meet as soon after expiry of the Lodging Period as expedient and may meet as and when it determines;
 - (ii) the Nominating Committee shall review all nominations and supporting materials received for appointment as a Director and make to the Representative Council such recommendations in respect of appropriateness of candidates as the Nominating Committee, in its discretion, may determine by preparing a report listing candidates in numeric order of appropriateness (from most to least appropriate) and including such other supporting material as the Nominating Committee considers relevant, in respect of each category of Directors under Clauses 72(1)(a) and (b) of the Constitution;
 - (iii) the report required to be prepared pursuant to paragraph (ii) above shall be delivered to the Company Secretary no later than thirty (30) days after expiry of the Lodging Period;
 - (iv) the Nominating Committee may make such other enquiries to assist in its deliberations as the Nominating Committee, in its discretion, may determine, and shall not be bound by the rules of natural justice; and
 - (v) in the deliberations of the Nominating Committee (which shall not be recorded and shall be confidential) the Chairman shall have a casting vote.
- (d) The Company Secretary shall circulate the report of the Nominating Committee to members of the Representative Council

contemporaneously with the Prescribed Notice and the Representative Council shall, in following the Election Rules, have due regard to, but shall not be bound by, the report of the Nominating Committee.

- (e) The Representative Council shall inform the Company Secretary of the names of the persons it has appointed as directors by the Closing Date, who shall in turn inform the Chairman of the Board as soon as possible.

Part 8. Form of Proxy

For the purposes of the Constitution every instrument of proxy shall be in the form or to the effect of Form 2 annexed provided that where notice has been given of a General Meeting at which it is intended to propose a resolution as a Special Resolution, the opportunity shall be offered to Members of voting by proxy for or against such Special Resolution by the addition of the following (or similar) words to Form 2:

This form is to be used *in favour of/against the Special Resolution

* Strike out whichever is not desired

(unless otherwise instructed the proxy may vote as the proxy sees fit)

Part 9. Public Accounting Services

9.1 Provision of Public Accounting Services

No Member shall provide, whether or not for reward and whether on their own account or by means of any entity recognised by law with which they are Affiliated, Public Accounting Services within the Commonwealth of Australia unless the Member holds a current Public Practice Certificate except:

- (a) in the capacity of Affiliate of a Member holding a current Public Practice Certificate;
- (b) in the capacity of Affiliate of an Approved Practice Entity Affiliated with a Member holding a current Public Practice Certificate;
- (c) so long as the Member, being also a member of a body specified in Schedule 5, is permitted (or a Practice Entity Affiliated with the Member is permitted) by the Constitution of such body to provide Public Accounting Services, and the Member has notified the Board of such conduct and permission;
- (d) being a Member having status of at least Certified Practising Accountant and permitted to practice as a legal practitioner in any jurisdiction within the Commonwealth of Australia, where the Member has the bona fide and reasonable expectation of rendering, and/or does render in any Annual Period, gross fees not exceeding the Prescribed Amount in consideration of providing of Public Accounting Services; or
- (e) so long as the Member:

- (i) holds current a policy of professional indemnity insurance in accordance with By-Law 9.5(a); and
- (ii) has the bona fide and reasonable expectation of rendering, and/or does render in any Annual Period, gross fees not exceeding the Prescribed Amount in consideration of providing of Public Accounting Services.

9.2 Approved Practice Entities

A Practice Entity is an Approved Practice Entity for the purpose of these By-Laws if (and only if) so approved by the Board in writing in every case upon application for approval being submitted by the Member Affiliated with the Practice Entity and for so long as:

- (a) Being a partnership, the partnership is Controlled by:
 - (i) a Member or Members or at least one Member together with (**Approved Controllers**):
 - A. such members of a body specified in Schedule 5 as shall be permitted by the Constitution of such body to provide Public Accounting Services; and/or
 - B. such other person or entity as the Board may, upon such terms and conditions as the Board may in the discretion of the Board determine, approve either generally or in any particular case taking into account, in the case of a natural person who is not Affiliated with the Member, the matters following:
 - (aa) the tertiary or other professional qualifications possessed by the person;
 - (bb) competence, experience or skill demonstrated by the person in their profession or calling;
 - (cc) the commercial, community or educational status of the person; and
 - (dd) such other matters as the Board may prescribe either generally or in any particular case; and/or
 - (ii) a body corporate or bodies corporate complying with By-Law 9.2(b); and/or
 - (iii) a trust or trusts complying with By-Law 9.2(c).
- (b) Being a body corporate:
 - (i) the director or (if more than one) all directors comprise respectively a Member or Members or at least one Member together with Approved Controllers;

- (ii) the Constitution of the body corporate contains provisions (**Approved Provisions**) that:
 - A. that instrument may only be amended with approval of the Board;
 - B. any change in Control must be notified to CPA Australia within five (5) Business Days prior to the change occurring, accompanied by the Structural Profile (as that term is defined in the CPA Australia By-Laws) applying after the change;
 - C. Public Accounting Services shall be provided at all times in accordance with the minimum professional, ethical and technical requirements from time to time contained in the CPA Australia By-Laws, Code of Professional Conduct and all other rules and pronouncements contained in or made under authority of the Constitution of CPA Australia; and
 - D. all stationery and other information provided (in any media) in conjunction with or in anticipation of providing Public Accounting Services shall contain the name of every natural person providing the same and their qualifications including, in the case of a Member, the designation appropriate to the Member other than any Specialist Designation, the use of which shall be optional.
- (c) Being a trust:
 - (i) the trustee is:
 - A. a Member or Members; and/or
 - B. a body corporate complying with By-Law 9.2(b); and
 - (ii) the trust is Controlled by a Member or Members or at least one Member together with Approved Controllers; and
 - (iii) the trust deed or other instrument constituting the trust contains the Approved Provisions.

9.3 Issue of Public Practice Certificates

- (a) A Public Practice Certificate shall be issued to a Member by the Board for an initial period not exceeding twelve (12) months expiring on 31 December next and shall be capable of renewal on an annual basis thereafter so long as the Member is not in default of their continuing obligations set out in By-Law 9.4. Every applicant for issue of a Public Practice Certificate (including following cancellation of a previously held Public Practice Certificate) shall:

- (i) make application in writing in the form from time to time prescribed for the purpose to be accompanied by the prescribed application fee (if any) and the prescribed subscription (if any);
- (ii) have achieved at least the status of or satisfy the criteria for admission as a Certified Practising Accountant;
- (iii) in the event the applicant has within the last five (5) years or is proposing to migrate from a Division outside the Commonwealth of Australia to a Division within the Commonwealth of Australia pursuant to By-Law 3.9, provide evidence satisfactory to the Board (whether generally or in any particular case) of having passed, within the last five (5) years immediately preceding the application, examinations approved by the Board in the subjects of company law, taxation and audit procedures applicable to the jurisdiction of the Division to which they are or would be attached and if none, as applying generally in the Commonwealth of Australia;
- (iv) provide evidence satisfactory to the Board of ability to satisfy the ongoing requirements referable to holders of a Public Practice Certificate contained in By-Law 9.4;
- (v) provide evidence satisfactory to the Board of having for a period of at least three (3) years within the last five (5) years immediately preceding the application been engaged in full time employment in either:
 - A. an area of work relating to accounting, finance or business advice; or
 - B. providing Public Accounting Services;
- (vi) if the applicant has previously held a Public Practice Certificate, satisfy the Board that, within the twelve (12) months immediately prior to the application, the Member has completed forty (40) hours of Continuing Professional Development referable to Public Accounting Services (which shall be disregarded in calculating compliance with the general requirement for Continuing Professional Development pursuant to By-Law 4.1);
- (vii) if the Member proposes to provide Public Accounting Services by or through a Practice Entity, evidence satisfactory to the Board such entity is an Approved Practice Entity;
- (viii) possess such other qualifications or comply with such other conditions as the Board may prescribe either generally or in any particular case;

and, unless the applicant last held a Public Practice Certificate (if at all) less than five (5) years prior to the making of the application, the applicant shall also:

- (ix) provide evidence satisfactory to the Board of having successfully completed, no more than five (5) years prior to the date of application, the Public Practice Program: by
 - A. direct participation; or
 - B. being granted such credits or dispensations approved by the Board in its discretion (whether generally or in any particular case) in respect of the applicant having undertaken a corresponding program conducted by one of the bodies of accountants listed in Schedule 5 or such other professional practice qualification program as the Board may from time to time approve.
- (b) The Board may issue, re-issue, refuse to issue or re-issue, cancel or suspend for any period a Public Practice Certificate upon such terms and conditions as the Board deems fit. The Public Practice Certificate of any Member ceasing for any reason to be a Member shall automatically be cancelled upon such cessation. Any refusal, cancellation or suspension, including by reason of breach by the Member concerned of the continuing requirements of By-Law 9.4(a) to (e) inclusive, must be notified to the Member concerned within five (5) Business Days of the refusal, cancellation or suspension being made accompanied by reasons for the same provided always the giving of notice shall not be a prerequisite for nor in any way effect the validity of any such refusal, cancellation or suspension.
- (c) Each Public Practice Certificate shall be and remain the property of CPA Australia and the Board may at any time call for and compel its production and delivery and may alter or amend the same or issue a replacement. Any Member or former Member suffering suspension or cancellation of their Public Practice Certificate shall return the same to the Board for dealing with accordingly. A Member shall not make or allow to be made any photographic or other imitation of their Public Practice Certificate.
- (d) The Board delegates (non-exclusively) the powers set out in By-Law 9.3(a) to (c) inclusive to the MPC severally with every ICM. A Member aggrieved by a decision of the Board (including its delegate) to refuse to issue or re-issue, cancel or suspend a Public Practice Certificate shall have the right of appeal to an Appeals Committee exercisable pursuant to By-Law 5.13(s) in the same manner as an appeal from a Determination of a Disciplinary Committee and upon the same terms contained in By-Laws 5.12 and 5.13 as can be applied to the context (including the power to make a Determination in respect of costs and expenses reasonably incurred by CPA Australia in the investigation and Determination of the matter), but without publication as provided by By-Law 5.14.

9.4 Rights and responsibilities of holders of a Public Practice Certificate

Every Member holding current a Public Practice Certificate shall, for so long as the Member shall hold the Public Practice Certificate:

- (a) hold current an enforceable policy of professional indemnity insurance which complies with By-Law 9.5;
- (b) comply with all Quality Assurance requirements and successfully complete a periodic Quality Assurance review;
- (c) do all acts matters and things necessary to maintain the status of at least a Certified Practising Accountant;
- (d) comply with any and all laws relating to Public Accounting Services having force in the place in which the Member offers Public Accounting Services including by payment of any applicable fees or levies;
- (e) if providing Public Accounting Services by or through a Practice Entity that is an Approved Practice Entity or a Practice Entity permitted by By-Law 9.1(c), submit to the Board within five (5) Business Days prior to any change and as and when from time to time required by the Board (and at least annually within the time prescribed for payment of annual subscriptions by Members), a Structural Profile in respect of the Practice Entity and, if so required, evidence satisfactory to the Board the Practice Entity remains an Approved Practice Entity or a Practice Entity permitted by By-Law 9.1(c); and
- (f) be permitted to use, by themselves or by an Approved Practice Entity Affiliated with the Member, such Intellectual Property of CPA Australia comprising:
 - (i) the designation ***Certified Practising Accountant***; and
 - (ii) any logo, including the logo specifically applicable to providing Public Accounting Services;

as licensee under limited licence from CPA Australia, provided always such use:

- (iii) be strictly within the Guidelines (and for the removal of doubt, any use otherwise than strictly within the Guidelines is prohibited);
- (iv) be solely in relation to providing Public Accounting Services;
- (v) may be determined and the licence of user revoked upon two (2) Business Days notice from the Board to the Member concerned without the necessity of ascribing a reason; and
- (vi) shall be determined and the licence of user revoked automatically and without the necessity of any notice upon the relevant Public Practice Certificate being cancelled or suspended or upon the Member concerned ceasing for any reason to be a Member or suffering a suspension of membership.

9.5 Professional Indemnity Insurance

- (a) Every Member providing Public Accounting Services shall (whether or not holding current a Public Practice Certificate or being entered on the Retired Membership List) hold current an enforceable policy of professional indemnity insurance that satisfies at least the minimum requirements set out in By-Law 9.5(b).
- (b) The minimum requirements for a policy of professional indemnity insurance are:
 - (i) the minimum sum insured shall be the greater of:
 - A. the sum of A\$250,000;
 - B. any sum from time to time prescribed by any legislative enactment having effect in the Division to which the Member is attached; and
 - C. any sum from time to time prescribed by the Board either generally or in any particular instance;
 - (ii) the assured shall be the relevant Member and any Approved Practice Entity with which the Member is Affiliated;
 - (iii) there shall be terms (save only to the extent the Board in any particular case otherwise allows) providing for:
 - A. run-off cover in respect of Members ceasing to provide Public Accounting Services;
 - B. an excess for each and every claim not exceeding the greater of:
 - (aa) 3% of the gross income of the assured in the immediately prior year; and
 - (bb) 1% of the policy limit;
 - C. cover with respect to losses arising out of the dishonesty of the Member or any Affiliate; and
 - D. indemnity to attach to any civil liability arising out of or in any way related to the provision of Public Accounting Services by the assured.
- (c) A Member required by By-Law 9.5(a) to hold current a policy of professional indemnity insurance shall provide to the Divisional Director of the Division to which they are attached:
 - (i) an original certificate of currency of such policy of insurance within ten (10) Business Days of issue, renewal or replacement of such policy;

- (ii) notification of any cancellation, lapse or failure to renew such policy of insurance within five (5) Business Days of the same occurring; and
- (iii) an authorisation (remaining current as a continuing requirement) in such form as the Divisional Director may from time to time require to the relevant insurer to provide to any officer of CPA Australia information upon request relating to the identity of the assured, currency, sums insured and terms of such policy of insurance.

FORM 1

CPA AUSTRALIA LTD

BALLOT PAPER

(..... Division)

ELECTION OF DIVISIONAL COUNCIL 20.....

Election closes AM/PM Day

of 20.....

DIVISIONAL COUNCIL

..... To be Elected

LIST OF CANDIDATES

(Names to be inserted in alphabetical order of surname)
(Retiring councillors seeking re-election to be denoted by means of an asterisk)

- (Name 1)
- (Name 2)
- (etc)

DIRECTIONS AS TO VOTING

Place the number 1 in the square opposite the name of the candidate of your first preference and place the number 2, 3, 4 (and so on as required) against the names of each subsequent candidate so as to indicate your order of preference for that candidate. Your ballot will not be invalid if you only partially complete the numbering but you must vote for at least one candidate.

Enclose completed ballot paper in envelope marked "Ballot Paper" and seal the envelope.

Sign slip attached to such envelope, adding full name, address and membership number.

Place envelope with ballot paper enclosed in another envelope and forward it to:

THE RETURNING OFFICER

so as to reach him/her not later than AM/PM on day

of 20

FORM 2

CPA AUSTRALIA LTD

FORM OF PROXY

I, of
(full name – please print) (address)

being attached to the Division of CPA Australia Ltd (**Company**), hereby

appoint of
(Name of proxy – please print) (Division)

or failing such appointment or the absence of that person the Chairperson of the Meeting as my proxy to vote for me on my behalf at the (insert whether Annual or Extraordinary) General Meeting of the Company to be held on the day of 20... at (**insert address of meeting**) and at any adjournment thereof.

Please tick (✓) one box only for each resolution. Unless otherwise instructed below, the proxy may vote as he or she thinks fit, or abstain.

[Ordinary/Special] Resolution

(Details of resolution)	For	Against	Abstain
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DATED this day of 20.....

Signed:

Status:

DIRECTIONS

- No member shall be entitled to vote either personally or by proxy if their subscription is overdue for three months or they are otherwise precluded from voting by the operation of Clause 70 of the CPA Australia Constitution.
- The above instrument appointing a proxy must be submitted to the Company Secretary of CPA Australia Ltd at the company's registered office at Level 28, 385 Bourke Street Melbourne, Victoria or faxed to +61(03)96021163. The Company Secretary shall endorse on the instrument a certificate that the appointer is a member qualified to vote at the meeting or meetings to which such instrument relates.
- The above instrument must be lodged at the registered office of CPA Australia Ltd not less than 48 hours before the time for holding the meeting at which the person named in such instrument proposes to vote.

CERTIFICATE OF COMPANY SECRETARY

I hereby certify that the appointer named above is a member qualified to vote, in accordance with the Constitution, at the meeting to be held on the date mentioned herein.

..... Company Secretary

SCHEDULE 1

List of Bodies of Accountants Offering Approved Corresponding Programs

The Institute of Chartered Accountants in Australia

Hong Kong Institute of Certified Public Accountants

The Institute of Certified Public Accountants of Singapore

New Zealand Institute of Chartered Accountants

American Institute of Certified Public Accountants

SCHEDULE 2

List of Bodies of Accountants Recognised for Mentors

American Institute of Certified Public Accountants

The Canadian Institute of Chartered Accountants

The Association of Chartered Certified Accountants (UK)

The Chartered Institute of Management Accountants (UK)

The Chartered Institute of Public Finance and Accountancy (UK)

Le Conseil Supérieur de l'Ordre des Experts Comptables

Hong Kong Institute of Certified Public Accountants

The Institute of Certified Public Accountants of Ireland

The Institute of Certified Public Accountants of Singapore

The Institute of Chartered Accountants in Australia

The Institute of Chartered Accountants in England and Wales

The Institute of Chartered Accountants in Ireland

New Zealand Institute of Chartered Accountants

The Institute of Chartered Accountants of Scotland

The Institute of Chartered Accountants of Sri Lanka

The Malaysian Institute of Certified Public Accountants

The Malaysian Institute of Accountants

The South African Institute of Chartered Accountants

The Indian Institute of Chartered Accountants

SCHEDULE 3

List of Bodies of Accountants with Permitted Designations

The Institute of Chartered Accountants in Australia

The Association of Chartered Certified Accountants (UK)

The Chartered Institute of Management Accountants (UK)

Hong Kong Institute of Certified Public Accountants

The Indian Institute of Chartered Accountants

The Institute of Certified Public Accountants of Singapore

The Institute of Chartered Accountants in England and Wales

New Zealand Institute of Chartered Accountants

The Institute of Chartered Accountants of Scotland

The Malaysian Institute of Certified Public Accountants

Malaysian Institute of Accountants

Certified Practising Accountants of Papua New Guinea

SCHEDULE 4

Part A: Personal Particulars of a Candidate

- full name, business and preferred contact address
- membership status
- recognised tertiary qualifications
- any civil or military awards or honours
- time period as a Member
- details of current employment
- offices or committee positions held at any time referable to CPA Australia

Part B: Personal Resume of a Candidate

- the candidate’s service to the accounting profession (generally or specifically)*;
- the area of accountancy in which the candidate practises*;
- any special interests of the candidate whether inside or outside the accounting profession;
- reasons why the candidate seeks appointment to the relevant position and issues the candidate would pursue if elected; and
- for Board appointments, a statement addressing the relevant selection criteria and the names of two (2) professional referees.

*Not applicable for candidates nominating for a position as a non member director.

SCHEDULE 5

List of Bodies of Accountants for Public Accounting Services purposes

The Institute of Chartered Accountants in Australia

SCHEDULE 6

Proof of Identity – 100 Point Check

Number of Points	Item
70 points	<ul style="list-style-type: none"> • Birth Certificate • Passport • Citizenship Certificate • National Identity Card issued in Hong Kong; Malaysia, Singapore, or PRC.
40 points	<p>(one permitted - so long as it bears name plus signature or photograph):</p> <ul style="list-style-type: none"> • Licence issued under law (eg: driver’s licence) • Permit issued under law • Public Service ID Card • Social Security ID Card issued by an arm of government • Tertiary Student Card
40 points	<p>A written reference dated not more than three (3) months prior to the date of application bearing the signature of the candidate, witnessed and verified by a referee ordinarily resident in the place in which the application is lodged, and demonstrating a minimum of 12 months association with:</p> <ul style="list-style-type: none"> • a financial institution • an approved referee
25 points	<ul style="list-style-type: none"> • internationally recognised credit card (if issued by independent financial institutions they count for 25 points each) • Australian Medicare Card

SCHEDULE 7

Maximum Fine

The sum of A\$100,000.00 or such other amount from time to time determined by the Board.

Maximum Costs and Expenses

In respect of the MPC or an ICM, the sum of A\$750 or such other amount from time to time determined by the Board.

In respect of an OPT, the sum of A\$1,500 or such other amount from time to time determined by the Board.

In respect of a Disciplinary Committee, the sum of A\$3,000 or such other amount from time to time determined by the Board.

In respect of an Appeals Committee, the sum not exceeding all costs and expenses (including an allowance for the cost of application of internal resources of CPA Australia) actually incurred by CPA Australia in respect of the matter (including, if any, in undertaking Disciplinary Procedures) or such other amount from time to time determined by the Board.

SCHEDULE 8

COLUMN 1	COLUMN 2
Any actual or alleged breach of the specific provisions of the Constitution, By-Laws or any Code of Professional Conduct or Technical Standards within the meaning in Clause 27(1) of the Constitution set out below:	(Model Penalties)
<p><u>Part A: Administrative Matters</u></p> <p>Any matter concerning:</p> <ul style="list-style-type: none"> (i) payment of any monies owing to CPA Australia on any account whatsoever excepting only in respect of costs the subject of a Determination; (ii) Quality Assurance; (iii) Continuing Professional Development; (iv) the holding of a Public Practice 	Fine of A\$500 for a first offence and A\$1,000 for each subsequent offence.

<p>Certificate;</p> <p>(v) professional indemnity insurance within the meaning in By-Law 9.5; and/or</p> <p>(vi) the Practice Entity through or by which the Member provides Public Accounting Services.</p>	
<p><u>Part B: Non-Administrative Breaches</u></p> <p>Any matter concerning any of the following paragraphs in Clause 27(1) of the Constitution:</p> <p>(b); (c); (d); (f);(h): & (i) (k); and</p> <p>(a) insofar as the breach concerns any of the following:</p> <p>[trust account recording without theft] [trust account recording with theft]</p>	<p>Suspension of membership for 6 months; Fine of A\$2,000 for a first offence and A\$5,000 for each subsequent offence; Forfeiture of membership; Forfeiture of membership; Fine of A\$2,000 for a first offence and A\$5,000 for each subsequent offence;</p> <p>Suspension of membership for 6 months; Forfeiture of membership;</p>
<p><u>Part C: Serious Conduct</u></p> <p>Any actual or alleged breach other than those constituting Administrative Matters or Non-Administrative Breaches.</p>	<p>In the discretion of the Tribunal</p>

SCHEDULE A - TRANSITION

This Schedule A including the heading and index reference shall only remain as a schedule to the By-Laws and have effect as such so long as the Board has not by ordinary resolution at any meeting of the Board resolved it shall henceforth be omitted. Upon such resolution being passed this Schedule A including the heading and index reference shall, with effect from the date specified in the resolution, be omitted from the By-Laws and cease to have any force nor effect accordingly.

So long only as this Schedule A shall remain in force and effect, however, then:

- (a) Any Complaint of which notification shall have been given to a Member prior to 30 April 2007 shall, unless and until the Member concerned otherwise elects, be governed by the By-Laws and Board resolutions relating to disciplinary matters in

force as at that date (***Old Procedures***), and shall proceed to Determination or dismissal as appropriate accordingly.

- (b) The Old Procedures shall continue to govern every Complaint, matter and Member concerned described in paragraph (a) as to Tribunal (including Disciplinary Committee and Appeals Committee proceedings), Disciplinary Procedures, penalty, publication and otherwise until such time as the matter be completed by closure of the relevant file.

Approved by the Board - Effective: 1 May 2007