



*Corporations Act*

Company Limited by Guarantee

**BY-LAWS**

**OF**

**THE REAL ESTATE INSTITUTE OF QUEENSLAND LTD**

ABN 49 009 661 287

Effective: 3 February 2017

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## **Part 1 Interpretation**

### **1 Inconsistency between By-laws and Constitution**

To the extent of any inconsistency between the provisions of these By-laws and the provisions of the Constitution, the Constitution prevails.

### **2 Definitions**

For the purposes of these By-laws:

- (a) **Act** means the *Property Occupations Act 2014* (Qld) as amended.
- (b) **Affected by bankruptcy action**, in relation to an individual, means the individual:
  - (i) is bankrupt; or
  - (ii) has compounded with creditors; or
  - (iii) has otherwise taken, or applied to take, advantage of any law about bankruptcy.
- (c) **Appeal** means an appeal from the decision of the Tribunal to the Appeals Tribunal made in accordance with these By-laws.
- (d) **Appeals Chair** means the person appointed to chair the Appeals Tribunal in accordance with By-law 97.
- (e) **Appeal Fee** means the fee as determined by the Institute, from time to time.
- (f) **Appeals Tribunal** means the tribunal established under these By-laws to hear and determine Appeals.
- (g) **Auctioneer** has the same meaning as provided in Section 14 of the Act.
- (h) **Board** means the board of directors of the Institute as constituted from time to time.
- (i) **Business Day** means any day that is not a Saturday, Sunday or gazetted public holiday in Queensland.
- (j) **Chairperson** means the person appointed to chair the Tribunal in accordance with By-law 77 and 79.
- (k) **Chapter** means a special interest group approved by the Directors, established under these By-laws and formed to foster professional development of Eligible Persons and employees of accredited agencies engage in that special interest area.
- (l) **Chapter Committee** means the Committee established by the Board under By-law 40.
- (m) **Chief Executive Officer** means the Chief Executive Office of the Institute.
- (n) **Company Secretary** means the Company Secretary of the Institute.
- (o) **Constitution** means the constitution for the Real Estate Institute of Queensland Limited ABN 49 009 661 287, as amended from time to time.
- (p) **Complaint** means the allegation of a breach of the Standards of Business Practice.
- (q) **Complainant** means the person making the Complaint in accordance with By-laws 43, 44 or 45.
- (r) **CPD** means the continuing professional development as prescribed by the Board for any

individual in order for that individual to maintain membership with the Institute.

- (s) **Director** has the same meaning as given in the Constitution.
- (t) **Eligible Person** means any one of the following;
  - (i) a member of a class described in By-laws 5 to 8;
  - (ii) a licensee who is in charge of any place of business of an Accredited Agency (refer to By-law 11).
- (u) **Eligible Voter** means each member of a class described in By-laws 5 to 8.
- (v) **Firm** means a corporation, partnership or sole trader engaged in real estate agency practice and which holds the appropriate licences.
- (w) **Hearing** means a hearing before the Tribunal or Appeals Tribunal (as applicable).
- (x) **Hearing Fee** means the fee as determined by the Institute, from time to time.
- (y) **in charge** has the same meaning as provided in Section 19 of the Act.
- (z) **Industry Representative** means an individual appointed to the Tribunal in accordance with By-law 78.
- (aa) **Institute** means the Real Estate Institute of Queensland Ltd ABN 49 009 661 287.
- (aa) **Licence** has the same meaning as provided in Schedule 2 to the Act.
- (bb) **Licensee** has the same meaning as provided in Schedule 2 to the Act.
- (cc) **Member director** has the same meaning as given in the Constitution.
- (dd) **Practice Direction** means the directions given by the Tribunal or the Appeals Tribunal in accordance with By-law 69.
- (ee) **Principal Licensee** has the same meaning as provided in Schedule 2 to the Act.
- (ff) **Member of the Public** means any individual who is not an Eligible Person and is (or has been) a party to a real estate transaction facilitated by an Eligible Person which is the subject of the Complaint.
- (gg) **Real Estate Agent** has the same meaning as provided in Section 16 of the Act.
- (hh) **Regional Member Director** has the same meaning as given in the Constitution.
- (ii) **Registrar** means the individual employed by the Institute in that role whose duties and functions include the managing of the administrative functions of the Tribunal and Appeals Tribunal.
- (jj) **Registry** means the registry of the Institute maintained by the Registrar under these By-laws for the administration of Complaints.
- (kk) **Remote Conferencing** means:
  - (i) telephone conferencing; or
  - (ii) video conferencing; or

- (iii) another form of communication that allows persons taking part in the proceedings to hear and take part in discussions as they occur.
- (ll) **Respondent** means the person against whom a Complaint is made by a Complainant.
- (mm) **Standards of Business Practice** means the Standards of Business Practice published by the Institute from time to time.
- (nn) **Tribunal** means either the Professional Standards Division or the Consumer Complaints Division, as the case requires, both of which are established by the Institute to hear and determine Complaints in accordance with these By-laws.
- (oo) **Zone** means a regional group of Eligible Persons approved by the Directors and established under these By-laws.
- (pp) **Zone Chair** means the chair of a Zone appointed in accordance with these By-laws.

## **Part 2 Standards of Business Practice**

### **3 Standards of Business Practice**

In accordance with rule 15 of the Constitution, the Board may publish Standards of Business Practice for its members.

## **Part 3 Membership**

### **4 Classes of Membership**

- (1) The Institute comprises of the memberships of Life, Fellow, Practising, Associate, Affiliate, Student, and Accredited Agency members, each of which are defined in in By-laws 5 to 11.
- (2) To maintain membership, all members in a class described in By-laws 5 to 11 (other than Life, Affiliate and Student members) must, satisfactorily complete all CPD requirements as prescribed by the Board from time to time.
- (3) No member in a class described in By-laws 5 to 11 has any right to use the intellectual property of the Institute, including, for example, any trade mark, design, patent, business or domain name, except as expressly stated in writing by the Institute. A member in a class described in By-laws 5 to 11 may describe himself or herself as a member of the Institute only by using the full name of the class of his or her membership.

### **5 Life**

A Fellow who:

- (a) has rendered long, outstanding and meritorious service to the Institute which, in the Board's opinion, entitles that person to the distinction; and
- (b) has been elected as a Life Member at a general meeting.

### **6 Fellow**

A person who:

- (a) at the time of application for Fellow Membership, is a Practising member and has held for a total period of 15 years individual membership as a Practising Member, Associate Member and/or was a previously nominated responsible officer of an Accredited Agency (refer to By-law 11) (or any combination thereof); and
- (b) can satisfy the Board of their high standard of professional conduct, commitment to



professional development and contribution to the real estate profession.

## **7 Practising**

A person:

- (a) actively engaged in real estate practice in Queensland who is licensed under the Act as a real estate agent, auctioneer or registered valuer or who holds the Diploma of Fellow or Associate of the Real Estate Institute of Australia; and
- (b) who meets fit and proper person requirements assessed by reference to the following matters:
  - (i) the applicant's character, competence and experience relative to the duties of the real estate profession, including whether the person possesses the necessary skills, knowledge, expertise, diligence and soundness of judgement, has demonstrated the appropriate competence and integrity in fulfilling occupational, managerial or professional responsibilities previously and/or in the conduct of his or her current duties(if applicable);
  - (ii) whether the applicant has demonstrated a lack of willingness to comply with legal obligations, regulatory requirements or professional standards, or been obstructive, misleading or untruthful in dealing with regulatory bodies or a court;
  - (iii) whether the applicant has breached a fiduciary obligation;
  - (iv) whether the applicant has perpetrated or participated in negligent, deceitful, or otherwise discreditable business or professional practices;
  - (v) whether the applicant has been reprimanded, or disqualified, or removed, by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
  - (vi) whether the applicant has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure has been occasioned in part by deficiencies in that management;
  - (vii) whether the applicant is of bad repute in any business or financial community or any market;
  - (viii) whether the applicant has been the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on that person's competence, diligence, judgement, honesty or integrity.

## **8 Associate**

A person actively engaged in full time real estate practice as a real estate salesperson or property manager.

## **9 Affiliate**

(1) A person who is not eligible for membership in any other classification and who:

- (a) is actively engaged in real estate agency practice;
- (b) has been a member but has ceased to be actively engaged in real estate agency practice;

- (i) an organisation, that is involved in Government or any government instrumentality whether local, state or federal;
  - (ii) an insurance company;
  - (iii) a financial institution;
  - (iv) a firm whose business activities include a department associated with the sale, care, management or valuation of real estate or training of real estate practitioners; or
  - (v) is engaged in business practice in a calling or profession associated with real estate.
- (2) An organisation must at all times nominate a suitably qualified representative.
- (3) An Affiliate member or nominated representative may attend but is not entitled to vote at any election or meeting of the Institute, Zone or Chapter.

#### **10 Student**

- (1) A person who has enrolled with the Institute for a course of study with a state or national accreditation for a registration or licensing outcome and has paid the required enrolment fees.
- (2) A Student member may attend but is not entitled to vote at any election or meeting of the Institute, Zone or Chapter.

#### **11 Accredited Agency**

- (1) A corporation, partnership or sole trader engaged in real estate agency practice and which holds the appropriate licences ("Firm") may apply for each separate place of business to be designated as an Accredited Agency provided that:
- (a) at least one licensed principal of the Firm is admitted as a Practising Member or Fellow; and
  - (b) the person in charge at each separate place of business is admitted as an Associate, Practising Member or Fellow; and
  - (c) the membership of no other director, partner or principal of the Firm has been terminated by the Institute or is currently suspended.
- (2) A Firm may be admitted as an Accredited Agency provided that:
- (a) the Firm has at all times advised the Institute of each place of business owned by the Firm which is operated under the authority of the Firm's licence;
  - (b) the Firm complies with the Constitution and By-laws including the Standards of Business Practice;
  - (c) the Firm meets any other requirements prescribed from time to time by the Board; and
  - (d) the Firm provides to the Chief Executive Officer when required, evidence of professional indemnity cover for such amount as specified by the Board from time to time, and a written undertaking in a form approved by the Board to maintain the professional indemnity cover as long as the Firm remains an Accredited Agency.
- (3) An Accredited Agency may exercise all those benefits approved from time to time by the Board, including (by way of example):
- (a) a revocable licence to use the Institute's intellectual property; the right to access the Institute's services nominated by the Board; and
  - (b) the right, subject to the requirements imposed by the Board, to describe each of the places of

business nominated as an "REIQ Accredited Agency".

- (4) An Accredited Agency member may attend but is not entitled to vote at any election or meeting of the Institute, Zone or Chapter.
- (5) If a Firm or entity ceases to be an Accredited Agency for any reason, any licence to use intellectual property conferred under By-law 4 is automatically revoked and the Firm or entity must immediately cease to:
  - (a) use any of the Institute's intellectual property; and
  - (b) describe any of its places of business as an "REIQ Accredited Agency".

## **12 Inter-Dependent Membership**

Unless the Board determines otherwise, where the membership of a principal of a Firm is suspended, the Board must also suspend for the period of suspension any Accredited Agency of the suspended member.

## **13 Suspension of Benefits of Membership**

- (1) During any period of suspension of membership or on termination, the member or former member must not:
  - (a) display any emblem, certificate or other device denoting membership of the Institute; or
  - (b) make any statement or claim to be holding membership of the Institute.
- (2) Any member who enters into business arrangements with a non-member is not entitled to provide any of the benefits of membership to the non-member.

## **Part 4 Fees and Subscriptions**

### **14 Fees**

- (1) Fees and subscriptions for membership are set out in Schedule 1 to these By-laws.
- (2) All fees must be paid on request by the Chief Executive Officer.

## **Part 5 Election Procedures for Member Directors**

### **15 Returning Officer**

The Company Secretary is the returning officer.

### **16 Roll of Electors**

For every election the Company Secretary must prepare a roll of voters consisting of names of all eligible voters arranged alphabetically. The roll must be prepared based on members enrolled at the date of publication of the notice of election as provided in By-law 18.

### **17 Certification**

The roll of electors certified by the Company Secretary must be used at the election of member directors and regional member directors and is conclusive evidence of the members entitled to vote at the election.

## **18 Notice of Election**

- (1) The Company Secretary must give notice to members of a class described in By-laws 5 to 8 of the intention to hold an election of member directors and regional member directors. The notice must be sent with a nomination paper to each individual eligible to vote.
- (2) The election notice must include:
  - (a) the last day for the receipt of nominations which is to be between **14 Business Days** and **28 Business Days** after the date of the election notice; and
  - (b) the address where the Company Secretary will be during office hours on the last day for the receipt of nominations.

## **19 Nomination**

- (1) Subject to By-law 19(3), to be eligible as a candidate for election as a member director, an individual must be a member of a class described in By-laws 5 to 8.
- (2) Subject to By-law 19(3), to be eligible as a candidate for election as a regional member director, an individual must:
  - (a) be a member a member of a class described in By-laws 5 to 8; and
  - (b) at the date of:
    - (i) nomination for election as a regional member director; and
    - (ii) at the date of the relevant general meeting at which the individual's appointment is being considered as a regional member director,must satisfy the criteria set out in the Constitution from time to time applying to regional member directors.
- (3) The election of member directors and the election of regional member directors are to be conducted as a single election process.
- (4) A nomination paper signed by the nominee must:
  - (a) specify whether the individual nominee satisfies the respective eligibility criteria for a member director or a regional member director;
  - (b) include a declaration by the nominee that they satisfy the respective eligibility criteria for a member director or a regional member director (as the case may be);
  - (c) be received by the Company Secretary within the time and at the address shown in the election notice; and
  - (d) contain such other information as determined by the Board from time to time.
- (5) A nomination paper may be accompanied by:
  - (a) a short curriculum vitae for the nominee; and
  - (b) a statement (of an appropriate length) prepared by that nominee outlining reasons for nomination and the benefits the nominee can bring to the Institute as a member director or regional member director; and
  - (c) the nominee's answers and/or submissions in relation to such other content or questions that the Board may deem relevant from time to time.

- (d) With the Board's approval this material may be sent to the eligible voters by the Company Secretary with the election notice.
- (6) A candidate's promotion for election to the Board must:
- (a) be limited to self-promotion only;
  - (b) not contain any negative or derogatory statements about other candidates or past directors of the Institute;
  - (c) not contain statements which may be considered to be defamatory;
  - (d) not be of a character that will bring or, may potentially bring, the reputation of the Institute or the real estate profession into disrepute; and
  - (e) not align with other candidates seeking election to the Board in producing how to vote material.

## **20 Nominations Match Vacancies**

After the date for nominations, if:

- (a) the number of candidates for election as member directors equals or is less than the number of individuals to be elected as member directors; or
- (b) the number of candidates for election as regional member directors equals or is less than the number of individuals to be elected as regional member directors,

those individuals must be declared elected (as member directors or regional member directors, as appropriate) at the next annual general meeting.

## **21 Vacancy**

At the conclusion of an election, if there is a vacancy in the office of a director because of a lack of nominations or the death or ineligibility of a candidate, that vacancy must be filled as a casual vacancy according to the Constitution.

## **22 Closing of Poll**

If after the due date for nominations to be received by the Institute, the number of candidates for the office of member director or regional member director exceeds the number of individuals to be elected as member directors (without distinguishing between regional member director and member director positions), a poll is required and the Company Secretary must appoint the date and time on which the poll will close, which must be between 14 days and 28 days from the date for the close of nominations.

## **23 Voting Papers**

- (1) If a poll is required, the Company Secretary must post voting papers to all eligible voters entitled to vote. Each voting paper must be in the form decided by the Board and must contain the names, as a single list in alphabetical order of all candidates for election as member directors or regional member directors, clearly designating which candidates satisfy the eligibility criteria for regional member director positions.
- (2) The Company Secretary must keep a certified list of those eligible voters who have been sent voting papers.
- (3) Each voting paper must be accompanied by:

- (a) an unsealed envelope addressed to the Company Secretary and endorsed "The Real Estate Institute of Queensland Limited Voting Paper"; and
- (b) a declaration of eligibility to vote to be signed by the voter.

#### **24 Method of Voting**

- (1) To vote, an eligible voter must mark the voting paper by placing the number of crosses specified in the voting paper (which shall correspond to the number of open board positions) in squares opposite the name of the candidate or candidates who the eligible voter wishes to vote in favour of.
- (2) Once the eligible voter has cast his or her vote in accordance with By-law 24(1), the eligible voter must then sign the declaration of eligibility to vote and return the voting paper and declaration to the Company Secretary in the envelope provided (or by the appropriate method of return or lodgment associated with the prescribed form of voting, which may include direct voting in accordance with By-law 30).

#### **25 Marking of Voters on List**

On examination of each declaration of eligibility to vote the Company Secretary must make a check mark against the name of the voter on the list of eligible voters.

#### **26 Scrutineers**

The Board must appoint not less than 2 individuals who are eligible voters (excluding a candidate for election) as scrutineers. The Board may at its discretion also appoint the Company's auditor to audit the counting of votes. The scrutineers must be present at the time and place appointed for examination of voting papers.

#### **27 Scrutiny of Votes and Declaration**

- (1) At the time and place nominated, the Company Secretary must examine and count the votes received in favour of each candidate. The Company Secretary and the scrutineers present at the examination of votes must sign and date a statement containing the number of votes cast for each candidate.
- (2) The determination of which of the candidates will be successful in being elected to fill open board positions will be determined as follows:
  - (a) If any of the open board positions are regional member director positions, the candidate(s) satisfying the eligibility criteria for election as a regional member director with the most votes are deemed to have been successfully elected as regional member directors up to the number of regional member directors required (which shall not exceed two).
  - (b) All other candidates who nominated for election as a regional member director, but who were not successful for election as a regional member director in accordance with By-law 27(2)(a), are then automatically deemed to be eligible for election for the remaining open board positions in accordance with By-law 27(2)(d). These candidates are to be included for the purposes of scrutinising the votes and determining the successful candidates to be nominated as member directors.
  - (c) For the avoidance of doubt, any candidate deemed to have been successfully elected as regional member directors in accordance with By-law 27(2)(a) do not participate in the process set out in By-law 27(2)(d).
  - (d) The candidates with the most votes in comparison with:
    - (i) all candidates who have nominated as a member director; and

- (ii) all candidates who nominated for election as a regional member director but who are now eligible to be elected as a member director in accordance with By-law 27(2)(b),  
are deemed to have been successfully elected as member directors, up to the number required.
- (3) When signing the statement of votes cast, the Company Secretary must declare the names of the candidates elected as member directors and the candidates elected as regional member directors.

## **28 Informal Votes**

At the examination of votes, a voting paper must be rejected if:

- (a) it is manifestly irregular;
- (b) it contains a greater number of marks in squares opposite the names of candidates than the number of candidates to be elected; or
- (c) it is so imperfectly completed that the intention of the voter cannot be determined.

## **29 Casting Vote**

### **(1) *Regional member directors***

If when determining which candidates are to be elected as regional member directors in accordance with By-law 27(2)(a) there is an equal number of votes cast in respect of two eligible candidates, the Company Secretary must put the names of the eligible candidates who received the equal number of votes in a vessel and draw one name who will then be deemed to be elected as a regional member director. For the avoidance of doubt, any candidate which the Company Secretary determines by lot is not elected as regional member director will automatically be eligible for election as a member director in accordance with By-law 27(2)(b).

### **(2) *Member directors***

If, when determining which candidates are to be elected as member directors in accordance with By-law 27(2)(d), there is an equal number of votes cast in respect of one or more of the positions to be filled, the Company Secretary must put the names of the eligible candidates who received the equal number of votes in a vessel and draw one name who will then be deemed to be elected as a member director.

## **30 Direct voting**

### **(1) A 'direct vote' in this By-law 30 includes a vote delivered to the Institute by:**

- (a) post;
- (b) fax;
- (c) e-mail;
- (d) interaction by a member with an authenticated internet web-link provided by the Institute for the purposes of administering and facilitating a meeting of members; or
- (e) any other electronic means approved by the Board.

### **(2) The Board may determine that members may cast their votes in an election of member directors and regional member directors called under these By-laws by direct vote.**

### **(3) If the Board decides that votes may be cast by direct vote, the Board may specify the regulations, rules and procedures it considers appropriate (in its absolute discretion) for the casting of direct votes,**

including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be considered valid.

### **31 Receipt, counting and withdrawal of direct votes**

- (1) Provided that the method of direct voting has been prescribed or otherwise approved by the Board for a given election, receipt of a direct vote from a member will constitute:
  - (a) that member's vote towards the election of the member specified on that direct vote to be elected as member director or regional member director; and
  - (b) a valid vote to be considered in the counting of all votes and determination of the successful nominees of an election notwithstanding the general voting requirements prescribed in By-laws 23 to 27 have not been complied with.
- (2) The Board may determine in their absolute discretion whether a direct vote cast by a member satisfies the requirements of a means of direct voting prescribed by the Board in respect of the election for which the vote is cast.
- (3) A direct vote received by the Institute may be withdrawn by a member by written notice received by the Institute provided that the notice of withdrawal is received prior to the time designated for the closing of the poll under By-law 22.
- (4) In addition to a withdrawal made under By-law 31(3), a direct vote is deemed to be automatically withdrawn where the Institute:
  - (a) receives from the same member a voting paper that has been validly completed; or
  - (b) receives from the same member a further direct vote or direct votes (in such event the most recently received direct vote is, subject to this clause, counted in lieu of the prior direct vote).
- (5) A direct vote withdrawn under this By-law is not to be counted towards the determination of an election.

### **32 Disposal of Voting Papers**

- (1) Immediately after declaring the result of the election the Company Secretary must place all voting papers and the list of voters in a packet and endorse on the packet details of the contents and the date of declaring the result. The Company Secretary must retain the packet and its contents for 1 calendar month after the date of declaring the result and must then destroy it.
- (2) If any question arises concerning the votes cast at an election before the destruction of the voting papers the contents of the packet maintained by the Company Secretary may be received in evidence in any court with jurisdiction to determine the question as proof of the votes.

### **33 Publication of Names of Successful Candidates**

The names of the persons elected as member directors and regional member directors (notwithstanding that it not be necessary for the publication to specify whether the persons have been elected as a member director or regional member director) must be published promptly in:

- (a) any journal or newsletter published by the Institute; or
- (b) any newspaper decided by the Company Secretary.



## **Part 6 Zone By-laws**

### **34 Register**

The Chief Executive Officer must maintain a register of all members, of a class described in By-laws 5 to 11 within each Zone containing current information for each of those individuals as directed by the Board and including the individual's:

- (a) name;
- (b) registered trading office address;
- (c) classification of membership or status (as the case requires); and
- (d) address for notices.

### **35 Zone Chair**

- (1) The Zone Chair must not be a Director of the Institute.
- (2) Only Eligible Voters of a Zone are eligible for nomination to the position of Zone Chair.

### **36 Appointment of Zone Chair**

- (1) Within 1 calendar month after the annual general meeting of the Institute the Company Secretary must invite nominations from eligible candidates for the position of Zone Chair.
- (2) Each Zone Chair is appointed by the Board for that purpose for a term of two years commencing at a time determined by the Board. Such appointment is to be made within 2 calendar months from the closing of nominations.
- (3) Each nomination must be signed by the candidate and endorsed by two Eligible Voters of the candidate's Zone.
- (4) If no nominations are received from eligible candidates for the position of Zone Chair the Board may appoint an individual who would have been an eligible candidate to the position of Zone Chair until the next election.
- (5) A Zone Chair's appointment is strictly subject to the Zone Chair's compliance with the Board's directions as varied from time to time.

### **37 Vacancy**

- (1) A Zone Chair may resign from their appointment by giving the Institute notice in writing.
- (2) A Zone Chair ceases to be a Zone Chair where:
  - (a) the Zone Chair ceases to be a member of the Institute or has their membership suspended; or
  - (b) becomes of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health.
- (3) A Zone Chair's appointment may be terminated by the Board in writing where:
  - (a) the Zone Chair fails to comply with the Board's directions; or
  - (b) the Zone Chair behaves in a manner the Board determines to be inappropriate or detrimental to the reputation of the Institute.

- (4) Where a Zone Chair vacancy arises due to any of the matters described in By-Laws 37(1) to 37(3), the Board may appoint an individual who would have been an eligible candidate to the position of Zone Chair until the next election.

### **38 Meetings of Zone**

The convening of Zone meetings and the control and conduct of those meetings is subject to the control of the Board.

## **Part 7 Chapters**

### **39 Functions**

- (1) Each Chapter is established to improve and elevate the knowledge and status of:

- (a) members of a class described in By-laws 5 to 11; and
- (b) employees of Accredited Agencies,

in the specialist area of that Chapter.

- (2) The specialist areas include:

- (a) auctioneering;
- (b) business brokerage;
- (c) buyer agency;
- (d) commercial and industrial sales, leasing and consultancy;
- (e) holiday letting;
- (f) management rights;
- (g) property management; and
- (h) residential sales.

### **40 Chapter Committee**

- (1) Each Chapter is administered by a committee appointed by the Board for that purpose for a term of two years commencing at a time determined by the Board.
- (2) Only Eligible Voters are eligible for nomination to the Chapter Committee.
- (3) The Chapter Committee established under By-law 40(1) must comprise:
  - (a) a chair elected by the committee members; and
  - (b) not more than 7 other committee members.
- (4) A Director may not be appointed to a Chapter Committee.
- (5) The chair of a Chapter Committee must not be a member of the Board, a Zone Chair or chair of any other Chapter Committee.
- (6) The Chapter Committee is responsible for the management of the Chapter subject to its terms of reference as determined by the Board from time to time.
- (7) A member of a Chapter Committee ceases to be a member of that committee if the member:

- (a) resigns and that resignation is accepted by the Chair of the Chapter Committee;
- (b) ceases to be eligible for membership of the Chapter Committee.

#### **41 Chapter Executive Officer**

- (1) The Chief Executive Officer must appoint a person to act as Chapter executive officer for each Chapter.
- (2) Each Chapter executive officer acts at the direction of the Chapter Chair subject to the overriding direction of the Chief Executive Officer.
- (3) Each Chapter executive officer must:
  - (a) maintain records of the Chapter;
  - (b) convene meetings of the Chapter committee in accordance with these By-laws;
  - (c) prepare reports on all proceedings of the Chapter committee for presentation at the next meeting of the Board; and
  - (d) subject to these By-laws, carry out the duties required by the Chapter committee.

### **Part 8 Complaints**

*Note: The Complaints procedure is reflected in the illustration shown in Schedule 2 of these By-laws.*

#### **42 Complaints**

- (1) Complaints may be brought against an Eligible Person by either:
  - (a) a Member of the Public;
  - (b) another Eligible Person; or
  - (c) the Institute.

#### **43 Complaints by Eligible Persons**

- (1) For a Complaint brought by an Eligible Person:
  - (a) the Complainant must, within 20 Business Days of the first event giving rise to the Complaint, provide written communication to the other Eligible Person involved which includes:
    - (i) details of the relevant facts;
    - (ii) reasons for the Complaint; and
    - (iii) requests what the Complainant seeks in order to resolve the dispute.
  - (b) The Respondent must provide a written response to the Complainant within 10 Business Days which must:
    - (i) set out which of the relevant facts are agreed or disputed;
    - (ii) give reasons for any disagreement with the details of the Complaint; and
    - (iii) advise of whether the Respondent will comply with the Complainant's requests.
- (2) If a response is not received in accordance with By-law 43(1)(b) and the matter is not otherwise resolved then subject to By-Law 47, the Complainant may refer the Complaint to the Institute for Mediation in accordance with By-laws 46 and 48 but must do so within 45 Business Days of the date of the first written communication required by By-law 43(1)(a).

#### **44 Institute initiated Complaints**

- (1) The Chief Executive Officer may, in the name of the Institute, lodge a Complaint against an Eligible Person:
  - (a) where the Chief Executive Officer reasonably believes that an Eligible Person has not complied with the By-laws or Standards of Business Practice; or
  - (b) where the Chief Executive Officer:
    - (i) received written communication, in whatever form, from no less than 10 members of a Zone requesting that the Chief Executive Officer bring a Complaint against an Eligible Person; and
    - (ii) in the Chief Executive Officer's reasonable opinion, the alleged Complaint affects all other members of a Zone.
- (2) A member of a Zone must, on the reasonable request of the Chief Executive Officer, provide any information relevant to the Complaint to the Chief Executive Officer.
- (3) Where the Chief Executive Officer makes a decision to lodge a Complaint against an Eligible Person in accordance with By-law 44(1) the following process must be complied with:
  - (a) The Chief Executive Officer must send written notification to the Eligible Person which sets out details of the alleged conduct giving rise to the Complaint; and
  - (b) After receiving the written communication in By-law 44(3)(a) the Eligible Person must provide a response in writing within 14 Business Days, which includes all relevant facts and provides any reasons why the Eligible Person believes that the Complaint is disputed; and
  - (c) Having considered the Response received, the Chief Executive Officer may require that the Eligible Person attend a Hearing.

#### **45 Complaints by a Member of the Public**

- (1) For a Complaint brought by a Member of the Public:
  - (a) The Complainant must, within 20 Business Days of the first event giving rise to the Complaint, provide written communication to the other Eligible Person involved which includes:
    - (i) details of the relevant facts;
    - (ii) reasons for the Complaint; and
    - (iii) requests what the Complainant seeks in order to resolve the dispute.
  - (b) The Respondent must provide a written response to the Complainant within 5 Business Days which must:
    - (i) set out which of the relevant facts are agreed or disputed;
    - (ii) give reasons for any disagreement with the details of the Complaint; and
    - (iii) advise of whether the Respondent will comply with the Complainant's requests.
- (2) If a response is not received in accordance with By-law 45(1)(b) and the matter is not otherwise resolved then subject to By-Law 47, the Complainant may refer the Complaint to the Institute for Mediation in accordance with By-laws 46 and 48 but must do so within 45 Business Days of the date of the first

written communication required by By-law 45(1)(a).

#### **46 Referral of Complaint to the Institute**

- (1) To refer a Complaint to the Institute the Complainant must file a notice of complaint form as prescribed, with the Tribunal, together with:
  - (a) the Hearing Fee; and
  - (b) copies of the communication required pursuant to By-Law 43 or 45.

#### **47 Jurisdiction**

- (1) The Institute does not have jurisdiction to assist in the resolution of a Complaint under these By-laws if the subject matter of the Complaint currently is, or has been, the subject of an investigation, proceedings, or action before any other authority (e.g. Office of Fair Trading), tribunal (e.g. Queensland Civil and Administrative Tribunal), statutory body or court other than the Tribunal. The Institute also does not have jurisdiction to assist in the resolution of a Complaint involving potential criminal allegations under the *Criminal Code 1899* or in relation to employment matters.
- (2) The Registrar may make an order to defer the Mediation or the Hearing, or both, until the matters disclosed pursuant to By-law 47 are finally determined.
- (3) The Registrar must provide written notification to the Respondent of a Complaint which:
  - (a) Confirms that a Complaint has been referred to the Institute; and
  - (b) requests that the Respondent complete and return either:
    - (i) an acknowledgment that the Complaint has been referred to the Institute; or
    - (ii) a notice of complaint form.

#### **48 Mediation**

- (1) The Chief Executive Officer must refer all Complaints referred to the Institute to mediation to be conducted by an Industry Representative.
- (2) The Registrar must provide notice in writing to both the Complainant and the Respondent which confirms that the matter is to proceed to Mediation and may set down the date for Mediation.
- (3) The Mediation will occur on a date to be determined by the Registrar, but Mediation must occur no more than 30 Business Days from the date on which the Complaint is referred to the Institute.
- (4) Subject to these By-laws, the procedure for Mediation is at the discretion of the Industry Representative appointed to conduct the Mediation.
- (5) the Complainant and Respondent must either:
  - (a) attend the Mediation in person; or
  - (b) have another person, other than a legal representative, and who has authority to settle the proceeding on behalf of the party attend the Mediation.
- (6) The Mediation is conducted on a confidential and without prejudice basis and anything said or done in the course of mediation is not admissible in any Hearing before the Tribunal or in any other investigation, action or proceedings by another authority, court or tribunal unless all the parties agree to the giving of the evidence.
- (7) As soon as reasonably practicable after the completion of Mediation, the Industry Representative must notify the Registrar in writing whether the Complaint has been resolved at Mediation.

#### **49 Referral of the Complaint to Hearing**

If the Complaint is not resolved at the Mediation, the Registrar must list the matter for Hearing before the relevant Tribunal.

#### **50 Notification of Hearing**

The Registrar must cause a written notice to be delivered to the parties to the Complaint stating:

- (a) the names of the Tribunal members;
- (b) the time and place of the Hearing;
- (c) the summary of the nature of the Complaint; and
- (d) the maximum penalties which may be imposed for a breach of these By-laws or the Standards of Business Practice.

#### **51 Time for filing submission and other documents**

- (1) The Complainant must, within 10 Business Days of receiving written notification of the Hearing, file with the Institute, and deliver to the Respondent the following:

- (a) written submissions outlining the Complaint which also refer to the Standards of Business Practice which are alleged to have been breached; and
- (b) copies of all documents, forms or correspondence relevant to the Complaint.

##### **(Complainant's Material)**

- (2) The Respondent must, within 10 Business Days of receiving the Complainant's Material, file with the Institute, and deliver to the Complainant the following:

- (a) written submissions outlining the reasons why the alleged conduct is denied; and
- (b) copies of all documents, forms or correspondence relevant to the Complaint.

#### **52 Legal Representation before the Tribunal**

The Tribunal may give leave for the Complainant or Respondent to be represented by a legal practitioner at a Hearing before the Tribunal, taking into account the complexity of the Complaint, attitudes of the parties and any hardship caused to either of the parties should leave not be granted.

#### **53 Withdrawal of Complaint**

A Complainant may withdraw all or part of a Complaint only with the Tribunal's leave.

### **Part 9 Powers of the Tribunal**

#### **54 Independence of the Tribunal**

In exercising its powers under these By-laws, the Tribunal is not subject to direction or control of any other person (including the Chief Executive Officer, the Registrar or the Board).

#### **55 Certain Complaints to be deferred**

If the parties to a Complaint referred to the Institute:

- (a) are or become, whether at the time the Complaint is referred to the Tribunal or while the Complaint is before the Tribunal, parties to any investigation, proceeding or action which is the

subject of the Complaint before an authority, tribunal or court ; and

- (b) the matter has not already been deferred to the Registrar in accordance with By-law 46, then the Tribunal may defer the Hearing or determination of the Complaint until the investigation, proceeding or action is completed, or finally determined.

## **56 Powers of Tribunal**

(1) The Tribunal may:

- (a) direct any Eligible Person (or an Accredited Agency for whom such Eligible Person may work) who is a party to a Complaint to pay commission derived, or entitled to be derived, under or in connection with a transaction the subject of that Complaint in a manner the Tribunal sees fit;
- (b) where an Eligible Person is found to be in breach of the Standards of Business Practice, or these By-laws, order one or more of the following, or any combination thereof:
  - (i) that the Eligible Person (or an Accredited Agency for whom such Eligible Person may work as the case may require) pay a fine to the Institute not exceeding the maximum fine in accordance with By-law 56.
  - (ii) that the Eligible Person (or an Accredited Agency for whom such Eligible Person may work as the case may require) attend to such other non-monetary orders as the Tribunal sees fit;
  - (iii) that an Eligible Person undertakes a course of instruction;
  - (iv) recommend to the Board that the membership of a member should be cancelled;
  - (v) recommend to the Board that the membership of a member should be suspended and recommend the terms of re-instatement of the member;
  - (vi) that a written caution be issued to the Eligible Person.

## **57 Maximum Fines**

- (1) Where the Tribunal finds the Eligible Person has committed multiple breaches of the Standards of Business Practice or the By-laws, the Tribunal may impose a single fine under By-law 56 to reflect the totality of the conduct having regard to the matters under By-law 57(3).
- (2) The maximum fine for a breach of a By-law of the Institute or of a Standard of Business Practice must not exceed \$10,000.
- (3) While By-law 57(2) provides for a maximum fine of \$10,000 for each breach of the Standards of Business Practice or the By-laws, the maximum fine will only be imposed in exceptional circumstances and in particular, having regard to:
  - (a) the nature and circumstance of the breach;
  - (b) whether the breach was intentional or reckless;
  - (c) any previous breach committed by the Eligible Person; and
  - (d) any damage or loss caused to a Member of the Public (as opposed to an Eligible person).

## **58 Jurisdiction**

The Tribunal has the power to determine its own jurisdiction.

## **59 Procedure**

- (1) The procedure for a Hearing is at the discretion of the Tribunal, subject to these By-laws and the rules of natural justice.
- (2) The proceeding is to be conducted with as little formality and technicality and with as much expedition as these By-laws and a proper consideration of the matters before the Tribunal permit.
- (3) The Tribunal may, if appropriate, conduct the proceeding by remote conferencing.
- (4) The Tribunal may hear and decide a Complaint in the Respondent's absence if the Tribunal is satisfied that the Respondent has been given notice of the Hearing and does not appear at the Hearing.
- (5) The Tribunal may make orders, give directions and do whatever is necessary for the just, fair, informal and cost efficient and expedient resolution of a proceeding.

## **60 Time limits and extensions of time**

- (1) The Tribunal may at any time set time limits for the completion of anything to be done in relation to the proceeding.
- (2) The Tribunal, on the written application of a party, or on its own initiative, may for a proceeding:
  - (a) extend a time limit fixed by or under these By-laws; or
  - (b) waive compliance with any procedural requirement under these By-laws.
- (3) The Tribunal may extend time or waive compliance even if the time or period for compliance has already expired.
- (4) The Tribunal may not extend time or waive compliance if to do so would cause any prejudice or detriment to a party or potential party that cannot be otherwise remedied by the Tribunal.

## **61 Requests for further submissions or documents**

- (1) The Tribunal may, at any time throughout the proceeding make a direction or order which requires a party to the proceeding to give the Tribunal:
  - (a) further submissions about any aspect of the Complaint; and
  - (b) a document or documents in the party's control which are or may be relevant to the Complaint.
- (2) The Chairperson of a Tribunal has the power to make the orders or directions in accordance with By-law 61(1) without referring to, or seeking agreement from, the other members of the Tribunal.

## **62 Tribunal may require witnesses to attend**

The Tribunal may, on the application of a party to a proceeding, or by its own motion, issue an attendance notice requiring any Eligible Person to attend before it at the time and place notified in the attendance notice to do either or both of the following:

- (a) appear as a witness and be examined about the matters the subject of the Hearing;
- (b) to produce the documents or things stated in the attendance notice or that belong to a category stated in the attendance notice.

## **63 Inspection of documents or things**

If a document or thing is produced to the Tribunal, the Tribunal may:

- (a) inspect the document or thing; and



- (b) copy or photograph the document or thing if it is relevant to the proceeding before the Tribunal.
- (2) The Tribunal may also take possession of the document or thing, and keep it while it is necessary for the proceeding.
- (3) While it keeps a document or thing, the Tribunal must permit a person otherwise entitled to possession of it to inspect, copy or photograph the document or thing at a reasonable place and time the Tribunal decides.

#### **64 Hearings in private**

The hearing of all Complaints will be conducted in private unless the Tribunal orders otherwise.

#### **65 Hearing on the documents**

The Tribunal may decide all or part of a proceeding from a consideration of the documents filed, without the parties or witnesses appearing if:

- (a) the parties to the proceeding agree; or
- (b) a Chairperson considers it appropriate in all the circumstances, having given the parties a reasonable opportunity to make submissions as to why all or part of the proceeding should not be conducted on the papers.

#### **66 Joinder of parties**

The Tribunal may order that an Eligible Person be joined as a party to a Hearing if the Tribunal considers that:

- (a) the Eligible Person ought to be bound by, or have the benefit of, an order of the Tribunal in the proceeding; or
- (b) the Eligible Person's interests are affected by the proceeding; or
- (c) for another reason it is desirable the person be included as a party.

#### **67 Vexatious proceedings**

If a Complaint is false, frivolous or vexatious, the Tribunal may dismiss the Complaint at any stage of the proceeding.

#### **68 Conduct of proceeding causing disadvantage**

If the Tribunal considers a party to a proceeding is acting in a way that unreasonably disadvantages another party to the proceeding including by:

- (a) not complying with a direction or order of the Tribunal without reasonable excuse; or
- (b) requesting an adjournment as a result of not complying with a direction or order of the Tribunal; or
- (c) unreasonably causing an adjournment,

then the Tribunal may dismiss the Complaint if the party causing the unreasonable disadvantage is the Complainant, or, make such other orders as the Tribunal deems appropriate.

## **69 Practice directions**

- (1) To the extent that a matter about the procedures of the Tribunal is not provided for by these By-laws, the Chairperson may issue any Practice Directions about the Tribunal's procedures.
- (2) To the other extent that a matter about the procedures of the Appeals Tribunal is not provided for by these By-laws, the Appeals Chair may issue Practice Directions about the Appeals Tribunal procedure.
- (3) Any Practice Direction issued pursuant to By-law 69 must be complied with unless the Tribunal or Appeals Tribunal otherwise orders.

## **Part 10 Decisions, Directions or Orders of the Tribunal**

### **70 Form of Decision, Direction or Order**

- (1) Where the Tribunal makes its Decision on a Complaint, the Tribunal must prepare and issue a decision in writing which:
  - (a) sets out the findings on any material questions of fact;
  - (b) refers to the evidence or any other material on which the findings of fact were based; and
  - (c) sets out the reasons for the decision.
- (2) Where the Tribunal makes a Direction or Order not part of a decision, that direction or order must be issued in writing by the Tribunal.

### **71 Issue of Decision, Direction or Order**

- (1) As soon as reasonably practicable after the Tribunal has made its decision, direction or order, the Tribunal must issue a copy of the decision, direction or order to the parties.
- (2) The Decision, Direction or Order takes effect on the date that the decision, direction or order is signed by the Chairperson.

### **72 Amendment of Decision, Direction or Order**

- (1) If, after the making of a decision by the Tribunal, the Tribunal is satisfied that there is a minor error in the decision the Tribunal may direct the Registrar to alter the decision as directed.
- (2) The final decision of the Tribunal will be the amended decision.
- (3) For the purposes of By-law 72:
  - (a) a *minor error* in a decision includes an obvious clerical or typographical error; and
  - (b) the correction of a minor error does not affect the operation of the decision.
- (4) For any necessary correction that is not a minor error, the Tribunal must issue a new decision, direction or order in accordance with By-laws 70 and 71.

### **73 Tribunal unable to reach agreement as to Decision, Direction or Order**

If for whatever reason the Tribunal is unable to reach agreement then the final decision, direction or order will be determined by the Chairperson.

### **74 Compliance with Decisions, Directions or Orders**

A party must comply with all decisions, directions and orders of the Tribunal within the time stated unless:

- (a) the party makes an application in writing to the Tribunal for an extension of time to comply with the order or direction; and
- (b) the party receives written confirmation that any application for leave to appeal has been granted by the Tribunal.

#### **75 Revocation of Direction or Order**

The Tribunal may, on application of a party or on its own initiative, revoke a direction or order given by it.

### **Part 11 Composition of the REIQ Tribunal**

#### **76 Divisions of the Tribunal**

The Tribunal has 2 divisions;

- (a) the Professional Standards Division as described in By-law 87; and
- (b) the Consumer Complaints Division as described in By-law 87.

#### **77 Eligibility to be Chairperson**

The Chairperson must be a lawyer of at least 5 years standing who is a member of the Queensland Law Society or the Bar Association of Queensland.

#### **78 Eligibility to be an Industry Representative**

An Industry Representative must be a member of a class described in By-laws 5, 6 or 7 and have been approved by the Board as an Industry Representative for the purposes of these By-laws.

#### **79 Advisory Committee**

(1) To assist the Board identify suitable candidates to be:

- (a) the Appeals Chair;
- (b) the Chairperson; or
- (c) an Industry Representative,

the Board may appoint and convene an advisory committee to interview those candidates and otherwise review and comment on the qualifications of individuals identified by that committee or the criteria for selecting individuals to those positions.

(2) The Board is not obliged to accept any recommendation made by an advisory committee established under By-law 79(1).

#### **80 Appointment of Tribunal Members**

The Board must appoint:

- (a) a Chairperson; and
- (b) as many Industry Representatives as the Board determines for the proper functioning of the Tribunal.

### **81 Remuneration and appointment conditions**

- (1) Tribunal members and members of the Appeals Tribunal must be paid such fees as the Board sees fit from time to time.
- (2) No Tribunal member or member of the Appeals Tribunal has any entitlement to any fees, allowance or compensation if his or her appointment is terminated under By-law 82 from the date of that termination.
- (3) Each Tribunal member and each member of the Appeals Tribunal holds office for the fixed term nominated by the Board at the time of their appointment subject to termination under By-law 82 or resignation under By-law 83.
- (4) On the expiration of each or any term of appointment under these By-laws, that Tribunal member, or member of the Appeals Tribunal, is eligible for reappointment for such further term or terms as the Board, in its discretion, sees fit.

### **82 Termination of appointment**

- (1) The appointment of a Tribunal member or a member of the Appeals Tribunal may be terminated if the Board is satisfied the Tribunal member or member of the Appeals Tribunal:
  - (a) is incapable of satisfactorily performing his or her duties; or
  - (b) performed his or her duties carelessly, incompetently or inefficiently; or
  - (c) has engaged in conduct that would warrant termination in any other circumstance; or
  - (d) is bankrupt within the meaning of the *Bankruptcy Act 1966 (Cth)*.
- (2) The Board must terminate the appointment of a Tribunal member or member of the Appeals Tribunal if he or she:
  - (a) ceases to be eligible for appointment as a Tribunal member or member of the Appeals Tribunal; or
  - (b) is charged with an indictable offence under the *Criminal Code Act 1899*.

### **83 Resignation of Tribunal members or members of the Appeals Tribunal**

- (1) A Tribunal member or member of the Appeals Tribunal may resign by giving a written notice of resignation to the Chief Executive Officer.
- (2) The resignation is effective on the receipt of the notice by the Chief Executive Officer.

### **84 Acting Tribunal members**

- (1) The Board may appoint to the office of acting Chairperson or acting Appeal Chair, a person who is qualified to be appointed under By-law 80 and 98 (as the case requires), during the period of any;
  - (a) vacancy in the office for any reason; or
  - (b) absence of the Chairperson or Appeals Chair from the location in which any duties of the Chairperson need to be performed; or
  - (c) inability of the Chairperson to perform the duties of that office.

- (2) The Board may appoint to the office of acting Tribunal member or acting member of the Appeals Tribunal, a person who is qualified to be appointed under By-laws 77 and 98 (as the case requires) during the period of any:
- (a) vacancy in the office for any reason;
  - (b) absence of any Tribunal member from the location in which any duties of a Tribunal member needs to be performed; or
  - (c) inability of a Tribunal member to perform the duties of that office.

#### **85 Chairperson's Function**

- (1) The Chairperson's functions include the following:
- (a) directing the Tribunal's adjudicative function to ensure they are just, fair, informal, cost efficient and as expedient as practical;
  - (b) developing, with the participation of other Tribunal members, guiding principles that promote high quality and consistent decisions by the Tribunal;
  - (c) developing and implementing procedures and policies for the Tribunal's adjudicative operations;
  - (d) issuing practice directions;
  - (e) managing the performance of Tribunal members;
  - (f) deciding whether the Tribunal should reconvene after making a decision to determine what action should be taken, if any, in circumstances where:
    - (i) an Eligible Person has failed to comply with an order made by the Tribunal; or
    - (ii) an Eligible Person has failed to appear at the Tribunal Hearing and the Tribunal decided a Complaint in the Eligible Person's absence pursuant to By-law 59(4).
- (2) Where the Chairperson decides to reconvene the Tribunal under By-law 85(1)(f) the Tribunal may make such further or additional directions or orders within the scope conferred by By-law 56, as the Tribunal thinks fit.
- (3) The Chairperson's decision on whether to reconvene the Tribunal under By-law 85(1)(f) is final.
- (4) The Chairperson's decision to reconvene the Tribunal can be made either:
- (a) under motion of the Chairperson; or
  - (b) on the application of an Eligible Person who was a party to the hearing.

#### **86 Disclosure of Interests**

- (1) If any Tribunal member has a conflict of interest in a Hearing, the Tribunal member must disclose the issue giving rise to the conflict:
- (a) if the Tribunal member is the Chairperson - to the parties to the proceeding; or
  - (b) otherwise - to the Chairperson and the parties to the proceeding.

- (2) After making the disclosure, the Tribunal member may disqualify himself or herself unless:
  - (a) if the Tribunal member is the Chairperson – the parties agree; or
  - (b) otherwise – the Chairperson and the parties agree.
- (3) A Tribunal member has a conflict of interest in a Hearing if the Tribunal member has an interest, financial or otherwise, that could potentially conflict with the Tribunal member's proper performance of his or her functions as a Tribunal member.
- (4) A member of the Tribunal is not deemed to have pecuniary interest for the purposes of By-law 85(3) merely by reason of the Tribunal Members' membership with the Institute.

#### **87 Tribunal Composition**

- (1) The Tribunal must be constituted as follows:
  - (a) **(Professional Standards Division)** For the Hearing of a Complaint made under By-law 43 or 44 – by a Chairperson and 2 Industry Representatives.
  - (b) **(Consumer Complaints Division)** For the Hearing of a Complaint made under By-law 44 or 45 – by a Chairperson and 2 Industry Representatives.
- (2) The Chief Executive Officer determines the constitution of the Tribunal and in doing so must consider:
  - (a) the recommendations (if any) of the Registrar in that regard;
  - (b) the complexity of the matter to be dealt with by the Tribunal;
  - (c) the interests of the real estate profession;
  - (d) the public interest; and
  - (e) the expediency with which the matter can be dealt.

#### **88 Appointment of Registrar**

- (1) The Registrar and other staff of the registry are appointed by the Chief Executive Officer.
- (2) The Registrar may be an employee of the Institute and perform other functions for the Institute (as an employee or otherwise) in addition to the office of Registrar.

#### **89 Registrar's functions and powers**

The Registrar's functions include:

- (a) making recommendations to the Chief Executive Officer as to the composition of the Tribunal to hear any Complaint;
- (b) keeping a register containing details of all Complaints;
- (c) notifying the Complainants and Respondents as required in accordance with these By-laws;
- (d) signing and issuing attendance notices, however described, for the Tribunal and Appeals Tribunal;
- (e) keeping and maintaining the records and decisions of the Tribunal and the Appeals Tribunal;
- (f) issuing the parties to a proceeding with the Tribunal's decisions, directions and orders;

- (g) keeping financial records of the Tribunal and Appeals Tribunal, including an account of the fees paid and payable to the members of the Tribunal and Appeals Tribunal;
- (h) collecting statistical data and other information relevant to the administration of the registry; and
- (i) any other functions prescribed from time to time by the Chief Executive Officer.

#### **90 Acting Registrar**

The Chief Executive Officer may appoint a person to act as acting Registrar if:

- (a) the Registrar is not available to carry out the Registrar's functions in accordance with By-law 88; or
- (b) if there is a vacancy in the position for any reason.

### **Part 12 Appeals**

#### **91 Who has standing to Appeal a decision**

The following persons may make an application for leave to appeal a decision of the Tribunal:

- (a) party to a Complaint who is not satisfied with the decision of the Tribunal; or
- (b) the Institute, whether or not it was a party to the Complaint, if it is not satisfied with a decision of the Tribunal.

#### **92 Application to Appeal**

- (1) A party wishing to appeal a decision of the Tribunal must make an application for leave to appeal within 10 Business Days from the date on which the decision of the Tribunal took effect in accordance with By-law 70.
- (2) An application for leave to appeal must:
  - (a) be in writing; and
  - (b) state the grounds on which the appeal is to be based; and
  - (c) provide specific and sufficient detail to illustrate why the appeal should be granted.

#### **93 Leave to Appeal**

- (1) The Appeals Chair is charged with the decision to reject or grant leave to appeal and the decision of the Appeals Chair, in this regard, is final.
- (2) Leave to appeal will only be granted if the Appeals Chair is satisfied, in his or her absolute discretion, that there is a prima facie case that the Tribunal has erred in its decision.
- (3) No appeal will be granted where the person making the application to appeal, other than the Institute, declined to participate at the original Hearing.

#### **94 Referral of the Complaint to Appeals Tribunal**

- (1) If leave to appeal is granted under By-law 93, the Registrar must list the matter for an appeal hearing before Appeals Tribunal.
- (2) The Registrar must provide notice in writing to all parties which:
  - (a) confirms that the Appeal is to proceed before the Appeals Tribunal; and

(b) provides the date on which the Appeal Hearing before the Appeals Tribunal is to take place.

**95 Entities which cannot be a party to an Appeal**

(1) In no circumstance can any of the following be made a party to an Appeal:

- (a) the Board;
- (b) the Chief Executive Officer (or any employee of the Institute);
- (c) the Chairperson; or
- (d) any other Tribunal member.

(2) Any attempt to include any of these entities as a party to an Appeal will be invalid and of no effect.

**96 Appeal Fee**

When lodging an Appeal request, the appellant must lodge the appropriate Appeal Fee which is non-refundable.



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## **Part 13 Appeals Tribunal**

### **97 Appeals Chair**

- (1) The Appeals Chair must be a lawyer of at least 10 years standing who is a member of the Queensland Law Society or Bar Association of Queensland.
- (2) The Appeals Chair is appointed by the Board and holds office for the period determined by the Board.
- (3) The Appeals Chair is responsible for chairing the Appeals hearings before the Appeal Tribunal.
- (4) If the Appeals Chair is absent for any reason, the Board may appoint an acting Appeals Chair to perform the duties of the Appeals Chair for a period determined by the Board.

### **98 Ordinary members of the Appeals Tribunal**

The ordinary members of the Appeals Tribunal shall be selected by the Appeals Chair from the individuals approved by the Board to be Tribunal members.

### **99 Constitution of Appeals Tribunal**

The Appeals Tribunal must be constituted by:

- (a) **(Professional Standards Division)** For the Hearing of an appeal arising from a Complaint made under By-law 43 or 44 – by the Appeals Chair and 2 Industry Representatives.
- (b) **(Consumer Complaints Division)** For the Hearing of an appeal arising from a Complaint made under By-law 44 or 45 - by a Chairperson and 2 Industry Representatives.

### **100 Disclosure of interests**

- (1) If any member of the Appeals Tribunal has a conflict of interest in an Appeal hearing, the Appeals Tribunal member must disclose the issue giving rise to the conflict:
  - (a) if the Appeals Tribunal member is the Appeals Chair – to the parties to the proceeding; or
  - (b) otherwise – to the Appeals Chair and the parties to the proceeding.
- (2) After making the disclosure, the Appeals Tribunal member may disqualify himself or herself.
- (3) However, the Appeals Tribunal member may take part in the proceeding:
  - (a) if the Appeals Tribunal member is the Appeals Chair – if the parties agree; or
  - (b) otherwise – if the Appeals Chair and the parties agree.
- (4) An Appeals Tribunal member has a conflict of interest in an Appeals hearing if the Appeals Tribunal member has an interest, financial or otherwise, that could potentially conflict with the proper performance of his or her functions as an Appeals Tribunal member.
- (5) A member of the Appeals Tribunal is not deemed to have a pecuniary interest for the purposes of By-law 100(4) merely by reason of the Appeal Tribunal member's membership with the Institute.

### **101 Proceedings of Appeals Tribunal**

- (1) The proceedings of the Appeals Tribunal must be conducted in accordance with By-law 59 and the whole of Part 9 and 10 of these By-laws, except By-law 74(b) with any references to the Tribunal being read as Appeals Tribunal and any references to the Chairperson being read as a reference to the Appeals Chair.
- (2) The hearing of the Appeal is limited to the specific grounds identified by the appellant's Appeal request and not by way of re-hearing of the entire Complaint.

### **102 Powers of Appeal Tribunal**

The Appeal Tribunal has all of the powers of the Tribunal as set out in By-law 56 and any powers or functions in Part 9 and Part 10 of these By-laws, except for By-law 74(b), with any reference to Tribunal being read as Appeals Tribunal and any references to the Chairperson being read as a reference to the Appeals Chair.

### **103 Decision of Appeals Tribunal Final**

- (1) In reviewing a decision, the Appeals Tribunal may:
  - (a) affirm the decision of the Tribunal;
  - (b) set aside the decision of the Tribunal; or
  - (c) set aside the decision of the Tribunal and make another decision in substitution.
- (2) The decision of the Appeals Tribunal is final.

## **Part 14 Costs**

### **104 Costs generally**

- (1) **The parties to a Complaint shall pay their own costs for any Hearing and Appeal.**
- (2) The Tribunal may make an order that the Hearing Fee paid by the Complainant be reimbursed by the Respondent, in whole or in part.
- (3) The Appeals Tribunal may make an Order that the Appeal Fee paid by the Complainant be reimbursed by the Respondent, in whole or in part.

## **Part 15 Miscellaneous**

### **105 Institute Forms**

A form may contain any terms and conditions (including indemnities) that the Board determines are necessary for the conduct of the particular Hearing or to protect:

- (a) the Institute;
- (b) the Board;
- (c) Tribunal members;
- (d) all employees of the Institute;
- (e) the Chief Executive Officer;
- (f) the Registrar;

- (g) Appeals Tribunal members; and
- (h) the Hearing procedure generally.

**Schedule 1**

**Fees**

**Annual Fees and Subscriptions (inclusive of Goods and Services Tax)**

| <b>INDIVIDUAL</b>      |          |
|------------------------|----------|
| Life                   | Nil      |
| Fellow                 | \$175.00 |
| Practising             | \$175.00 |
| Associate              | \$175.00 |
| Affiliate - Individual | \$175.00 |
| Affiliate - Corporate  | \$245.00 |
| Student                | \$100.00 |

**Bi-Annual Fees and Subscriptions (inclusive of Goods and Services Tax)**

|   |          |
|---|----------|
| <b>Accredited Agency</b> (Head Office Large)  | \$580.00 |
| <b>Accredited Agency</b> (Head Office Micro)  | \$390.00 |
| <b>Note:</b> No more than two (2) people actively engaged in the office.  |          |
| <b>Accredited Agency</b> (Branch Office)  | \$195.00 |
| <b>Note:</b> The Licensee for an Accredited Agency is also a member of a class described in By-law 2.1, and fees payable in respect of that individual's membership are payable in addition to the fees payable by the Accredited Agency. |          |

**Joining fees (inclusive of Goods and Services Tax)**

|  |          |
|--|----------|
| <b>Accredited Agency</b> (Head Office Large) | \$250.00 |
| <b>Accredited Agency</b> (Head Office Micro) | \$250.00 |

Schedule 2

Complaints process

