



**The Real Estate Institute
of Queensland**

Corporations Act

Company Limited by Guarantee

BY-LAWS

OF

THE REAL ESTATE INSTITUTE OF QUEENSLAND LTD

ABN 49 009 661 287

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BY-LAWS
OF
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STANDARDS OF BUSINESS PRACTICE

1 Standards of Business Practice

- 1.1 In accordance with Clause 14 of the Constitution, the Board may publish Standards of Business Practice for its members.

MEMBERSHIP

2 Classes of Membership

- 2.1 The Institute comprises :

- (a) members admitted to those classes described in By-law 2.2 in accordance with By-law 2; and
- (b) members admitted as an accredited agency on or after Commencement time in accordance with By-law 3.

- 2.2 The classes of membership (other than the class created by By-law 3) are:

(1) Life

A person 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.

(2) Fellow

A person who has for a continuous period of 15 years been:

- (a) a Practising Member;
- (b) a responsible officer for an accredited agency; or
- (c) a combination of either a Practising member or a responsible officer for an accredited agency,

and who can satisfy the Board of their high standard of professional conduct, commitment to professional development and contribution to the real estate industry.

(3) Practising

A person 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 was admitted to this class of membership on or prior to the Commencement time and has continuously maintained his or her membership of this class since the Commencement time.

(4) Associate

A person actively engaged in full time real estate practice as a real estate salesperson or property manager and was admitted to this class of membership on or prior to the Commencement time and has continuously maintained his or her membership of this class since the Commencement time.

(5) Affiliate

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;
- (c) is a suitably qualified nominated representative of:
 - (i) organisations involved in Government or any government instrumentality whether local, state or federal;
 - (ii) an insurance company;
 - (iii) a financial institution; or
 - (iv) a firm whose business activities include a department for 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.
- (d) has enrolled in a course of study approved by the Board, has paid the required tuition fees and is preparing to sit for the examination prescribed for the issue of a licence required for eligibility as a practising member.

and was admitted to this class of membership as at 30 November 2004 and has continually maintained his or her membership of this class since that time.

An Affiliate member may attend but is not entitled to vote at any election or meeting of the Institute, Zone or Chapter.

(6) Previous Service

A person who was, prior to the Commencement time, either a Fellow, Practising or Associate member who has been granted relief by the Board from compliance with By-law 2.3 on the grounds of age or infirmity or who is no longer actively engaged in real estate practice may be admitted as a Previous Service member for so long as he or she continuously maintains membership of this class from the date of that admission. A person in this class may not be nominated as the responsible officer for an entity under By-law 3.2(b).

2.3 To maintain their membership, all members in a class described in By-law 2.2 (other than Life, Affiliate and Previous Service members) must, after 1 January 2005, satisfactorily complete all CPD requirements.

2.4 No person will be admitted:

- (a) as a Practising Member or Associate Member after the Commencement time; or
- (b) as an Affiliate Member after 30 November 2004.

Persons admitted to those classes of membership on or before the dates mentioned above may, however, continue their membership of that class as long as they continue to comply with the relevant requirements imposed under these By-laws and the Constitution.

2.5 No member in a class described in By-law 2.2 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-law 2.2 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.

3 Accredited Agency

3.1 This By-law takes effect (unless otherwise stated) as from the Commencement time.

3.2 An entity may apply to be admitted to membership as an accredited agency if:

- (a) the entity is licensed under the Act as:
 - (i) an auctioneer;

- (ii) a real estate agent;
 - (iii) a pastoral house; or
 - (iv) a restricted letting agent; and
- (b) the entity has at all times nominated to the Institute an individual as its responsible officer who is either:
- (i) if the entity is a sole trader – the principal licensee; or
 - (ii) if the entity is a partnership – a licensee who is a partner or, if one or more corporations are members, a licensee who is also a director of any such corporation; or
 - (iii) if the entity is a corporation – a licensee who is also a director.
- (c) the entity has at all times nominated to the Institute each place of business owned by the entity which is operated under the authority of entity's licence;
- (d) unless the Board determines otherwise, each licensee who is in charge of any of the entity's places of business nominated in accordance with By-law 3.2(c) satisfactorily completes any continuing professional development requirement as prescribed from time to time by the Board;
- (e) the entity complies with the Constitution and By-laws including the standards of business practice;
- (f) the entity meets any other requirements prescribed from time to time by the Board for members of this class; and
- (g) the entity 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 it remains such a member.
- 3.3 An accredited agency may exercise all those benefits of membership approved from time to time by the Board for members of that class, including (by way of example):
- (a) a revocable licence to use the Institute's intellectual property;
 - (b) the right to access the Institute's services nominated by the Board; and
 - (c) the right, subject to the requirements imposed by the Board, to describe each of the places of business nominated in accordance with By-law 3.2(c) as an "*REIQ Accredited Agency*".
- 3.4 If membership as an accredited agency ceases for any reason, any licence to use intellectual property conferred under By-law 3.3 is automatically revoked and the 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*".
- 3.5 If persons conducting a business under the authority of a Licence in partnership seek admission to membership as an accredited agency, the relevant and only entity which will be so admitted is only that partnership regardless of the number of partners in that partnership or the status of those partners (i.e. whether they individually are also licensees or, if corporations are partners, whether any director of such corporation is a licensee).

4 Suspension of Benefits of Membership

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

FEES AND SUBSCRIPTIONS

5 Fees

5.1 Fees and subscriptions for membership as at 1 July 2010 are:

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

Individual	
Life	Nil
Fellow	\$94.00
Practising	\$94.00
Associate	\$94.00
Affiliate	\$94.00
Previous Service	\$94.00

<p>Accredited Agency</p> <p>Note: If the responsible officer for an accredited agency is also a member of a class described in By-law 2.2, fees payable in respect of that individual's membership (if that individual elects to continue his or her membership of a class described in By-law 2.2) are payable in addition to the fees payable by the accredited agency.</p>	\$455.00
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5.2 All fees must be paid on request by the Chief Executive Officer.

ELECTION PROCEDURES FOR MEMBER DIRECTORS

6 Returning Officer

6.1 The Company Secretary is the returning officer.

7 Roll of Electors

7.1 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 9.

8 Certification

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

9 Notice of Election

9.1 The Company Secretary must give notice to members of a class described in items (1), (2), (3) or (4) of By-law 2.2 and the responsible officer for each accredited agency of the intention to hold an election of member directors. The notice must be sent with a nomination paper to each individual eligible to vote.

9.2 The election notice must include:

- (1) the last day for the receipt of nominations being between 14 days and 28 days after the date of the election notice; and
- (2) the address where the Company Secretary will be during office hours on the last day for the receipt of nominations.

10 Nomination

10.1 To be eligible as a candidate for election as a member director, an individual must be either:

- (a) a member of a class described in items (1), (2), (3) or (4) of By-law 2.2; or
- (b) a responsible officer for an accredited agency.

10.2 A nomination paper signed by the nominee must be received by the Company Secretary within the time and at the address shown in the election notice.

10.3 A nomination paper may be accompanied by:

- (1) a short curriculum vitae for the nominee; and
- (2) a brief statement (not exceeding 100 words) by that nominee outlining reasons for nomination and the benefits the nominee can bring to the Institute as a director. With the Board's approval this material may be sent to the eligible voters by the Company Secretary with the election notice.

10.4 A candidate's promotion for election to the Board must not:

- (1) use any public media including television, radio, signs, newspapers or periodicals for personal promotion; or
- (2) align with other candidates seeking election to the Board in producing how to vote cards.

11 Nominations Match Vacancies

11.1 After the date for nominations, if the number of candidates equals the number of individuals to be elected, those individuals must be declared elected at the next annual general meeting.

12 Vacancy

12.1 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 Regulations.

13 Closing of Poll

- 13.1 After the due date for nominations if the number of candidates for the office of Member Director exceeds the number of individuals to be elected 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.

14 Voting Papers

- 14.1 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 in alphabetical order of all candidates for election.
- 14.2 The Company Secretary must keep a certified list of those eligible voters who have been sent voting papers.
- 14.3 Each voting paper must be accompanied by:
- (1) an unsealed envelope addressed to the Company Secretary and endorsed "The Real Estate Institute of Queensland Ltd Voting Paper"; and
 - (2) a declaration of eligibility to vote to be signed by the voter.

15 Method of Voting

- 15.1 To vote an eligible voter must mark the voting paper by placing a cross in a square opposite the name of the chosen candidate or candidates. 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.

16 Marking of Voters on List

- 16.1 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.

17 Scrutineers

- 17.1 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.

18 Scrutiny of Votes and Declaration

- 18.1 At the time and place nominated, the Company Secretary must examine and count the votes received by each candidate in each section. 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.
- 18.2 The candidates, up to the number required, with the most votes are elected as directors.
- 18.3 When signing the statement of votes cast, the Company Secretary must declare the names of the candidates elected in each section.

19 Informal Votes

- 19.1 At the examination of votes a voting paper must be rejected if:
- (1) it is manifestly irregular; or
 - (2) it contains a greater number of marks in squares opposite the names of candidates than the number of candidates to be elected; or
 - (3) it is so imperfectly completed that the intention of the voter cannot be determined.

20 Casting Vote

- 20.1 If the same number of votes are cast for two or more candidates the Company Secretary must determine by lot which of those candidates is elected.

21 Disposal of Voting Papers

- 21.1 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 month after the date of declaring the result and must then destroy it.
- 21.2 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.

22 Publication of Names of Successful Candidates

- 22.1 The names of the persons elected as Directors must be published promptly in:
- (1) any journal or newsletter published by the Institute; or
 - (2) any newspaper decided by the Company Secretary.

ZONE BY-LAWS**23 Register**

- 23.1 The Chief Executive Officer must maintain a register of:
- (1) all members of a class described in By-law 2.2;
 - (2) the responsible officers for each accredited agency; and
 - (3) each licensee who is in charge of any place of business of accredited agency (other than a responsible officer)
- of the Zone containing current information for each of those individuals as directed by the Board and including the individual's:
- (4) name;
 - (5) registered trading office address;
 - (6) classification of membership or status (as the case requires); and
 - (7) address for notices.

24 Zone Chair

- 24.1 The chair of a Zone must not be a Director of the Institute.
- 24.2 Only Eligible Voters of a Zone are eligible for nomination to the position of Zone Chair.

25 Appointment of Zone Chair

- 25.1 Each Zone Chair is appointed by the Board for that purpose for a term of 2 years at the Board's first meeting following the taking of office by the newly elected Member Directors under rule 5.7 of the Constitution.
- 25.2 Within 1 calendar month after the annual general meeting of the Institute that coincides with a Board election, the Company Secretary must invite nominations from eligible candidates for the position of Zone Chair.
- 25.3 Each nomination must be signed by the candidate and endorsed by two Eligible Voters of the candidate's Zone.

26 Meetings of Zone

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

CHAPTERS**27 Functions**

Each Chapter is established to improve and elevate the knowledge and status of:

- (1) members of a class described in items (1), (2), (3) or (4) of By-law 2.2; and
- (2) principals and employees of accredited agencies,

in the specialist area of that Chapter. The specialist areas include:

- auctioneering;
- business brokerage;
- commercial and industrial sales, leasing and consultancy;
- management rights;
- property management; and
- residential sales.

28 Chapter Committee

28.1 Each Chapter is administered by a committee appointed by the Board for that purpose for a term of 2 years at the Board's first meeting following the taking of office by the newly elected Member Directors under rule 5.7 of the Constitution.

28.2 The Committee established under By-law 28.1 must comprise:

- (1) a Chair elected by the committee members; and
- (2) not more than 5 other committee members.

28.3 A Director may not be appointed to a Chapter Committee.

28.4 The Chair of a Chapter Committee must be an Eligible Voter but must not be a member of the Board, a Zone Chair or Chair of any other Chapter Committee.

28.5 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.

28.6 A member of a Chapter Committee ceases to be a member of that committee if the member:

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

29 Chapter Executive Officer

29.1 The Chief Executive Officer must appoint a person to act as Chapter executive officer for each Chapter.

29.2 Each Chapter executive officer acts at the direction of the Chapter Chair subject to the overriding direction of the Chief Executive Officer.

29.3 Each Chapter executive officer must:

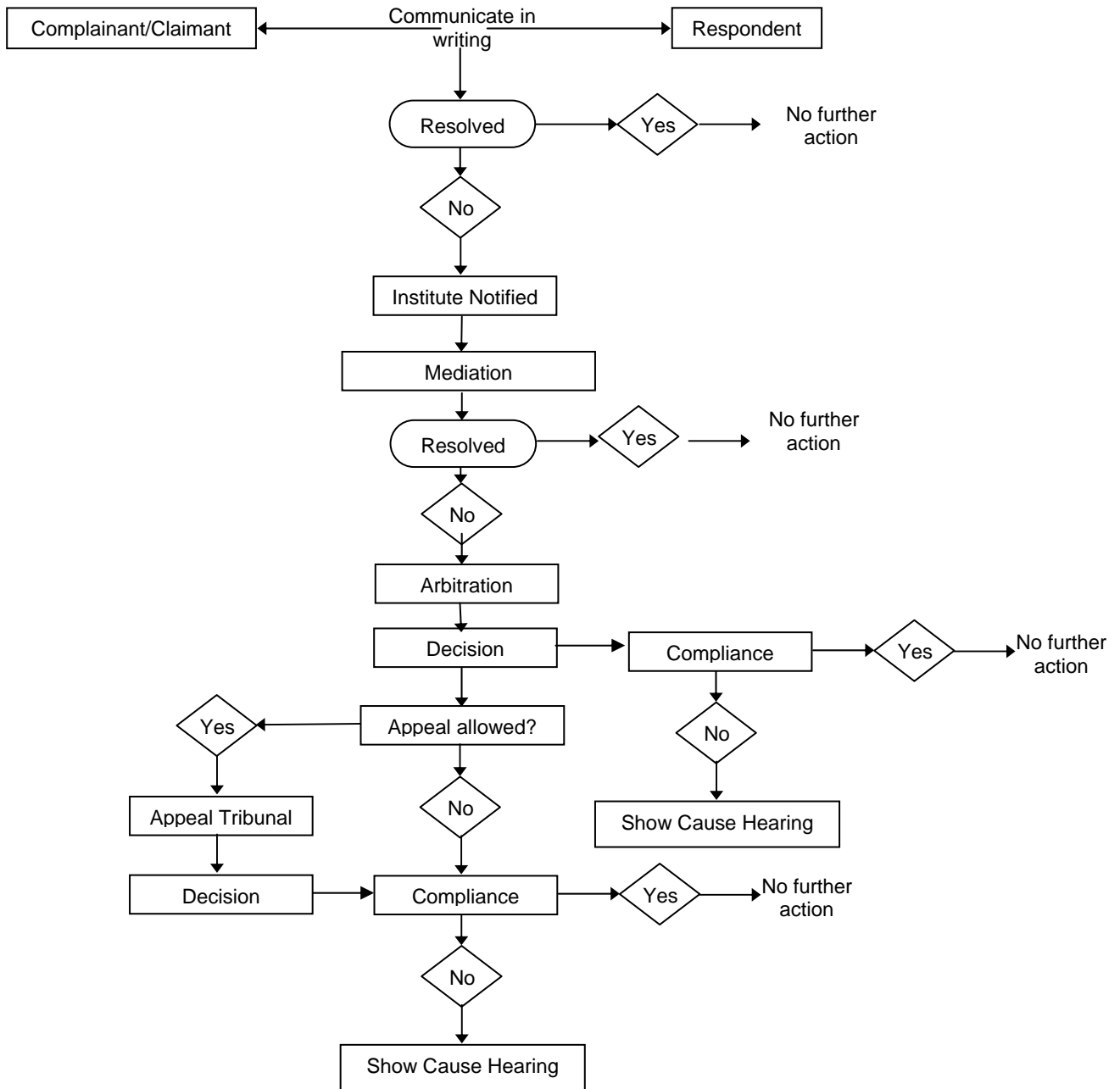
- (1) maintain records of the Chapter;
- (2) convene meetings of the Chapter committee in accordance with these By-laws;
- (3) prepare reports on all proceedings of the Chapter committee for presentation at the next meeting of the Board; and
- (4) subject to these By-laws, carry out the duties required by the Chapter committee.

GRIEVANCES

30 Procedures

30.1 The procedure for processing Grievances is shown below:

**FLOWCHART
OF
GRIEVANCE PROCEDURES**



31 Grievances

31.1 All Grievances involving an Eligible Person must be dealt with in accordance with these By-laws.

32 Grievances between Eligible Persons

- 32.1 Any Grievances between Eligible Persons must be referred to the Institute under these By-laws prior to taking any other action.
- 32.2 Before referring any Grievance to the Institute any Eligible Person making a Claim (**Claimant**) or a Complaint (**Complainant**) must write to the other Eligible Person involved in the events the subject of the Grievance (**Respondent**) with details of the Claim or Complainant (as the case may require) allowing the Respondent at least 7 days to respond. The Respondent's reply must include reasons for any disagreement with the details of the Claim or Complaint (as the case may require).
- 32.3 If a response is received within 10 days of receipt of the notice from the Claimant or Complainant (as the case requires) referred to in By-law 32.2, the Claimant or Complainant (as the case requires) must write again to the Respondent within a further period of 7 days from receipt of that response from the Respondent either accepting the explanation or advising that copies of correspondence will be referred to the Institute.
- 32.4 If a response is not received within 10 days of receipt of the notice from the Claimant or Complainant (as the case requires) referred to in By-law 32.2, the Claimant or Complainant (as the case requires) may in writing refer the Grievance to the Institute.

33 Complaints by the Institute

- 33.1 The Chief Executive Officer may, in the name of the Institute, make a Complaint involving an Eligible Person under these By-laws.
- 33.2 The Chief Executive Officer may also make a Complaint, in the name of the Institute, involving an Eligible Person at the request of at least 10 members of a Zone without requiring each member to comply with By-law 32.2 if, in the Chief Executive Officer's opinion, the alleged Complaint affects all other members of a Zone.
- 33.3 If either By-laws 33.1 or 33.2 applies, the Chief Executive Officer must first write to the Eligible Person involved allowing that person a reasonable opportunity to respond. The Eligible Person's response must include reasons for any disagreement with details of the Complaint.

34 Complaints by Public

34.1 A member of the Public may make a Complaint in writing (in a form approved by the Tribunal) against an Eligible Person.

35 Time of Lodgement of Grievance

35.1 Written notice of a Grievance must be lodged with the Institute within 6 months after the last of the events giving rise to the Grievance with the fee and notices described in By-laws 36 and 37 respectively.

36 Filing fee

36.1 The Claimant or Complainant (as the case may require) must lodge a fee as determined by the Board with its notice of the Grievance (as appropriate).

37 Form of lodgement of Grievance

- 37.1 Grievances lodged with the Institute under these By-laws must be in a form approved by the Board.
- 37.2 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:
- (1) the Institute;
 - (2) the Board;
 - (3) Tribunal members;
 - (4) all employees of the Institute;
 - (5) the Chief Executive Officer;

- (6) the Registrar;
- (7) Appeals Tribunal members; and
- (8) the Hearing procedure generally.

38 Mediation

- 38.1 Despite any other provision of these By-laws, the Chief Executive Officer must refer a Grievance to mediation by an Industry Representative.
- 38.2 The Registrar must give notice of a mediation referred under By-law 38 to each party in accordance with the practice directions.
- 38.3 Subject to these By-laws, the procedure for mediation is at the discretion of the Industry Representative.
- 38.4 The Registrar must require a party to attend the mediation, either personally or by a representative (other than a legal representative) who has authority to settle the proceeding on behalf of the party.
- 38.5 Evidence of anything said or done in the course of a mediation is not admissible in any hearing before the Tribunal unless all the parties agree to the giving of the evidence.
- 38.6 If the parties agree to settle the proceeding as a result of mediation, the Industry Representative must notify the Chief Executive Officer that the parties have agreed to settle the Grievance.
- 38.7 If the parties do not agree to settle the Grievance at the mediation, the Registrar must list the matter for hearing before the Tribunal and make any appropriate directions.

39 Real Estate Industry Professional Standards and Consumer Complaints Tribunal

- 39.1 The Tribunal has 2 divisions;
 - (1) the Professional Standards Division; and
 - (2) the Consumer Complaints Division.

40 Eligibility to be Chairman

- 40.1 The Chairperson (and any acting 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.

41 Eligibility to be a member of the Tribunal or Appeals Tribunal (other than Chairman or Appeals Chair)

- 41.1 An Industry Representative must be either;
 - (1) a member of a class described in By-law 2.2; or
 - (2) a responsible officer of an accredited agency,
 and have been approved by the Board as an Industry Representative for the purposes of these By-laws.
- 41.2 A Consumer Representative must:
 - (1) have demonstrated experience in consumer affairs; and
 - (2) not be an Eligible Person,
 and have been approved by the Board as a Consumer Representative for the purposes of these By-laws.

42 Advisory Committee

- 42.1 To assist the Board identify suitable candidates to be:
 - (1) the Appeals Chair;
 - (2) the Chairperson;
 - (3) an Industry Representative; or
 - (4) a Consumer 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. The Board is not obliged to accept any recommendation made by an advisory committee established under this By-law.

43 Vacancies in the Tribunal

- 43.1 The Board may, as it sees fit, call for applications or expressions of interest from;
- (1) Eligible Persons who have a desire to be considered for approval as an Industry Representative for the purposes of these By-laws; or
 - (2) persons (other than Eligible Persons) who have a desire to be considered for approval as Consumer Representative for the purposes of these By-laws.

44 Appointment of Tribunal Members

- 44.1 The Board must appoint;
- (1) a Chairperson (or acting Chairperson); and
 - (2) as many Industry Representatives and Consumer Representatives as the Board determines from time to time for the proper functioning of the Tribunal.

45 Remuneration and appointment conditions

- 45.1 Tribunal members and members of the Appeals Tribunal must be paid such fees as the Board sees fit from time to time.
- 45.2 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 46, from the date of that termination.
- 45.3 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 46 or resignation under By-law 47. On the expiration of each or any term of appointment under this By-law 45, that Tribunal member or member of the Appeals Tribunal (as the case requires) is eligible for reappointment for such further term or terms as the Board, in its discretion, sees fit.

46 Termination of appointment

- 46.1 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 (as the case required):
- (1) is mentally or physically incapable of satisfactorily performing his or her duties; or
 - (2) performed his or her duties carelessly, incompetently or inefficiently; or
 - (3) has engaged in conduct that would warrant termination in any other circumstance; or
 - (4) is affected by bankruptcy action.
- 46.2 The Board must terminate the appointment of a Tribunal member or member of the Appeals Tribunal if he or she:
- (1) ceases to be eligible for appointment as a Tribunal member or member of the Appeals Tribunal (as the case requires); or
 - (2) is charged with of an indictable offence.

47 Resignation of Tribunal members or members of Appeals Tribunal

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

48 Acting Tribunal members

- 48.1 The Board may appoint to the office of acting Chairperson, a person who is qualified to be appointed under By-law 40.1, during the period of any;

- (1) vacancy in the office for any reason; or
- (2) absence of the Chairperson from the location in which any duties of the Chairperson need to be performed; or
- (3) inability of the Chairperson to perform the duties of that office.

48.2 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 41.1 and 41.2 during the period of any:

- (1) vacancy in the office for any reason;
- (2) absence of any Tribunal member from the location in which any duties of a Tribunal member needs to be performed; or
- (3) inability of a Tribunal member to perform the duties of that office.

49 Chairperson's Function

49.1 The Chairperson's functions include the following:

- (1) directing the Tribunal's adjudicative function to ensure they are just, fair, informal, cost efficient and as expedient as practical;
- (2) developing, with the participation of other Tribunal members, guiding principles that promote high quality and consistent decisions by the Tribunal;
- (3) developing and implementing procedures and policies for the Tribunal's adjudicative operations;
- (4) issuing practice directions;
- (5) managing the performance of Tribunal members;
- (6) deciding whether the Tribunal should reconvene after making a decision to determine what action should be taken, if any, in circumstances where:
 - (a) an Eligible Person has failed to comply with an order made by the Tribunal;
 - (b) an Eligible Person has failed to comply with the terms of a Consent Award; or
 - (c) an Eligible Person has failed to appear at the Tribunal hearing and the Tribunal decided a Grievance in the Eligible Person's absence pursuant to By-law 60.1.

49.2 Where the Chairperson decides to reconvene the Tribunal under By-law 49.1(6), the Tribunal may make such further or additional directions or orders within the scope conferred by By-law 59 as the Tribunal thinks fit.

49.3 The Chairperson's decision on whether to reconvene the Tribunal under By-law 49.1(6) is final and is not subject to any right of Appeal under 49.4. A party, affected by an order or direction made under By-law 49.2 may apply for a review of that decision in accordance with By-laws 81 to 84.

49.4 The Chairperson's decision to reconvene the Tribunal can be made either:

- (1) under motion of the Chairperson; or
- (2) on the application of an Eligible Person who was a party to the hearing.

50 Disclosure of Interests

50.1 If any Tribunal member has a conflict of interest in a Hearing, the Tribunal member must disclose the issue giving rise to the conflict:

- (1) if the Tribunal member is the Chairperson - to the parties to the proceeding; or
- (2) otherwise - to the Chairperson and the parties to the proceeding.

50.2 After making the disclosure, the Tribunal member may disqualify himself or herself.

50.3 However, the Tribunal member may take part in the proceeding:

- (1) if the Tribunal member is the Chairperson – if the parties agree; or

(2) otherwise – if the Chairperson and the parties agree.

50.4 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.

51 Tribunal Composition

51.1 The Tribunal must be constituted as follows:

- (1) **(Professional Standards Division)** For the Hearing of a Grievance made under By-law 32 or (subject to By-law 51.1(2)) under By-law 33 – by a Chairperson and 2 Industry Representatives.
- (2) **(Consumer Complaints Division)** For the Hearing of a Complaint made under By-law 34 by a Chairperson, 1 Industry Representative and 1 Consumer Representative.

51.2 The Chief Executive Officer, except for when By-law 51.3 applies, determines the constitution of the Tribunal and in doing so must consider:

- (1) the recommendations (if any) of the Registrar in that regard;
- (2) the complexity of the matter to be dealt with by the Tribunal;
- (3) the interests of the real estate industry;
- (4) the public interest; and
- (5) the expediency with which the matter can be dealt.

51.3 If a Complaint is made under By-law 33 then the Chairperson of the Tribunal shall determine the constitution of the Tribunal having regard to the considerations under By-law 51.2.

52 Registrar of the Tribunal

52.1 The administrative affairs of the Tribunal are the responsibility of the Registrar.

53 Appointment of Registrar

53.1 The Registrar and other staff of the registry are appointed by the Chief Executive Officer.

53.2 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.

54 Registrar's functions and powers

54.1 The Registrar's functions include:

- (1) making recommendation to the Chief Executive Officer as to the composition of the Tribunal to hear any Grievance;
- (2) keeping a register containing details of all Complaints made under By-law 34 (**Public Complaint Register**);
- (3) notifying Respondents that a Claim or Complaint (as the case may require) has been made to the Institute;
- (4) notifying Claimants, Complainants and Respondents of the timetable on which a Claim or Complaint is to proceed as applicable to mediation and and/or hearing including making directions for the filing of witness statements and written submissions;
- (5) signing and issuing attendance notices, however described, for the Tribunal;
- (6) keeping and maintaining the Tribunal's records and decisions;
- (7) issuing the parties to a proceeding with the Tribunal's written statements in the proceeding;
- (8) keeping financial records of the Tribunal including an account of the fees paid and payable to the Tribunal;
- (9) collecting statistical data and other information relevant to the administration of the registry; and
- (10) any other functions prescribed from time to time by the Chief Executive Officer.

55 Acting Registrar

- 55.1 The Chief Executive Officer may appoint a person to act as Acting Registrar if the Registrar is not available to carry out the Registrar's functions or if there is a vacancy in the position for any reason.

PROCEDURE AND POWERS OF THE TRIBUNAL

56 Jurisdiction of Tribunal

- 56.1 Subject to By-law 57, the Tribunal must hear all Grievances referred to it under these By-laws.
- 56.2 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).

57 Tribunal must defer hearing certain Complaints

- 57.1 If the parties to a Complaint made under by-law 34 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 matter, proceeding or action before a court or tribunal (other than the Tribunal) of competent jurisdiction ('**other matter**'), the Tribunal must defer the hearing or determination of the Complaint until the other matter is complete, finally determined, resolved or settled.
- 57.2 The Tribunal must defer the hearing or determination under By-law 57.1 regardless of whether or not:
- (1) the parties to the Complaint are the only parties to the other matter; or
 - (2) the subject matter of the Complaint is the same or substantially the same as the subject matter of the other matter.

58 Notice of Tribunal Hearing

- 58.1 The Registrar must cause a notice to be served on the parties to the Claim or Complaint (as the case requires) stating:
- (1) the names of the Tribunal members;
 - (2) the time and place of Hearing;
 - (3) the particulars of the nature of the Claim or Complaint and the names of relevant witnesses, if known;
 - (4) the parties are to file and serve their evidence in accordance with the practice direction issued by the Chairperson (a copy of which is to be attached to the Notice); and
 - (5) the maximum penalties of which may be imposed for a breach of these By-laws.

59 Powers of Tribunal

- 59.1 The Tribunal may:
- (1) adjudicate a Grievance and its decision is final subject only to By-law 49.2 and any right of Appeal provided by these By-laws;
 - (2) direct any Eligible Person (or an accredited agency for whom such Eligible Person may work) who is a party to a Grievance to pay commission derived, or entitled to be derived, under or in connection with a transaction the subject of that Grievance in a manner the Tribunal sees fit;
 - (3) 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:
 - (a) 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 \$10,000 for each breach;
 - (b) 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;
 - (c) that an Eligible Person undertakes a course of instruction;

- (d) that costs, if any, in relation to the Claim or Complaint are paid by the Eligible Person (or an accredited agency for whom such Eligible Person may work - as the case may require);
- (e) recommend to the Board that the membership of a member should be cancelled;
- (f) recommend to the Board that the membership of a member should be suspended and recommend the terms of re-instatement of the member;
- (g) that demerits prescribed under the Standards of Business Practice should apply; and
- (h) that a written caution be issued to the Eligible Person.

59.2 While By-law 59.1(3)(a) 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).

59.3 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 59.1(3)(a) to reflect the totality of the conduct having regard to the matters under By-law 59.2. If a single fine is imposed, it must not exceed the maximum fine of \$10,000.

59.4 The Tribunal may take evidence on oath or affirmation. If a person refuses to give evidence on oath or affirmation, then the Tribunal may give that evidence less weight.

59.5 A person appearing before the Tribunal must not give evidence that, to his or her knowledge, is false or misleading.

59.6 The procedure for a Hearing is at the discretion of the Tribunal, subject to these By-laws and the rules of natural justice.

59.7 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.

59.8 The Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

59.9 The Tribunal may, if appropriate, conduct the proceeding by remote conferencing.

60 Non-appearance of respondent

60.1 The Tribunal may hear and decide a Grievance 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.

61 Tribunal may require witness to attend

61.1 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, or a person who the Tribunal believes that the Eligible Person can cause (or ought to be able to cause) to attend and who can provide relevant evidence, to attend before it at the time and place notified in the attendance notice to do either or both of the following:

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

62 Inspection of documents or things

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

- (1) inspect the document or thing; and

(2) copy or photograph the document or thing if it is relevant to the proceeding before the Tribunal.

62.2 The Tribunal may also take possession of the document or thing, and keep it while it is necessary for the proceeding.

62.3 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.

63 Representation before the Tribunal

63.1 The Tribunal may allow for a party to be represented by a legal practitioner or other person in the circumstances prescribed under the *Commercial Arbitration Act 1990*.

64 Hearings in private

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

65 Hearing on the documents

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

- (1) the parties to the proceeding agree; or
- (2) 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 Directions and Orders

66.1 The Tribunal may make orders, give directions and do whatever is necessary for the just, fair, informal, cost efficient and expedient resolution of a proceeding.

66.2 Without limiting By-law 66.1 the Tribunal may at any time:

- (1) set time limits for the completion of anything to be done in relation to the proceeding; and
- (2) require a party to the proceeding to give the Tribunal either or both of the following if the Tribunal considers it may be relevant to the proceeding:
 - (a) a document in the party's possession or control;
 - (b) any other information or evidence.

66.3 A party must comply with an order or direction within the time stated in the order or direction unless the party applies to the Tribunal for, and is granted, an extension of time to comply with the order or direction.

66.4 The Tribunal, on application of a party or on its own initiative, may at any time vary or revoke an order or direction given by it.

67 Documents to which disclosure does not apply

67.1 In this By-law, **duty of disclosure** means a requirement under By-law 66.3 relating to a document mentioned in By-law 66.2(2)(a).

67.2 The duty of disclosure does not apply to the following documents:

- (a) a document in relation to which there is a valid claim to privilege from disclosure;
- (b) a copy of a document already disclosed, if it is reasonable to suppose the copy contains no change, obliteration or other mark or feature likely to affect the outcome of the proceeding.

68 Extension of time and waiver of compliance

68.1 The Tribunal, on the application of a party or on its own initiative, may for a proceeding:

- (1) extend a time limit fixed by or under these By-laws; or
- (2) waive compliance with any procedural requirement under these By-laws.

- 68.2 The Tribunal may extend time or waive compliance even if the time or period for compliance has expired.
- 68.3 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 remedied by an appropriate order for costs.

69 Joinder of parties

- 69.1 The Tribunal may order that an Eligible Person be joined as a party to a Hearing if the Tribunal considers that:
- (1) the Eligible Person ought to be bound by, or have the benefit of, an order of the Tribunal in the proceeding; or
 - (2) the Eligible Person's interests are affected by the proceeding; or
 - (3) for another reason it is desirable the person be included as a party.
- 69.2 The Tribunal may make an order under By-law 69.1 on application of a party or on the application of an Eligible Person who is not a party.

70 Vexatious proceedings

- 70.1 If a Claim or Complaint is vexatious or oppressive, the Tribunal may:
- (1) summarily dismiss the Grievance at any stage of the proceeding; and
 - (2) order costs against the party who made the Claim or Complaint.

71 Conduct of proceeding causing disadvantage

- 71.1 If the Tribunal considers a party to a proceeding is acting in a way that unreasonably disadvantages another party to the proceeding including by:
- (1) not complying with a direction or order of the Tribunal without reasonable excuse; or
 - (2) requesting an adjournment as a result of not complying with a direction or order of the Tribunal; or
 - (3) vexatiously conducting the proceeding; or
 - (4) unreasonably causing an adjournment,
- the Tribunal may:
- (5) dismiss the Grievance if the party causing the unreasonable disadvantage is the Claimant or Complainant (as the case requires); or
 - (6) make such other orders as the Tribunal deems appropriate.

72 Withdrawal of Claim or Complaint

- 72.1 A Claimant or Complainant may withdraw all or part of a Claim or Complaint (as the case requires) only with the Tribunal's leave.
- 72.2 A Claimant or Complainant may withdraw against 1 or more Respondents without withdrawing against the other Respondents only with the Tribunal's leave.

73 Notice of withdrawal

- 73.1 A withdrawal for which the Tribunal's leave is not required may be effected by filing a notice of withdrawal, in the approved form, and serving it as soon as practicable on the other parties.
- 73.2 A withdrawal for which the Tribunal's leave is required is effected by the order giving leave.

74 Tribunal may hear proceeding regardless of related criminal or disciplinary action

- 74.1 The Tribunal may make an order to resolve the proceeding whether or not the person:
- (1) has been charged with, convicted of or sentenced for an offence arising out of the contravention; or
 - (2) is the subject of a pending disciplinary proceeding relating to the contravention; or
 - (3) may be, or has been, subject to disciplinary action relating to the contravention.

75 Practice directions

- 75.1 To the extent that a matter about the procedures of the Tribunal is not provided for by these By-laws, the Chairperson may issue practice directions about the Tribunal's procedures.
- 75.2 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.
- 75.3 The practice directions must be complied with unless the Tribunal or Appeals Tribunal (as this case requires) otherwise orders.

TRIBUNAL DECISIONS**76 Form of decisions of Tribunal**

- 76.1 Where the Tribunal makes its decision on a Grievance, the Tribunal must prepare a written statement that:
- (1) sets out the decision of the Tribunal;
 - (2) sets out the reasons for the decision;
 - (3) sets out the findings on any material questions of fact; and
 - (4) refers to the evidence or any other material on which the findings of fact were based.

77 When decision takes effect

- 77.1 A decision of the Tribunal takes effect:
- (1) if all parties to a proceeding before the Tribunal are present when the decision is given or order is made—when the decision is given or the order is made; or
 - (2) if 1 or more parties are not present when the decision is given or order is made—when the decision is served on all of those parties.
- 77.2 If, after the making of a decision by the Tribunal, the Tribunal is satisfied that there is an obvious error in the written statement the Tribunal may direct the Registrar to alter the text of the written statement in accordance with the directions of the Tribunal
- 77.3 If the written statement is so altered, the altered written statement is taken to be the written statement of the Tribunal
- 77.4 An example of an obvious error in a written statement is where there is an obvious clerical or typographical error in the written statement.
- 77.5 The powers of the Tribunal under this By-law may be exercised by the Chairman or a Tribunal Member who constituted the Tribunal.
- 77.6 The making of a correction under this By-law does not stop the operation of the order or decision.

78 Opinions Equally Divided

- 78.1 If for the purposes of any particular proceeding, the Tribunal comprises an even number and the opinions of those Tribunal members on a question before them are equally divided, the question must be decided by the Chairperson.

79 APPEALS Appeals generally

- 79.1 Either:
- (1) party to a Grievance who is not satisfied with the decision of the Tribunal; or
 - (2) the Institute (whether or not it was a party to the Complaint) if it is not satisfied with a decision of the Tribunal,
- may apply for a review of that decision in accordance with By-laws 79 to 92.
- 79.2 Appeals are not automatic and may 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.

79.3 No appeal will be granted where the appellant (other than the Institute) declined to participate at the original Hearing.

80 Mediation

- 80.1 Despite any other provision of these By-laws, the Appeals Chair may first refer an appeal arising from a decision of the Tribunal on a Claim or any part of it to mediation by an Industry Representative.
- 80.2 A referral may be made by By-law 80.1 with or without consent of the parties.
- 80.3 The Registrar must give notice of a mediation referred under this By-law 80 to each party in accordance with the practice directions.
- 80.4 Subject to these By-laws, the procedure for mediation is at the discretion of the Industry Representative.
- 80.5 The Registrar must require a party to attend the mediation, either personally or by a representative (other than a legal representative) who has authority to settle the proceeding on behalf of the party.
- 80.6 Evidence of anything said or done in the course of a mediation held under this By-law 80 is not admissible in any hearing before the Appeals Tribunal unless all the parties agree to the giving of the evidence.
- 80.7 If the parties agree to settle the proceeding as a result of mediation, the Industry Representative must notify the Chief Executive Officer that the parties have agreed to settle the Appeal.
- 80.8 If the parties do not agree to settle the Appeal at the mediation, the Registrar must list the matter for hearing before the Appeals Tribunal and make any appropriate directions.

81 Notice of Appeal

- 81.1 A party wishing to appeal:
- (1) a decision of the Tribunal; or
 - (2) any further or additional orders or directions given by the Tribunal under By-law 49.2
- must do so within 10 working days from the date on which the decision of the Tribunal is notified in writing.
- 81.2 An Appeal request must state the grounds on which the Appeal is to be based and gives specific examples and sufficient detail to illustrate why the Appeal should be granted.

82 Authority to grant Appeal

- 82.1 The Appeals Chair may grant or a reject a request to appeal. The decision of the Appeals Chair, in this regard, is final.

83 Entities which cannot be a party to an Appeal

- 83.1 Subject to By-law 83.2 in no circumstance can any of the following be made a party to an Appeal:
- (1) the Institute;
 - (2) the Board;
 - (3) the Chief Executive Officer (or any employee of the Institute);
 - (4) the Chairperson; or
 - (5) any other Tribunal member.
- Any attempt to include any of these entities as a party to an Appeal will be invalid and of no effect.
- 83.2 The Institute may be a party to an Appeal if, and only if, the Institute:
- (1) is dissatisfied with a decision of the Tribunal (whether or not it was a party to the Claim or Complaint) and it lodges an Appeal request in accordance with these By-laws; or
 - (2) was a party to the Complaint (being a Complaint made under By-law 33) and any party to that Complaint has lodged an Appeal request.

84 Appeal cost

- 84.1 When lodging an Appeal request, the appellant (or appellants) must lodge the appropriate fee which is non-refundable.
- 84.2 The appellant must bear all the costs and expenses reasonably incurred by the Appeals Tribunal in hearing the appeal.

85 Appeals Chair

- 85.1 The Appeals Chair (and any acting 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.
- 85.2 The Appeals Chair (or acting Appeals Chair) is appointed by the Board and holds office for the period determined by the Board.
- 85.3 The Appeals Chair is responsible for chairing Hearings of the Appeal Tribunal.
- 85.4 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.

86 Ordinary members of the Appeals Tribunal

- 86.1 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.

87 Constitution of Appeals Tribunal

- 87.1 The Appeals Tribunal must be constituted by:
- (1) **(Professional Standards Division)** For the Hearing of an appeal arising from a Grievance made under By-law 32 or (subject to By-law 87.1(2)) under By-law 33 – by the Appeals Chair and 3 Industry Representatives.
 - (2) **(Consumer Complaints Division)** For the Hearing of an appeal arising from a Complaint made under By-law 34 or any Complaint which, in the opinion of the Chief Executive Officer, directly affects the rights of any member of the Public - by a Chairperson, 2 Industry Representatives and 1 Consumer Representative.

88 Disclosure of interests

- 88.1 If any member of the Appeals Tribunal who constitutes, or is to constitute, the Appeals Tribunal for the purpose of a particular proceeding, whether with or without others, has or acquires an interest pecuniary or otherwise, that could conflict with the proper performance of the functions of the member in relation to that proceeding, the member must not take part in the proceedings unless all parties to the proceedings agree otherwise.
- 88.2 A member of the Appeals Tribunal is not deemed to have a pecuniary interest for the purposes of By-law 88.1 merely by reason of the member's membership of the Institute (or being a responsible officer of an accredited agency).

89 Proceedings of Appeals Tribunal

- 89.1 The proceedings of the Appeals Tribunal must be conducted as far as is practicable as if By-laws 59 to 75 inclusive applied mutatis mutandis in relation to proceedings before the Appeal Tribunal.
- 89.2 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 Claim or Complaint.

90 Powers of Appeal Tribunal

- 90.1 The Appeal Tribunal has all of the powers of the Tribunal and in reviewing a decision may:
- (1) affirm the decision of the Tribunal;
 - (2) set aside the decision of the Tribunal; or
 - (3) set aside the decision of the Tribunal and make another decision in substitution.

COSTS

91 Costs generally

- 91.1 The parties to a Grievance or Appeal shall pay their own costs unless the Tribunal or Appeals Tribunal determines otherwise.
- 91.2 In a proceeding, the Tribunal or Appeals Tribunal may award the costs it considers appropriate on:
- (1) the application of a party to the proceeding; or
 - (2) its own initiative.
- 91.3 The costs the Tribunal or Appeals Tribunal may award may be awarded at any stage before the conclusion of the proceeding.
- 91.4 In deciding whether to award costs, and the amount of the costs, the Tribunal or Appeals Tribunal may have regard to the following:
- (1) the outcome of the proceeding;
 - (2) the conduct of the parties to the proceeding before and during the proceeding;
 - (3) the nature and complexity of the proceeding;
 - (4) the relative strengths of the claims made by each of the parties to the proceeding;
 - (5) any contravention of an Act by a party to the proceeding; and
 - (6) anything else the Tribunal considers relevant.

Examples of paragraph 91.4(6)

The Tribunal may consider whether a party to a proceeding is acting in a way that unreasonably disadvantages another party to the proceeding.

The Tribunal may consider whether the proceeding, or a part of the proceeding, has been frivolous or vexatious.

- 91.5 A party to a proceeding is not entitled to costs only because:
- (1) the Tribunal made an order or orders in a party's favour; or
 - (2) the party was legally represented at the proceeding.
- 91.6 The power of the Tribunal or Appeals Tribunal to award costs under this By-law is in addition to the Tribunal's or Appeals Tribunal power to award costs under any other provision of these By-laws.
- 91.7 The Tribunal or Appeals Tribunal may direct that costs be assessed by the Registrar.

92 Stay pending payment of costs

- 92.1 If a party has been ordered to pay the costs of another party whether under By-law 91 or otherwise, and the party, before paying the costs, lodges another Complaint against the same party the Tribunal may order a stay of the other complaint until the costs are paid.

REBATES AND COMMISSIONS

93 Rebates and Commissions

- 93.1 The Institute may alone or in conjunction with other bodies negotiate joint buying arrangements on behalf of members with any person providing goods or services.
- 93.2 Any joint buying arrangement may include the provision of a commission to the Institute from the supplier of the goods or services.
- 93.3 Where the Institute receives commission under a joint buying arrangement it must account to the members for the amount received in the proportions decided by the Board.

- 93.4 The Institute may make a charge against the members in respect of its negotiation, or administration of any joint buying arrangement approved by the Board provided that the charge made to any member does not exceed the amount of the member's entitlement under By-law 93.3.
- 93.5 Any amount payable by a member under By-law 93.4 may be deducted by the Institute from the amount payable by it to the member under By-law 93.3 and the Institute must account to the member for the balance.

INTERPRETATION

94 Inconsistency Between By-laws and Constitution

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

- 94.2 For the purposes of these By-laws:

Act means the *Property Agents and Motor Dealers Act*.

affected by bankruptcy action, in relation to an individual, means the individual:

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

Appeal means an appeal from the decision of the Tribunal to the Appeals Tribunal made in accordance with these By-laws.

Appeals Chair means the person appointed to chair the Appeals Tribunal in accordance with by law 85.2.

Appeals Tribunal means the tribunal established under these By-laws to hear and determine Appeals.

auctioneer has the same meaning as provided in Schedule 2 to the Act.

Chairperson means the person appointed to chair the Tribunal in accordance with By-law 44.1

Chapter Committee means the Committee established by the Board under By-law 28.1.

Claim means a claim or disagreement of a commercial nature by, against or between an Eligible Person or Eligible Persons.

Claimant means the Eligible Person (as modified by this By-law 94.2) making a Claim in accordance with By-law 32.

Commencement time means 1 January 2006.

Complaint involves the allegation that the Eligible Person's conduct is unethical and/or in breach of the Institute's Standards of Business Practice

Complainant means the Eligible Person making a Complaint in accordance with By-law 32.

Consumer Representative means a person appointed to the Tribunal in accordance with By-law 44.1.

CPD means the continuing professional development as prescribed by the Board for any individual in order for that individual or an entity associated with him or her to maintain membership with the Institute.

Eligible Candidate means an individual described in By-law 24.2;

Eligible Person means any one of the following;

- (a) an accredited agency;
- (b) a member of any class described in By-law 2.2;
- (c) a responsible officer of an accredited agency; and

(d) a licensee who is in charge of any place of business of an accredited agency.

However, an Eligible Person for the purposes of a Claim or Claimant is further limited to either an accredited agency or principal licensee but will never include a person who is solely classified as an Associate (under By-law 2.2(4)) Affiliate (under By-law 2.2(5)) or Previous Service (under By-law 2.2(6)).

Eligible Voter means each member of a class described in items (1), (2), (3) or (4) of By-law 2.2 and the responsible officer of each accredited agency.

entity means the owner (whether a sole trader, as partners conducting a partnership or as a corporation) of a business operating under the authority of a Licence.

Grievance means either a Claim or Complaint as the case requires.

Hearing means a hearing before the Tribunal or Appeals Tribunal (as the case may require).

in charge has the same meaning as provided in Schedule 2 to the Act.

Industry Representative means an individual appointed to the Tribunal in accordance with By-law 44.1.

Licence has the same meaning as provided in Schedule 2 to the Act.

licensees has the same meaning as provided in Schedule 2 to the Act.

pastoral house has the same meaning as provided in Schedule 2 to the Act.

Practice direction means a direction as to process or procedure before the Tribunal and Appeals Tribunal given by the Tribunal or the Appeals Tribunal (as the case may require) in accordance with By-law 45.

principal licensee has the same meaning as provided in Schedule 2 to the Act.

Public means any individual who is not an Eligible Person but is a party (or a prospective party) to the transaction which is the subject of the Complaint.

real estate agent has the same meaning as provided in Schedule 2 to the Act.

Registrar means the individual employed by the Institute whose duties and functions include the managing the administrative functions of the Tribunal and Appeals Tribunal.

registry means the registry maintained by the Registrar under these By-laws for the administration of Grievances.

remote conferencing means:

- (a) telephone conferencing; or
- (b) video conferencing; or
- (c) another form of communication that allows persons taking part in the proceedings to hear and take part in discussions as they occur.

Respondent means the Eligible Person who is the subject of a Claim or Complaint made by a Claimant or Complainant (as the case requires).

responsible officer means the individual nominated by the accredited agency in accordance with By-law 3.2(b).

Standards of Business Practice means the Standards of Business Practice published by Institute from time to time.

Tribunal means the tribunal established by the Institute to hear and determine Grievances in accordance with these By-laws.