

IPENZ DISCIPLINARY REGULATIONS

1 Commencement

These regulations come into force on 1 January 2005.

2 Interpretation

In these regulations unless the context otherwise requires:-

material conflict of interest means, in relation to any matter, a financial or other interest that is likely to affect his or her judgement on that matter;

notify means send a written notice (by post, email, fax, or other similar means of communication) to the last known address of the person concerned; and

professional development includes but is not be limited to undertaking education or training or working under supervision.

3 How to complain about a Member

(1) A person may complain to the Institution about the conduct of a Member in accordance with this clause and Rule 11 of the Institution.

(2) The complaint must be made in writing and contain the complainant's name and contact details.

(3) The Institution must give all reasonable assistance that is necessary in the circumstances to enable a person who wishes to make a complaint to put the complaint in writing.

4 Institution may inquire into matters on own motion

(1) The Institution may inquire into any matter under these regulations if it has reason to suspect that a Member may have breached the Rules of the Institution.

(2) If subclause (1) applies, the Institution may —

(a) carry out an initial investigation of the matter in accordance with clause 17 as if it were a complaint; or

(b) if a complaint on that matter has already been made, continue to inquire into the matter even if the complaint is subsequently withdrawn.

5 Institution may refer complaint to Disciplinary Committee

The Institution must, as soon as practicable after receiving a complaint —

(a) refer the matter to a Disciplinary Committee; or

(b) investigate the matter according to clause 7.

6 Grounds for Referring a Complaint to a Disciplinary Committee

The Institution may refer a complaint to a Disciplinary Committee without investigating the matter according to clause 7 if the Chair of Disciplinary Committees decides that in relation to the complaint one or more of the following grounds apply:

(a) The Member concerned has been convicted by a competent Court or Tribunal of an offence punishable by a sentence of imprisonment or a fine exceeding \$2,000; or

(b) The Member concerned has been disciplined under section 21 of the Chartered Professional Engineers of New Zealand Act 2002 or any subsequent amendments to that Act;

7 Institution must refer complaint to Investigating Committee unless grounds for not doing so

The Institution must, as soon as practicable after making the decision in clause 5(b), carry out an initial investigation of the complaint in accordance with clause 9 and—

- (a) refer the complaint to an Investigating Committee; or
- (b) dismiss the complaint on a ground in clause 8.

8 Grounds for not referring complaint to Investigating Committee

The Institution may dismiss a complaint without referring it to an Investigating Committee if the Chairperson of Investigating Committees decides under clause 9 that—

- (a) there is no applicable ground of discipline under Rule 11 of the Institution; or
- (b) the subject matter of the complaint is trivial; or
- (c) the alleged breach of Rule 4 is insufficiently grave to warrant further investigation; or
- (d) the complaint is frivolous or vexatious or is not made in good faith; or
- (e) the person alleged to be aggrieved does not wish action to be taken or continued; or
- (f) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or
- (g) an investigation of the complaint is no longer practicable or desirable given the time elapsed since the matter giving rise to the complaint.

9 Way in which decision on whether or not to refer complaint to Investigating Committee must be made

The Institution must carry out an initial investigation of a complaint against the grounds in clause 8 in accordance with the following process:

- (a) the Institution must notify the Member complained about of the general nature of the complaint before commencing the investigation; and
- (b) a Complaints Research Officer must carry out the initial investigation of the complaint and recommend to the Chairperson of Investigating Committees that the complaint proceed or be dismissed on a ground in clause 8; and
- (c) the Chairperson of Investigating Committees or Complaints Research Officer may seek to verify the information in the complaint by requesting a statutory declaration by the complainant; and
- (d) after considering the Complaints Research Officer's recommendation, the Chairperson must decide whether the complaint proceeds, or if it is dismissed on a ground in clause 8.

10 Institution must notify and implement decision

The Institution must —

- (a) notify the complainant and the Member complained about of the decision under clause 9 and the reasons for the decision; and
- (b) unless the Chairperson decides that the complaint should be dismissed, appoint an Investigating Committee under clause 42 and refer the complaint to that Committee.

11 Investigating Committee must determine whether or not to refer complaint or inquiry to Disciplinary Committee

An Investigating Committee must, as soon as practicable after receiving a complaint or inquiry, investigate the matter and—

- (a) refer the matter to a Disciplinary Committee; or
- (b) dismiss the matter on a ground in paragraphs (a) to (g) of clause 8.

12 Powers of Investigating Committees

Subject to clause 38, an Investigating Committee may—

- (a) make, or appoint a person to make, any preliminary inquiries it considers necessary;
- (b) engage counsel, who may be present at a hearing of the Committee, to advise the Committee on matters of law, procedure, and evidence;
- (c) request the Member complained about or the complainant to provide to the Committee, within a specified period of at least 14 days that the Committee thinks fit, any documents, things, or information that are in the possession or control of the person and that are relevant to the investigation; and
- (d) take copies of any documents provided to it; and
- (e) request the Member complained about or the complainant to attend before the Committee, at that person's own cost, on at least 14 days' notice;
- (f) receive any evidence that it thinks fit;
- (g) request a person giving evidence to verify a statement by statutory declaration; and
- (h) provide information to assist the complainant and the Member complained about obtaining counsel or other advocacy assistance.

13 Investigating Committee may explore alternative dispute resolution for complaints

- (1) Before making the decision under clause 11 on a complaint, the Investigating Committee may explore, with the complainant and the Member complained about, the possibility of the complaint being referred to conciliation, mediation, arbitration, or another dispute resolution process.
- (2) If a complaint is referred to a dispute resolution process under subclause (1) and the complainant and Member complained about fail to resolve the dispute within 60 days of the reference, or within any other time period that the Investigating Committee thinks fit, the Investigating Committee must make the decision under clause 11 on the complaint.

14 Investigating Committee must give Member complained about opportunity to respond

If the Investigating Committee proposes to refer a complaint or inquiry to a Disciplinary Committee, the Investigating Committee must—

- (a) notify the Member complained about of the reasons for the proposed decision; and
- (b) give the Member complained about a reasonable opportunity to make submissions on the matter.

15 Way in which Investigating Committee's decision must be made

The Investigating Committee's decision under clause 11 on a complaint or inquiry must be made in the following way:

- (a) the Committee must make its decision as soon as practicable, but may delay making the decision until the outcome is known of any other legal proceedings that may affect its findings; and
- (b) if the Committee is not unanimous, the decision of the majority of the Committee is the decision of the Committee (but dissenting members may issue dissenting views).

16 Institution must notify and implement decision

The Institution must—

- (a) notify the complainant and the Member complained about of the decision under clause 11, the reasons for the decision, and any dissenting views; and

- (b) if the decision is to refer the complaint or inquiry to a Disciplinary Committee, appoint a Disciplinary Committee in accordance with clause 43 and refer the matter to that Committee.

17 Disciplinary Committee must determine complaint or inquiry

- (1) A Disciplinary Committee must, as soon as practicable after receiving a complaint or inquiry, hear the matter and decide whether or not there are grounds for disciplining the Member complained about under Rule 11 of the Institution.
- (2) If the Disciplinary Committee decides under sub clause (1) that there are no grounds for disciplining the Member complained about under Rule 11 of the Institution, the Institution must dismiss the complaint.
- (3) If the Disciplinary Committee decides under sub clause (1) that there are grounds for disciplining the Member complained about under Rule 11 of the Institution, the Disciplinary Committee must decide whether and how to exercise the Institution's powers under Rule 11 of the Institution, including imposing one or more of the following penalties:
 - (a) that the Member be expelled from membership of the Institution;
 - (b) that such Member be suspended from Membership for any period;
 - (c) that such Member be suspended from the Membership until such time as the Member has fulfilled requirements for professional development as have been specified by the Committee;
 - (d) that if by a prescribed date the Members fails to fulfil requirements for professional development as have been specified by the Committee such Member be suspended from Membership for a specified period of time;
 - (e) that the Member pay the Institution such sum by way of penalty not exceeding five times the annual membership subscription for a Professional Member as the Disciplinary Committee thinks fit;
 - (f) that the Member be reprimanded or admonished;
 - (g) that the Member pay a sum not exceeding ten times the annual membership subscription for a Professional Member towards the costs incurred by the Institution and/or the complainant as are directly attributable to the investigation hearing, and/or determination of the complaint against the Member concerned; and
 - (h) that upon completion of consideration of the complaint according to these Regulations, the Member be named, the order made against the Member be stated and the nature of the breach described in the official journal of the Institution, or publicised in any other manner as may be prescribed by the Committee.

18 Powers of Disciplinary Committees

Subject to clause 38, a Disciplinary Committee may—

- (a) make, or appoint a person to make, any preliminary inquiries it considers necessary;
- (b) engage counsel, who may be present at a hearing of the Committee, to advise the Committee on matters of law, procedure, and evidence;
- (c) request the Member complained about or the complainant to provide to the Committee, within a specified period of at least 14 days that the Committee thinks fit, any documents, things, or information that are in the possession or control of the person and that are relevant to the complaint or inquiry; and
- (d) request the Investigating Committee to provide its report into the complaint and copies of the evidence it considered; and

- (e) take copies of any documents provided to it; and
- (f) request the Member complained about or the complainant to attend before the Committee, at that person's own cost, on at least 14 days' notice; and
- (g) request that one or more members of the Investigating Committee attend before the Committee, on at least 14 days notice:
- (h) receive any evidence that it thinks fit:
- (i) request a person giving evidence to verify a statement by statutory declaration: and
- (j) provide information to assist the complainant and the Member complained about obtaining counsel or other advocacy assistance.

19 Way in which Disciplinary Committee must consider disciplinary matter

- (1) Before making the decision under clause 17 on a complaint or inquiry, the Disciplinary Committee must—
 - (a) send details of the complaint or inquiry to the Member complained about; and
 - (b) invite him or her to respond in writing to the complaint or inquiry within a specified period (which must be at least 14 days); and
 - (c) give the complainant, the Member complained about, and any person alleged to be aggrieved (if not the complainant) at least 28 days' notification of—
 - (i) the time and place of the hearing; and
 - (ii) the right of those persons to be heard and represented, and to present evidence at the hearing; and
 - (d) advise each of the persons in paragraph (c) that the person must notify the Committee within a specified period (which must be at least 14 days) if the person wishes to be heard or present evidence (including the calling of witnesses) by the Committee on the complaint or inquiry.
- (2) The complainant, Member complained about, and any person alleged to be aggrieved have the right to be heard and represented, and to present evidence at the hearing.

20 Way in which Disciplinary Committee's decision must be made

The Disciplinary Committee's decision under clause 17 on a complaint or inquiry must be made in the following way:

- (a) the Committee must make its decision as soon as practicable, but may delay making the decision until the outcome is known of any other legal proceedings that may affect its findings; and
- (b) if the Committee is not unanimous, the decision of the majority of the Committee is the decision of the Committee (but dissenting members may issue dissenting views); and
- (c) As appropriate in considering a complaint in regard to an alleged breach of the ethical obligation, the Disciplinary Committee may evaluate the diligence in applying the Code of Ethics by the Member; the degree to which account was taken of each clause of the Code and the extent of explicit disregard of the Code; and
- (d) As appropriate in considering a complaint in regard to an alleged breach of the competence obligation the Disciplinary Committee may evaluate the actions of the Member having regard to the competence expected of Members holding the same membership class of the Institution as the Member complained of; and
- (e) As appropriate in considering a complaint in regard to an alleged breach of the Membership obligation, the Disciplinary Committee may evaluate the actions of the Member having regard to the extent that the Member attempted to comply with the Rules and the extent of explicit disregard of them; and

- (f) As appropriate in considering an alleged breach of the good character obligation, the Disciplinary Committee may evaluate the actions of the Member having regard to whether the person is a fit and proper person to be a Member of the Institution.

21 Institution must notify and implement decision

The Institution must—

- (a) notify the complainant and the Member complained about of the Committee's decision under clause 16, the reasons for that decision, any dissenting views, and their rights of appeal under the Rules of the Institution and these regulations; and
- (b) implement any of those decisions that require actions by it, but must allow at least 28 days after notifying the complainant of the decisions before an order made under Rule 11 of the Institution takes effect.

22 Lodging of appeals

Either the complainant or the Member complained of may lodge a request for an appeal against the decision or any penalty imposed by a Disciplinary Committee to be heard, provided that—

- (a) The request for hearing of the appeal is lodged in writing with the Chief Executive within 28 days of notification of the decision of the Disciplinary Committee; and
- (b) The grounds for the appeal is provided with the request.

23 Appeal Committee may deny request to hear an appeal

An Appeal Committee must, as soon as practicable after receiving a request to hear an appeal against a decision of a Disciplinary Committee decide:

- (a) whether there are grounds for hearing of an appeal; or
- (b) whether the request for an appeal to be heard should be dismissed.

24 Grounds for granting a request to hear an appeal

An Appeal Committee must grant a request to hear an appeal against a Disciplinary Committee decision if it considers that one or more of the following grounds exist:

- (a) new evidence of a decisive nature that could not reasonably have been available at the time of the Disciplinary Committee hearing is now available;
- (b) in determining the matter the Disciplinary Committee did not follow the procedures set out in these Regulations;
- (c) the penalty imposed by the Disciplinary Committee is unfair in the light of the gravity of the breach concerned; or
- (d) the decision reached by the Disciplinary Committee is manifestly at odds with the evidence presented at the hearing.

25 Notification of decision to allow appeal to be heard

The Institution must notify the complainant and the Member complained about of the Committee's decision under clause 23.

26 Determination of Appeal

An Appeal Committee must, as soon as practicable after making the decision to hear an appeal under clause 23(a), hear the matter and decide whether to confirm, vary, or reverse the decision or any order of the Disciplinary Committee and may, in addition, make any decision or order that the Disciplinary Committee is empowered to make, as well as such order for the payment of the costs of the appeal as it thinks fit.

27 Powers of Appeal Committee

Subject to clause 38 an Appeal Committee may—

- (a) engage counsel, who may be present at a hearing of the Committee, to advise the Committee on matters of law, procedure, and evidence;
- (b) request the Member complained about or the complainant to provide to the Committee, within a specified period of at least 14 days that the Committee thinks fit, any documents, things, or information that are in the possession or control of the person and that are relevant to the investigation; and
- (c) take copies of any documents provided to it; and
- (d) request the Member complained about or the complainant to attend before the Committee, at that person's own cost, on at least 14 days' notice;
- (e) receive any evidence that it thinks fit;
- (f) request a person giving evidence to verify a statement by statutory declaration; or
- (g) provide information to assist the complainant and the Member complained about obtaining counsel or other advocacy assistance.

28 Way in which Appeal Committee must consider appeal

- (1) Before making the decision under clause 27 on a complaint or inquiry, the Appeal Committee must—
 - (a) give the complainant, the Member complained about, and any person alleged to be aggrieved (if not the complainant) at least 28 days' notification of—
 - (i) the time and place of the hearing; and
 - (ii) the right of those persons to be heard and represented at the hearing; and
 - (b) advise each of the persons in paragraph (a) that the person must notify the Committee within a specified period (which must be at least 14 days) if the person wishes to be heard by the Committee on the complaint or inquiry.
- (2) The complainant, Member complained about, and any person alleged to be aggrieved have the right to be heard and represented at the hearing and to make written submissions.
- (3) Unless the Appeal Committee otherwise directs, it is not permissible to recall witnesses who gave evidence before the Disciplinary Committee or to call other witnesses and the material before the Appeal Committee must be the record of the proceedings of the Disciplinary Committee and its report and any documents which supported it together with any additional submissions made in respect of the appeal.

29 Way in which Appeal Committee's decision must be made

The Appeal Committee's decision under clause 27 on an appeal must be made in the following way:

- (a) the Committee must make its decision as soon as practicable, but may delay making the decision until the outcome is known of any other legal proceedings that may affect its findings; and
- (b) if the Committee is not unanimous, the decision of the majority of the Committee is the decision of the Committee (but dissenting members may issue dissenting views).

30 Institution must notify and implement decision

The Institution must notify the complainant and the Member complained about of the Appeal Committee's decision under clause 27 which is final and binding. The Institution must take the steps necessary to implement any orders made.

31 Notification of Orders to the Board

In all cases where any order or orders are made under these regulations the Chief Executive must report to the Board, with particulars of such order or orders.

32 Payment of fines and costs

- (1) Any fine or costs ordered to be paid under these regulations is immediately due, recoverable as a civil debt, and the order continues to apply whether or not a Member is suspended or expelled under these regulations, or resigns after the order is made.
- (2) The existence of a debt described in subclause (1) is sufficiently proved by the production of:
 - (a) The Rules of the Institution and these regulations; and
 - (b) The declaration of the Member on his/her form of application for membership; and
 - (c) A copy of either—
 - (i) The decision or order of the Disciplinary Committee setting out the fine or costs to be paid, such decision or order to be certified as a true and correct record by affixing to it the signatures of a majority of members of the Disciplinary Committee (including the Chairperson), present when the decision or order was made; or
 - (ii) In the case of an appeal, the decision of the Appeal Committee duly certified as a true copy by the Chief Executive of the Institution.

33 Grants towards costs

The Institution is not liable for any expense by way of travelling, engagement of counsel, calling of any witness or in any other matter connected with the investigation, incurred either by the Member whose conduct is under investigation or by the person or persons making the complaint; but the Board may, at its discretion, and without being deemed to make any admission of liability by so doing, make a grant to such Member or person(s) to cover the whole or any part of such expense.

34 Enforcement of Orders

- (1) If a Member against whom an order has been made fails to comply with that order within a period of 30 days from the date at which proceedings under these Regulations are complete, or such other time as may be specified by the Chief Executive as reasonable in the circumstances for the particular order, the Chief Executive may suspend the Member until the order is complied with.
- (2) If the Member against whom the order is made fails to comply within a further period of 30 days from the date at which the period specified in clause (1) has expired, the Chief Executive may expel the Member from the Institution,
- (3) The Chief Executive may publish the fact of any action taken under clause 34 and the name of the Member concerned in the official journal of the Institution.

35 Persons carrying out delegated functions and powers under these Regulations

- (1) The Board may delegate to the following persons the functions and powers given to those persons by these regulations:
 - (a) Complaints Research Officers appointed under clause 39:
 - (b) the Chairperson and the alternate Chairpersons of Investigating Committees appointed under clause 41:

- (c) Investigating Committees appointed under clause 42:
 - (d) the Chairperson and the alternate Chairpersons of Disciplinary Committees appointed under clause 41:
 - (e) Disciplinary Committees appointed under clause 43:
 - (f) Appeal Committees appointed under clause 44: and
 - (g) Chief Executive, in respect of organisational and notification actions required to implement these regulations in an effective manner.
- (2) The Board may delegate the authority to appoint persons to roles under subsection (1) to either a single member of the Board appointed for this purpose or, in the case of Complaint Research Officers, to the Chief Executive.

36 Regulations do not limit the Board's power to carry out delegated functions and powers

The fact that the rules give a function or power to a person does not, in itself, prevent the Board from performing the function or exercising the power.

37 General provisions about appointments, revocations of appointments, and resignations

- (1) The Board may appoint a person to a role under these Regulations by written notice to him or her.
- (2) The Board may, at any time,—
 - (a) revoke a person's appointment to a role under these Regulations by written notice to him or her:
 - (b) require a person appointed to a role under these Regulations not to participate in a matter if the Board considers that, due to a material conflict of interest or otherwise, it would be inappropriate for that person to continue in his or her role in respect of that matter:
 - (c) reconstitute any body of persons appointed under these Regulations by written notice to that body.
- (3) Any person appointed under these Regulations may resign the appointment to that role by written notice to the Chief Executive.

38 General provisions about procedures

- (1) Every person or body appointed under these Regulations must—
 - (a) give reasons for its decisions under these regulations; and
 - (b) observe the rules of natural justice.
- (2) Except as otherwise provided in the Rules of the Institution or these regulations, a person or body of persons appointed under these Regulations may regulate the person's or body's own procedure as it thinks fit.

39 Complaints Research Officers

- (1) The Institution may appoint, for a particular case or class of cases, a Complaints Research Officer.
- (2) The Institution must appoint Complaints Research Officers who—
 - (a) are Professional Members or Fellows; or
 - (b) have other qualifications or experience that the Institution considers relevant to the subject-matter of the case.
- (3) In appointing a Complaints Research Officer for a case or class of cases, the Institution must endeavour to ensure that he or she does not have a material conflict of interest on the case or class of cases.

40 Institution must keep list of persons who may be members of Committees

- (1) The Institution must keep a list of persons who may be members of Investigating Committees and Disciplinary Committees.
- (2) The Institution must select persons for the list who are Professional Members or Fellows and, in selecting persons, must have regard to—
 - (a) the extent of their experience in, and knowledge of professional engineering; and
 - (b) their experience in competency assessments; and
 - (c) their experience in investigating and hearing complaints in professional engineering or other professions.

41 Chairpersons and alternate chairpersons of Investigating and Disciplinary Committees

- (1) The Institution must appoint persons from the list kept under clause 40 to be—
 - (a) the Chairperson of Investigating Committees, and the alternate Chairperson of Investigating Committees; and
 - (b) the Chairperson of Disciplinary Committees, and the alternate Chairperson of Disciplinary Committees.
- (2) The Institution may appoint more than one—
 - (a) alternate Chairperson of Investigation Committees; and
 - (b) alternate Chairperson of Disciplinary Committees.
- (3) An appointment—
 - (a) is for the term specified by the Institution on making the appointment up to a maximum term of 2 years; and
 - (b) may be renewed, but no person may be appointed for more than 3 2-year terms.
- (4) An alternate Chairperson has all the functions, duties, and powers of the Chairperson under these rules if—
 - (a) there is no Chairperson or, for any reason, the Chairperson is unable to perform and exercise his or her functions, duties, and powers as Chairperson; or
 - (b) in relation to a particular matter, the Institution refers the matter to the alternate Chairperson instead of the Chairperson.

42 Investigating Committee

- (1) The Institution may appoint, for a particular case or class of cases, an Investigating Committee consisting of—
 - (a) the Chairperson or an alternate Chairperson of Investigating Committees; and
 - (b) 2 or more other persons from the list kept under clause 40.
- (2) In appointing a member to a Committee for a case or class of cases, the Institution must endeavour to ensure that the member does not have a material conflict of interest on the case or class of cases.

43 Disciplinary Committee

- (1) The Institution may appoint, for a particular case or class of cases, a Disciplinary Committee consisting of—
 - (a) the Chairperson or an alternate Chairperson of Disciplinary Committees; and
 - (b) 1 other person from the list kept under clause 40; and
 - (c) 1 person who—
 - (i) is not an engineer; and
 - (ii) is nominated by a body that the Institution considers to be representative of consumer interests.

- (2) The Institution may appoint a further 2 persons to a Disciplinary Committee for a particular case or class of cases if it considers it appropriate or necessary in the circumstances.
- (3) Any 2 persons appointed under subclause (2) must consist of—
 - (a) 1 person from the list kept under clause 40; and
 - (b) 1 person who—
 - (i) is not an engineer; and
 - (ii) is nominated by the Institution.
- (4) In appointing a member to a Disciplinary Committee for a case or class of cases, the Institution must endeavour to ensure that the member does not have a material conflict of interest on the case or class of cases.

44 Appeal Committee

- (1) The Institution may appoint for a particular case or class of cases, an Appeal Committee consisting of-
 - (a) 2 Institution representatives, being either the President and one Past-President, or two Past-Presidents,
 - (b) a barrister of the High Court of New Zealand.
- (2) In appointing a member to an Appeal Committee for a case or class of cases, the Institution must endeavour to ensure that the member does not have a material conflict of interest on the case or class of cases.

45 Indemnity

Persons undertaking duties on behalf of the Institution, pursuant to these Regulations are indemnified in the discharge of their duties under these Regulations, provided that each person so indemnified has immediately disclosed any actual or perceived conflict of interest to the Institution.