

AUSTRALIAN INSTITUTE OF CONVEYANCERS (SA DIVISION) INC. BY-LAWS

Effective 10th day of December 2019

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PART 1 Definitions and Interpretation

1.1 Dictionary

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

AICSA	means the Australian Institute of Conveyancers (SA Division) Inc.
Australian Council	means the Australian Council of the Australian Institute of Conveyancers.
By-Laws	means these By-Laws approved by the Division Council pursuant to Article 11(13) of the Constitution.
Chief Executive Officer	means the Chief Executive Officer of the AICSA.
Code of Conduct	means the Australian Institute of Conveyancers (SA Division) Inc. Code of Conduct, as amended from time to time.
Complainant	means any person making a Complaint and may include a member of the South Australian conveyancing profession.
Constitution	means the Constitution of the Australian Institute of Conveyancers (SA Division) Inc., as amended from time to time.
Council Meeting	means a meeting referred to in Article 19(1) of the Constitution.
Division	means the AICSA.
Division Council	means the AICSA Council.

General Meeting	means the meeting referred to in Article 19(1) of the Constitution.
Member	means any person who holds membership of the AICSA, in one of the classes of membership specified in Article 5(1) of the Constitution.
Registrar	means the person appointed to the role of Chief Executive Officer of the AICSA.
Relevant Complaint	means a complaint that is not an Unviable Complaint.
Professional conduct & Practice Committee	means a Committee of the AICSA established pursuant to Article 11(5) of the Constitution.
PCPC	means the Professional Conduct and Practice Committee.
Relevant date	in relation to the renewal of membership, is the 31 st day of December in each year.
Special General Meeting	means all other meetings that are not an Annual General Meeting, pursuant to Article 19(2) of the Constitution.
Template letter	means a series of letter used by the AICSA to communicate with the complainant and member regarding a complaint.
Unviable Complaint	means a complaint that: <ul style="list-style-type: none"> (a) concerns a matter occurring more than five years prior to the date of the Complaint; or (b) concerns a person who, at the time of receipt of the Complaint, is not a Member; or (c) concerns a matter that does not involve a breach of the AICSA Constitution or Code of Conduct; or

- (d) concerns a matter that is being managed by
Consumer and Business Services and/or a lawyer; or
- (e) is unsupportable on the available evidence; or
- (f) is or at any time becomes a dispute primarily
concerning a fee dispute.

1.2 Interpretation

In these By-Laws:

- (a) to the extent of any inconsistency between these By-Laws and the
Constitution, the provisions of the Constitution prevail; and
- (b) unless specified to the contrary:
 - (i) the Forms and Appendices are incorporated in and form part of these
By-Laws;
 - (ii) a reference to the singular includes the plural and vice versa;
 - (iii) a reference to a given gender includes all other genders;
 - (iv) use of the word "including" and similar expressions are not, nor are
they to be interpreted as, words of limitation;
 - (v) a reference to a person includes a natural person, a body corporate,
any other organisation whether incorporated or not and other entities
recognised by law;
 - (vi) a reference to a statute, regulation, proclamation or ordinance
includes all statutes, regulations, proclamations, ordinances or by-laws
amending, consolidating or replacing it, whether passed by the same
or another governmental authority with legal power to do so, and a

- reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (vii) a reference to any provision in or having force under authority of the AICSA Constitution, By-Laws, Code of Conduct or applicable regulations includes any effective modification or re-enactment of, or provision substituted for, that provision;
 - (viii) a reference to any governmental or regulatory body includes any body which replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as such body;
 - (ix) a reference to writing means any legible writing in visible form in the English language and includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes email and fax transmission;
 - (x) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (xi) if the time for performing an obligation under this agreement expires on a day which is not a Business Day, then time is extended until the next Business Day;
 - (xii) the language in all parts of these By-Laws shall be in all cases construed in accordance with its fair and common meaning; and
 - (xiii) the index and any headings are for ease of reference only and do not affect the interpretation of these By-Laws.

PART 2 Payment of membership subscriptions

2.1 Pursuant to Article 9(3) of the Constitution, membership of the Division shall be renewed on or before the 31st day of December in each and every year (the renewal date) by payment of a membership subscription.

2.2 A member who fails to renew membership by paying their membership subscription in full on or before the renewal date or such later as the Division Council may determine, shall stand suspended from the AICSA in accordance with Article 9(4) of the Constitution.

2.3 Written notice of a suspension of membership referred to in By-Law 2.2, shall be sent to the member using Form 1 of these By-Laws, advising that if payment of their subscription is not received within the time specified in the notice (being not less than fourteen (14) Business Days after posting), their membership with the AICSA shall automatically terminate from the date stated in the Form 1.

2.4 Nothing in these By-Laws affects the operation of Article 9(5) of the Constitution that provides that if a suspended member pays the subscription within the time limit referred to in By-Law 2.3, the membership of that member shall be renewed.

PART 3 Regulation of Professional Conduct

3.1 Making of a Complaint and initial assessment

(a) A Complaint shall be initiated by:

(i) a Complainant, by forwarding to the Chief Executive Officer (CEO) of the AICSA particulars of the matter complained of using Form 2 of these By-Laws; or

(ii) the CEO, upon becoming aware of any facts, matters or circumstances which indicate that a Member may have done any of the acts, or been the subject of any of the circumstances or events, referred to in Article 28 of the Constitution.

(b) A member of the public who is considering lodging a complaint against a Member of the AICSA may speak with the CEO regarding the matter and the CEO shall explain the mechanisms available and may send a letter to the potential Complainant using a template letter explaining the process.

(c) A Complainant (or the CEO, where he or she has initiated a Complaint) may at any time withdraw a Complaint. In the case of a Complainant, a Complaint may be withdrawn by providing written notice of such intention to the CEO.

(d) Within seven (7) Business Days of receiving a Complaint the CEO must:

(i) if the Complaint is made by a member of the public, acknowledge in writing the Complaint by posting to the Member a letter using a template letter. The letter shall also be emailed to the Member and a 'Read/Receipt' requested. The CEO shall also telephone the Member to ensure that the letter has been received;

(ii) if the Complaint is made by another conveyancer, acknowledge in writing the Complaint by sending to Member a letter using a template letter. The letter shall also be emailed to the Member and a 'Read/Receipt' requested. The CEO shall also telephone the Member to ensure that the letter has been received;

(iii) if the Complaint is made by a member of the public or another conveyancer acknowledge in writing the Complaint by sending a letter to the Complainant using a template letter.

(e) Upon receipt of the template letter referred to in By-Law 3.1(d)(i) or (ii) the Member shall have fourteen (14) Business Days in which to respond to the Complainant's claims.

(f) If no response has been received from the Member the CEO may refer the Complaint to the PCPC without Member input.

(g) In respect of all Complaints, the CEO must determine whether:

- (i) the Complaint is an Unviable Complaint or a Relevant Complaint; or
- (ii) he or she requires further information in order to make such a determination.

(h) In making the determination in By-Law 3.1(c) (i), the CEO may contact the Member and/or Complainant in order to resolve the matter.

(i) If, following initiation of the Complaint or the receipt of any further information which may be requested by the CEO, the CEO assesses the Complaint to be an Unviable Complaint:

- (i) using a template letter, he or she must notify the Complainant of that assessment; and
- (ii) no further action will be taken in respect of the Complaint;
- (iii) the complaint shall be regarded as dismissed.

(j) If following initiation of the Complaint or the receipt of any further information which may be requested by the CEO, the CEO assesses the Complaint to be a Relevant Complaint, he or she must:

- (i) open a file;
- (ii) send a letter to the Complainant and Member using a template letter advising that this is a Relevant Complaint;
- (iii) refer the matter to the AICSA Professional Conduct Practice Committee (PCPC) for a determination.

3.2 Investigation of Complaint

(a) On receipt of a referral of a Complaint by the CEO, the AICSA Professional Conduct Practice Committee (PCPC) may proceed to make an assessment of the Complaint on the material before it, without further communication with the Member.

(b) The PCPC may at any time request the Complainant or the Member to provide further information (either in writing, in person or over the telephone) in respect of the Complaint.

Where any such request is made:

(i) the requested information shall be provided within fourteen (14) Business Days (or such further period as may be agreed with the PCPC), failing which, the PCPC may proceed to make an assessment of the Complaint on the material before it without further communication with the Complainant or Member;

(ii) Information provided by a Member may contain personal information and sensitive information within the meaning of the *Privacy Act 1988* (Cwlth). Unless the Member informs the AICSA to the contrary, by providing such information to the AICSA, the Member is taken to have consented to the AICSA using the information for the purposes of determining the Complaint and providing to the Complainant a copy or written summary of all and any information furnished by the Member to the AICSA regarding the Complaint.

(c) The PCPC in investigating the Complaint may at any time obtain expert advice to assist them in investigating the Complaint.

(d) The PCPC in investigating a complaint shall maintain appropriate records of the investigation.

(e) If at any time before the investigation can be concluded by the PCPC, the Member against whom the Complaint is made, resigns as a Member of the AICSA, the PCPC shall have no power to determine the matter and the CEO shall using a template letter advise the Complainant of this fact.

(f) If at any time the PCPC decides that the Complaint has become an Unviable Complaint, then:

(i) the Complaint must be dismissed;

(ii) the file in respect of the Complaint shall be closed; and

(iii) the Complainant and the Member concerned shall be notified in writing that the matter is an Unviable Complaint and that the Complaint has been dismissed using a template letter.

3.3 Assessment of whether there is no case to answer

(a) The PCPC must, acting reasonably, determine whether or not there is a case to answer based on all the available relevant evidence and on any external advice obtained in respect of the Complaint (if any).

(b) A Member shall be considered to have no case to answer in respect of a Complaint if:

(i) there is insufficient evidence on the balance of probabilities to support the Complaint; or

(ii) the Member has offered a satisfactory explanation with respect to the matters referred to in the Complaint.

(c) For a Complaint in which an assessment is made by the PCPC that there is no case to answer:

(i) the Complaint must be dismissed;

(ii) the file in respect of the Complaint must be closed; and

(iii) the Complainant must be notified of this decision in writing within ten (10) Business Days of the PCPC making of this decision, using a template letter.

3.4 Assessment by PCGC of a Case to Answer

(a) A Complaint in which a Member is assessed as having no case to answer must be dealt with in the manner set out in By-Laws 3.3 (a),(b) and (c).

(b) Where the PCPC find a case to answer against the Member and determines that the Member is guilty of conduct referred to in Article 28 (1) of the Constitution, the PCPC may determine that it is appropriate that:

(i) no action shall be taken against the Member;

(ii) the Member be fined and the amount of the fine to be imposed;

(iii) the Member be reprimanded and the wording of the reprimand;

(iv) the Member be suspended from the AICSA, the length of the suspension and the start and finish date of the suspension period;

(v) the Member be expelled from membership of the AICSA.

(c) If the determination of the PCPC is that no action be taken against the Member or that the Member be fined or reprimanded the AICSA shall within ten (10) Business Days of the PCPC making the decision, advise the Complainant and the Member in writing of the PCPC's decision using a template letter.

(d) If the determination of the PCPC is that the Member be suspended or expelled from the AICSA, the Committee shall refer the matter forthwith for consideration by the Division Council.

3.5 Consideration by the Division Council

(a) Within one calendar month of receiving the referral referred to in By-Law 3.4(d), the Division Council shall meet to determine the Complaint and to consider all relevant evidence.

(b) The AICSA shall give to the Member not less than seven (7) Business Days' notice of the date, time and location of the Division Council meeting and advise the Member of the right to attend this meeting and present such information as they see fit.

(c) The Division Council shall determine whether to uphold or overturn the decision of the PCPC that the Member be suspended or expelled from the AICSA, and shall within ten (10) Business Days of making such a decision, notify in writing the Complainant of their decision using a template letter.

(d) If the Division Council overturns the decision of the PCPC that the Member be suspended or expelled from the AICSA it shall within ten (10) Business Days of the making the decision, notify in writing the Member of their decision using a template letter.

(e) If the Division Council upholds the decision to suspend the Member it shall within ten (10) Business Days of the making the decision, notify the Member that the decision has been upheld and of the length of the period of suspension from the AICSA, and the start and finish date of the period of the suspension.

(f) If the Division Council upholds the decision of the PCGC to expel the member from the AICSA, it shall inform the Member using a template letter that the decision has been upheld and the commencement date of the expulsion from the AICSA.

(g) If the Division Council upholds the decision of the PCGC to either suspend or expel the Member the letters referred to in By-Law 3.5(e) shall detail the right a Member has to appeal this decision to the AICSA in General Meeting and shall explain the process for doing so in accordance with By-Law 3.6.

3.6 Appeal to General Meeting

(a) A Member may by notice in writing using Form 3 of these By-Laws given or delivered to the CEO within one calendar month from the date of receipt of the notification by the Division Council of his or her suspension or expulsion from the AICSA, appeal the decision to suspend or expel to a General Meeting.

(b) The Notice of Appeal (Form 3) referred to in By-Law 2.1(a) shall state the grounds of appeal and the appeal shall be heard at the General Meeting next following the expiration of one month from the lodging of the notice to appeal with the CEO.

(c) In accordance with Article 29(3) of the Constitution, the Member appealing may in the Notice of Appeal (Form 3) require that a Special Division General Meeting be held to deal with the matter and in such event, the Member shall deposit the sum of five hundred dollars (\$500) or such other sum that the Division Council may from time to time determine, with the Notice of Appeal.

(d) If the appeal is upheld, the sum referred to in By-Law 3.1 (c) shall be forfeited to the AICSA but in the event that the appeal is dismissed, then the said sum shall be refunded to the Member.

(e) The AICSA shall within ten (10) Business Days of receiving the Notice of Appeal (Form 3) notify the Member and the Complainant in writing using a template letter that shall include details of the date, time and the location of the General/Special General Meeting that will consider the appeal.

(f) Until the hearing of any appeal, the decision of the PCGC shall have full force and effect, provided that if the decision was to expel the Member such decision shall not take effect unless the appeal is dismissed.

3.7 Hearing of appeal by General Meeting

(a) The General/Special General Meeting may consider any evidence presented by the Complainant, the Member and any other relevant person in making a decision whether to uphold or dismiss the appeal.

(b) The General/Special General Meeting has the power to uphold any appeal and to vary any penalties imposed by the Division Council.

(c) The Minutes of the General/Special General Meeting referred to in By-Law 3.7(a) shall record the decision of the meeting with respect to the appeal and in particular:

(i) state whether the appeal is upheld or dismissed;

(ii) if the appeal is dismissed, whether there is any variation to the penalty imposed by the PCPC, and if yes, the details of the varied penalty.

(d) Within ten (10) Business Days from the date of the General/Special General Meeting, the Division Council shall using a template letter notify the Complainant and the Member of the outcome of the appeal.

(e) In accordance with Article 9 of the Constitution, a further appeal can be made to the Australian Council. This information should be conveyed to the Member in the letter referred to in By-Law 4.1(d).

FORM 1

AUSTRALIAN INSTITUTE OF CONVEYANCERS (SA DIVISION) INC.

TERMINATION OF MEMBERSHIP FOR FAILURE TO PAY SUBSCRIPTION

TO:of.....

(full name)

(address)

Article 9(3) of the AICSA Constitution requires membership of the AICSA to be renewed on or before the 31st day of December in each and every year (the renewal date) by payment of a membership subscription.

A renewal notice was sent to you on by the AICSA on the ...day of...20..requesting that you pay your membership subscription by the ...day of...20..

No payment has been received from you to renew your membership of the AICSA.

In accordance with Article 9(4) of the Constitution, your failure to pay your membership subscription has resulted in your membership of the AICSA being suspended from the date of this Notice.

Notice is hereby given that if payment of your membership subscription is not received by the AICSA by 5pm on the ... day of ... 20.. your membership of the AICSA shall be automatically terminated.

Dated the ... day of...20..

FORM 2

AUSTRALIAN INSTITUTE OF CONVEYANCERS (SA DIVISION) INC.

COMPLAINT FORM

(ONLINE FORM AVAILABLE AT <https://www.aicsa.com.au/>)

FORM 3

AUSTRALIAN INSTITUTE OF CONVEYANCERS (SA DIVISION) INC.

NOTICE OF APPEAL TO GENERAL MEETING

Name (full name)of (address).....

Hereby appeals the decision of the AICSA Division Council made on ...the...date...of...20...to suspend/expel (delete as appropriate) me from membership of the AICSA to a General Meeting of the AICSA.

The following grounds of appeal are relied upon:

- 1.
- 2.
- 3.

Strike out below if not applicable:

*I request that the AICSA hold a Special Division General Meeting to consider this appeal and pursuant to By-Law 3.6(c) I agree to deposit the sum of five hundred dollars (\$500) with the AICSA with this Notice of Appeal.

Dated this ... day of ... 20..