

By-Laws

Version 4 – 16 April 2018

Australian Bookkeepers Association Ltd
ACN 162 054 140

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1. Definitions and Interpretation

1.1 Definitions

In the construction of these By-Laws, unless the contrary intention appears:

Association means Australian Bookkeepers Association Ltd ACN 162 054 140;

Board means the board of directors of the Association;

By-Laws means these By-Laws approved by the Board under authority of clause 20.6 of the Constitution;

Constitution means the constitution of the Association as amended from time to time;

Code of Professional Conduct means the Code of Professional Conduct set out in section 30-10 of the TASA, as amended from time to time;

CPE Year has the meaning given in By-Law 4.1;

Foundation Members means a Member admitted to Membership before the Registration Date;

Investigator means a person or persons appointed by the Board pursuant to By-Law 8.1(a);

Non-Voting Member means a person admitted for Membership by the Association who has met the requirements of By-Laws 3.2(a) and 3.2(c);

Registration Date means the date the Association attains registration as a BAS agent association in accordance with the TAS Legislation;

TASA means the *Tax Agent Services Act 2009* (Cth), as amended from time to time;

TAS Legislation means collectively the TASA and the TASR;

TASR means the *Tax Agent Services Regulations 2009* (Cth), as amended from time to time;

Tax Practitioners Board means the national board responsible for the registration and regulation of tax practitioners and for ensuring compliance with the TAS Legislation; and

Voting Member means a person admitted for Membership by the Association who has met the requirements of By-Laws 3.2(a) and 3.2(b).

1.2 Interpretation

- (a) In the construction of these By-Laws:
- (i) headings are disregarded;
 - (ii) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;

- (iii) singular includes plural and vice versa and words importing any gender include all other genders;
 - (iv) words or expressions not otherwise defined but defined in the Constitution shall have the same meaning when used in the By-Laws as defined in the Constitution;
 - (v) subject to By-Law 1.2(a)(iv), except for the definitions in the preceding By-Law, an expression has, in a provision of these By-Laws that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act;
 - (vi) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.
- (b) Where in these By-Laws any person holding an office is referred to in general terms, that reference shall, unless the contrary intention appears, be a reference to all persons who at any time hold that office for the time being.
 - (c) Where these By-Laws confer a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.
 - (d) Where these By-Laws confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office or the person appointed by the Board to act in the place of the holder of the office or during a vacancy in the office.

2. Notices

Clause 25 of the Constitution applies to any notice, consent or other communication required to be given for the purposes of these By-Laws.

3. Membership

3.1 Classes of Membership

The Association shall have three classes of Membership:

- (a) Voting Members, who are entitled to attend meetings of the Association and vote in any ballot of the Association in the manners prescribed in the Rules; and
- (b) Non-Voting Members, who are entitled to attend meetings of the Association but are not entitled to vote in any ballot of the Association.
- (c) Corporate Members, who are entitled to attend meetings of the Association but are not entitled to vote in any ballot of the Association.

3.2 Requirements for Membership

- (a) The Association shall admit applicants as Members where they apply in writing to the Association in the form prescribed by the Board from time to time, and otherwise

meet the requirements of the relevant Membership class set out at By-Laws 3.2(b) and 3.2(c).

- (b) In the case of admission as a Voting Member, an applicant must provide documentary evidence to the reasonable satisfaction of the Board that:
 - (i) they are the holder of at least a Certificate IV Financial Services (bookkeeping) or a Certificate IV Financial Services (accounting) from a registered training organisation or an equivalent institution (within the meaning of the TAS Legislation);
 - (ii) they are of good fame, integrity and character; and
 - (iii) if the applicant is involved in public practice, that they have appropriate professional indemnity insurance.
- (c) In the case of admission as a Non-Voting Member, the Membership of an applicant must, to the reasonable satisfaction of the Board, be considered to advance the Objects.

3.3 Membership Fees

- (a) The Annual Subscription payable by each Member is \$77.00 GST Inc per annum, other than for Australian Bookkeepers Network Pty Ltd members who are also Australian Bookkeepers Association Ltd members and in this case the membership fee is waived, pursuant to an agreement with Australian Bookkeepers Network Pty Ltd for the provision of member support services to Australian Bookkeepers Association Ltd.
- (b) The Annual Subscription payable by The Corporate Members is determined by the board.
- (c) Subject to clause 3.2(c), the Annual Subscription is payable by each Member upon their admittance to Membership will be for the following period of membership
 - (i) For the Voting and Non-Voting members the annual subscription is payable on each calendar year anniversary thereafter, in advance for the proceeding calendar year,
 - (ii) For the Corporate Members the annual subscription is payable on each financial year anniversary thereafter, in advance for the proceeding financial year
- (d) Despite any By-Law to the contrary:
 - (i) no Annual Subscription shall be payable by Foundation Members prior to, or for the year proceeding, the Registration Date; and
 - (ii) the first, and consecutive, Annual Subscriptions of Foundation Members are per Clause 3.3(a)

4. Continuing professional education

4.1 Requirement to undertake

Every Voting Member must, in each 12 month period following their admittance to Membership (**CPE Year**), undertake at least 15 structured hours of continuing professional education. The Association considers CPE to be any educational activity that maintains, develops or promotes your bookkeeping skills, knowledge or attributes. The Association recognises these CPE activities and those, which contribute to the overall efficiency, development or professionalism of you or your business.

4.2 Requirement to keep records

Each Voting Member undertaking continuing professional education must:

- (a) maintain a record of the precise nature of his or her continuing professional education, including the date, time expended and topics covered;
- (b) retain such record for at least 3 years after the end of the CPE Year; and
- (c) produce such record to an Officer of the Association for inspection upon request.

4.3 Failure to undertake continuing professional education

The Board may, in respect of any Voting Member who for any reason fails to undertake the required amount of continuing professional education activities in any period or who fails to produce for inspection a record of their continuing professional education activities in a CPE Year at the request of the Association for inspection:

- (b) suspend their Membership; or
- (c) lower their allocated Membership status from “Voting” to “Non-Voting”.

4.4 Regulatory standards

Members must meet the requirements of applicable regulatory standards and ensure they are acting with sufficient professional competence.

5. Professional and ethical standards

The Code of Professional Conduct is mandatory for all Members, in so far as its provisions are reasonably applicable to the circumstances of each Member, regardless of whether or not the Member is registered under the TAS Legislation as a tax agent or BAS agent.

The Objects include the promotion of the interests of the bookkeeping profession and of bookkeepers. To this end, the Association expects all of its Members to display a level of professionalism and ethical standing which reflects positively on the Association and the bookkeeping professions. When Members are providing services, it is expected that they will display an appropriate, professional standard of behaviour beyond that which is expected of someone who is not acting in a professional capacity.

6. Members' conduct

6.1 Misconduct and penalties

- (a) A Member will be deemed to have acted with misconduct where the Member:
 - (i) has been found by the Board to be in breach of the Rules;
 - (ii) has, in the reasonable opinion of the Board, failed to observe a proper standard of professional care, skill or competence, including but not limited to breaching the Code of Professional Conduct;
 - (iii) has, in the reasonable opinion of the Board, obtained admission to Membership by improper means;
 - (iv) has, in the reasonable opinion of the Board, ceased to hold the necessary qualifications for Membership;
 - (v) has, in the reasonable opinion of the Board, been charged with an offence or been guilty of conduct which is not in the best interests of the Association;
 - (vi) has failed to comply with any reasonable request made by the Board, Investigator or other Officer of the Association;
 - (vii) has failed to comply with an order of the Board; or
 - (viii) ceases to have capacity at law.
- (b) Where a Member has been deemed to have acted with misconduct as set out in By-Law 6.1(a), the Board may:
 - (i) forfeit the Membership of the Member;
 - (ii) suspend the Membership of the Member for any period, and on such terms, as seen fit;
 - (iii) counsel or caution the Member;
 - (iv) impose a fine not exceeding \$1,000 with a consequence of forfeiture of Membership if payment is not made within such period as the Board prescribes;
 - (v) require payment of any costs and expenses reasonably incurred by the Association in the investigation and determination of any matter concerning the misconduct of the Member;
 - (vi) inform the regulators of any professional body of which the Member is a member, including but not limited to the Tax Practitioners Board; and
 - (vii) impose any other penalty deemed appropriate.

6.2 Suspension and forfeiture of Membership

- (a) During any period of suspension a Member shall continue to pay all fees and subscriptions required by, and will remain subject to, the Rules. A suspended Member shall cease to enjoy any of the rights or benefits conferred on Members by the Rules.
- (b) A person whose Membership has been forfeited shall cease to be a Member of the Association. The Member's name shall be removed from the Register and the Member shall return any certificate of Membership provided by the Association forthwith.

7. Complaints against a Member

7.1 Lodging a complaint

- (a) Any complaint against a Member of the Association shall be lodged in writing with the Association.
- (b) Where the Board is aware of circumstances which suggest, or suspects, any misconduct of a Member, the Board may itself lodge a complaint against the Member.

7.2 Handling a complaint

Any complaint against a Member of the Association shall be referred to the Investigator.

8. Investigation of Members' conduct

8.1 Appointment of Investigator

- (a) The Board may, from time to time, appoint a person or persons to undertake investigations on behalf of the Association in relation to complaints, alleged breaches of the Rules or any matters referred to in By-Law 6.1(a).
- (b) The Investigator shall be responsible to the Board at all times.

8.2 Information requested from Members

- (a) Any Member suspected or alleged to have breached the Rules or in relation to whom any matter referred to in By-Law 6.1(a) is suspected or alleged to have occurred, must comply with all reasonable requests for information from the Investigator.
- (b) The Investigator may, acting reasonably, prescribe a date by which a Member is expected to comply with any request for information made by the Investigator pursuant to By-law 8.2(a).
- (c) A Member may, in writing, request an extension of time to comply with any request for information made by the Investigator pursuant to By-law 8.2(a), which the Investigator must allow if satisfied such request is reasonable.

8.3 Recommendation of an Investigator

- (a) The Investigator shall, upon completion of an investigation, form an opinion and recommend to the Board that either:

- (i) the Member has no case to answer;
 - (ii) the complaint should be referred to arbitration or mediation for resolution in accordance with By-Law 8.5;
 - (iii) there is a case to answer and, if considered appropriate to do so, recommend a voluntary resolution of the complaint in accordance with By-Law 8.6;
 - (iv) there is a case to answer and, if considered appropriate to do so, take action in accordance with the powers of the Investigator prescribed by By-Law 8.7 where referral of the matter to the Board for hearing would be inappropriate; or
 - (v) there is a case to answer and, if considered that recommendation of a voluntary resolution of the complaint is inappropriate or exercise of a power under By-Law 8.7 would not be adequate, refer the matter to the Board for hearing.
- (b) The Investigator must, together with their recommendation, provide the Board with any evidence collected during their investigation which they consider useful for review by the Board.
 - (c) The Board must consider and, if it thinks appropriate, approve the recommendation of the Investigator. The Board may request additional information from the Investigator or the Member concerned as it sees necessary to consider the recommendation of the Investigator.
 - (d) If the Board does not approve a recommendation of the Investigator, the matter shall be deemed referred to the Board for hearing.

8.4 Notice of determination

The Board must notify the Member of the recommendation of the Investigator and its acceptance or refusal of such recommendation, within fourteen days of the decision of the Board.

8.5 Arbitration or mediation

- (a) An Investigator may, where it considers appropriate and the complaint does not involve breaches of the Rules, recommend that a matter be referred to arbitration or mediation.
- (b) The Investigator may recommend a qualified arbitrator or mediator to hear a complaint or the complainant and the Member may otherwise agree on their own arbitrator or mediator.
- (c) A complainant and the Member concerned will not be compelled to undertake arbitration or mediation.
- (d) If a Member refuses to undertake arbitration or mediation, or the arbitration or mediation does not produce a settlement, an Investigator may make an alternative recommendation in respect of the matter, in accordance with By-Law 8.3(a), if the Investigator considers such appropriate.

- (e) The complainant and the Member shall at all times be responsible for the conduct and costs of any arbitration or mediation.

8.6 Voluntary resolution

- (a) An Investigator may, where it considers appropriate, recommend a complaint be resolved by way of a voluntary resolution.
- (b) Within twenty-one days of receipt of a decision of a Board in accordance with By-Law 8.4 which contains a voluntary resolution offer, the Member concerned must communicate their decision to accept or reject the voluntary resolution in writing to the Board.
- (c) If the Member rejects the voluntary resolution, the matter shall be deemed referred to the Board for hearing.

8.7 Administrative powers of the Investigator

Where it considers appropriate to do so due to the less serious nature of an allegation, the Investigator may, on the approval of the Board:

- (a) require the Member concerned to undertake specific continuing professional education within the meaning of the TAS Legislation;
- (b) require the Member concerned to make undertakings to the Association;
- (c) give the Member concerned a written warning; or
- (d) take any other remedial action deemed appropriate.

9. Disciplinary hearings of the Board

9.1 Board Disciplinary hearing – notification

- (a) Where a hearing of the Board in respect of a Member's alleged misconduct is required (by way of a recommendation of an Investigator or operation of these By-Laws), the Secretary must inform the Member in writing of the time and place of the proposed Board meeting to hear the matter at least twenty-eight days before the date of the hearing. Such notice shall contain:
 - (i) a description of the alleged misconduct of the Member;
 - (ii) a summary of the findings of the Investigator, including facts, matters and evidence indicating misconduct.
- (b) The Member must respond in writing to the letter referred to in By-Law 9.1(a) not less than seven days prior to the date set for the hearing, which must include:
 - (i) an admission of guilt to the alleged misconduct and a statement in mitigation of penalty; or
 - (ii) a denial of guilt to the alleged misconduct and a statement setting out any information and containing such evidence the Member wishes to put forward in their defence.

9.2 Consideration of a matter

- (a) The Board may, on or after the hearing date notified to a Member in accordance with By-Law 9.1(a), meet for the purpose of considering the matter in respect of the Member.
- (b) The Board may, upon considering the matter in respect of the Member, determine that the Member has committed misconduct in accordance with By-Law 6.1(a) and impose any penalty it sees fit in accordance with By-Law 6.1(b).
- (c) When considering a matter in respect of a Member and determining what penalty (if any) should be imposed, the Board must have consideration to any written statement lodged by the Member in accordance with By-Law 9.1(b).
- (d) The Board may, if it considers appropriate, request further information from a Member in respect of their misconduct hearing and adjourn such hearing to a latter date.

9.3 Notification

The Secretary shall provide a written statement of any decision of the Board under By-Law 9.2 within twenty-one days of the conclusion of the hearing.

9.4 Effective date

Any order of the Board under By-Law 9.2 shall take effect on the date that it is announced by the Board, unless as part of the order the Board directs that all or part of the orders is to take effect on a specific date.

10. Publication of disciplinary statistics

10.1 Publication

- (a) The findings and orders of the Investigator or the Board (as applicable) as to a complaint or investigation into the conduct of a Member may be published by the Association by the following means:
 - (i) by way of press release;
 - (ii) in the Publication; and/or
 - (iii) on the Association 's website,in such terms and manner as the Board directs. For the avoidance of doubt, the Association shall not cause information of an investigation to be published if the Board considers publication inappropriate.
- (b) Where a Member has been found to have committed serious misconduct in the reasonable opinion of the Board, the information published by the Association in accordance with 10.1(a) may set out the name, the breach or breaches that the Member was found to have made and the findings of the Board or Investigator.

10.2 Annual statistics

- (a) The Association shall maintain and furnish regular reports containing information of:
 - (i) the kinds and frequency of complaints against Members;
 - (ii) findings made as a result of the complaints against Members; and
 - (iii) action taken as a result of those findings,and must publish annual statistics in respect of such categories in the Publication.
- (b) The Investigator must provide the Association with any information reasonably necessary to furnish the reports described in By-Law 10.2(a).