

# The Institute of Chartered Accountants in Australia Annual Report on Professional Conduct

for the year ended 30 June 2006



## The Institute of Chartered Accountants in Australia

The Institute of Chartered Accountants in Australia (the Institute) is the professional body representing Chartered Accountants in Australia. Our reach extends to more than 55,000 of today's and tomorrow's business leaders, representing some 44,000 Chartered Accountants and 11,000 of Australia's best accounting graduates who are currently enrolled in our world-class post-graduate program.

Our members work in diverse roles across commerce and industry, academia, government and public practice throughout Australia and in 114 countries around the world.

We aim to lead the profession by delivering visionary thought leadership projects, setting the benchmark for the highest ethical, professional and educational standards and enhancing and promoting the Chartered Accountant brand. We also represent the interests of members to government, industry, academia and the general public by actively engaging our membership and local and international bodies on public policy, government legislation and regulatory issues.

The Institute can leverage advantages for its members as a founding member of the Global Accounting Alliance (GAA), an international accounting coalition formed by the world's premier accounting bodies. The GAA has a membership of 700,000 and promotes quality professional services to share information and collaborate on international accounting issues.

Established in 1928, the Institute is constituted by Royal Charter. For further information about the Institute visit [charteredaccountants.com.au](http://charteredaccountants.com.au)

### Disclaimer:

In exercising its Professional Conduct functions, investigating particular members of the Institute and taking (or not taking) disciplinary action against members, the Institute is NOT certifying or representing that the work done or the opinions given by the member (or by any other members) is correct or of a high or any particular standard. The Institute expressly disclaims all liability for any loss or damage arising from any reliance upon the fact that the Institute has or exercises Professional Conduct functions (either directly or via the Professional Conduct tribunal or appeal tribunal), or exercises them in a particular way, or has investigated particular members and taken (or not taken) disciplinary action against members, or upon any annual reports, overviews, reports on particular members or practices, or other materials produced by the Institute regarding or in connection with its Professional Conduct functions.

All information is current as at August 2006

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First published August 2006

**Published by:** The Institute of Chartered Accountants in Australia

**Address:** 37 York Street, Sydney, New South Wales, 2000

**Professional Conduct Annual Report 2006**

**First edition**

Professional Conduct Annual Report  
ISSN 1833-9476

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## A message from the CEO

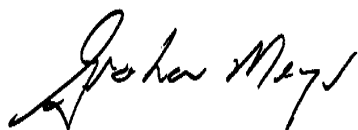
The dedication and professionalism of Australian Chartered Accountants is admired the world over. To maintain this, we at the Institute have a duty to uphold the highest possible standards of behaviour by members.

We take this responsibility very seriously indeed, educating members through our Chartered Accountants Program and monitoring their work through the Quality Review Program. Alongside this, the Professional Conduct function rigorously enforces ethical, technical and professional standards through investigation of complaints and other issues as well as imposing disciplinary sanctions, where appropriate.

To maintain objectivity, our Professional Conduct processes are firmly independent, involving non-members as well as senior members. We also believe in complete transparency, which is why we are publishing this report. It outlines the top-line results of our Professional Conduct investigations during the financial year ending 30 June 2006.

Although our ability to discipline members does not have the force of law, we have strengthened the rigour, independence and transparency of Professional Conduct during the past year. This report looks at how we have done this.

Naturally, feel free to contact the Institute if you would like to know more.



Graham Meyer

Chief Executive Officer

The Institute of Chartered Accountants in Australia

## Executive summary

During the year to 30 June 2006, the Institute investigated 298 complaints and other issues concerning the conduct of its members. Of these, 31 matters were referred to the Professional Conduct tribunal, which imposed sanctions ranging from exclusion from membership to a mandated Quality Review. These complaints and issues represent a tiny fraction of the many thousands of tasks carried out by the 44,000 Chartered Accountants in Australia last year.

During the year, the Institute developed a series of initiatives to enhance the disciplinary process and to meet our obligations within the co-regulatory framework that governs the Australian accounting profession. These included:

### Global activities

- > Benchmarking the Institute's processes against major accountancy bodies in other countries. This process confirmed that the Institute's practices met or exceeded global best practice
- > Participation in a detailed self-assessment of procedures and policies through an International Federation of Accountants (IFAC) survey. Early indications are that the Institute's Professional Conduct function meets IFAC's rigorous statement of member obligations.

### Relevant products and services

- > Developing case hearing guidelines for members of the Professional Conduct and Appeal tribunals
- > Securing Star Initiatives Grant funding and utilising this funding to develop an educational toolkit to help members resolve client disputes, or prevent them occurring.

### Corporate governance

- > Amending the Institute's regulations to ensure all members introduce a formal client complaints procedure
- > Amending Institute By-laws to deliver greater transparency during disciplinary issues. The Institute may now publish the name of a member who resigns in the face of disciplinary action, including alleged professional misconduct.

### Leadership initiatives

- > Providing detailed information to the Financial Reporting Council (FRC) as part of its review of the professional bodies' professional conduct processes, particularly as they relate to audit
- > Announcing an investigation of a member to the media (if it relates to a member who is subject to serious adverse publicity) when it is the public interest to do so.

## Professional Conduct: background and context

### Why have a Professional Conduct function?

The Institute is committed to enhancing and promoting the reputation and role of Chartered Accountants in Australia. To do that, it has to set the highest ethical, technical and professional standards of conduct and performance for current and future members.

The Professional Conduct function is the disciplinary arm that enforces those standards, protecting the integrity of the Chartered Accountant designation by investigating complaints and other issues relating to members' conduct and, where appropriate, imposing sanctions against individuals who breach the standards.

The Institute is not a regulator or a court. Its role is to set and maintain high standards among members and ensure that holders of the Chartered Accountant designation conduct themselves properly at all times and not bring the Institute (and thereby its other members) into disrepute. Protection of the Institute and its members' reputation therefore requires the Institute to call its members to account when issues of concern arise.

### Regulatory framework

In Australia there is no single body tasked with regulating the accounting profession. Bodies that regulate accounting activities are illustrated below:

Regulatory body	Who they regulate
Australian Securities & Investment Commission (ASIC)	Financial planners Auditors and liquidators, through the government's Companies Auditors and Liquidators Disciplinary Board (CALDB)
Tax Agents Boards	Tax practitioners
Australian Prudential Regulation Authority (APRA)	Auditors/trustees of superannuation funds
Insolvency Trustee Service Australia (ITSA)	Trustees in bankruptcy

It is important to note that the primary purpose of the Institute's disciplinary process is to protect the reputation of the Institute and the Chartered Accountant designation, rather than punish individual members. The Institute does not have legal power to order the payment of compensation or any other remedy to seek redress on behalf of the community or to punish offenders other than through membership-related sanctions.

Financial and criminal sanctions are the preserve of the regulators and the courts, which have wider powers – such as to subpoena witnesses and compel production of written evidence. However, the Institute will investigate members who are the subject of adverse decisions by the regulators and the courts (irrespective of whether anyone has lodged a complaint to the Institute) and will refer the relevant cases to the Professional Conduct tribunal for determination. In accordance with legal advice received by the Institute, the disciplinary process will occur after the regulatory and court process is finalised.

### The tribunal process

The Institute's disciplinary processes are fair, rigorous and independent. Serious breaches of By-laws and regulations are subject to independent hearings by the Professional Conduct tribunal. If a member (who is subject to an adverse finding) or the president is dissatisfied with the decision, he/she can appeal to a separate Appeal tribunal.

Results of the tribunals' decisions are published in the printed and online versions of the Institute's magazine (*Charter*). This helps educate other members as well as demonstrating the transparency of the disciplinary process. In significant cases, the tribunals may also publish the reasons for their decisions.

Both tribunals must meet strict professional guidelines when hearing cases. They must comprise senior accounting members to represent the Australian profession and also non-members to represent the public interest. Lay representatives were introduced more than 10 years ago and come from a wide variety of business and professional backgrounds.

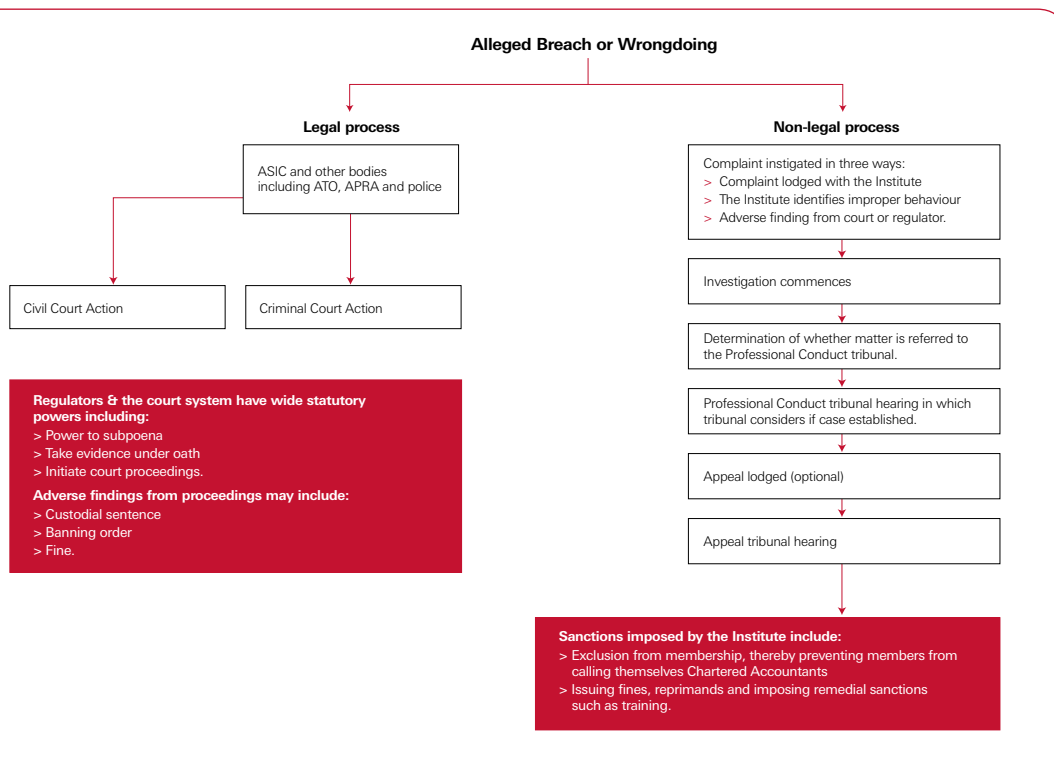
### Recent events

In recent years some high-profile corporate collapses (such as Enron in the United States and HIH Insurance in Australia) have focused regulatory attention on the accounting profession and particularly on areas such as audit quality and independence. This has resulted in regulatory changes that give legislative weight to auditing standards and to the establishment of new reviewing bodies such as the Financial Reporting Council (FRC) and the Audit Quality Review Board (AQRB).

## How does the Professional Conduct function work?

The following diagram shows both the Institute's process and where it fits within the overall legal and regulatory framework.

### The Institute of Chartered Accountants Professional Conduct Process



### Types of sanctions

Sanctions are designed to reflect the impact of the member's actions on the reputation of the Institute and its members rather than to punish the individual member. The Professional Conduct tribunal can impose one or more of a range of sanctions, including:

- > The ultimate sanction: exclusion from membership of the Institute (removing the right to be a Chartered Accountant). This is appropriate if the member has demonstrated that they are no longer fit and proper to be a Chartered Accountant and that their continued membership would bring discredit on all other members as well as the Institute
- > Withdrawing members' right to engage in public practice
- > Fines of up to \$100,000
- > Public reprimands
- > Cancellation of membership for a period of up to five years
- > Other sanctions such as remedial training or an additional quality review of the member's practice.

In some cases where the tribunal finds a case established, it has the power to impose no sanctions. This discretion is normally exercised where there is a technical breach of the Institute's standards and the member has acknowledged the error, or where the member has been subject to penalties in another jurisdiction and the tribunal concludes that no further sanctions are warranted.

### Institute's role

Under the Australian professional and regulatory framework any individual can provide accountancy services. A licence is required from a regulatory body to carry out specific service (such as company audits or acting as a tax agent) but a professional membership is not.

If a member is excluded from membership of the Institute, this does not prevent that person from continuing to provide accountancy services. However, action from ASIC or the Tax Agents Board which cancels their registration will prevent them from practicing as company auditors, liquidators or tax agents. Also, the individual will no longer be able to use the Chartered Accountant designation.

Under the Corporations Law, ASIC has the power to regulate company auditors. Only the CALDB can cancel an auditor's registration. Given the limited powers of the Institute, its policy (based on legal advice) is to await the completion of an investigation by the statutory body and any subsequent disciplinary or legal action before taking disciplinary action.

## Professional Conduct: results and achievements

### 2005/2006 results

During the year the Professional Conduct team initiated investigations into 298 formal complaints or other issues concerning the conduct of members which came to the Institute's attention, for example as the result of action by regulators or the courts. As a result of these investigations, 31 members were called to appear before the Professional Conduct tribunal.

These figures represent a tiny fraction of the many thousands of individual tasks conducted by more than 44,000 Chartered Accountants every year. This demonstrates that complaints are rare, but when they do occur they are taken very seriously by the Institute.

A report of each case is published in online and print versions of *Charter*, the Institute's monthly magazine. To enhance the transparency of its process, in 2004 members voted to amend the By-laws so that all reports now include the member's name. Previously the tribunal had the discretion to order that the member's name be excluded from these reports.

In addition to ensuring the transparency of the professional conduct function, these reports also serve as a warning to other members about the need to follow both the letter and the spirit of the Institute's standards.

### Sanctions

In the financial year ending 30 June 2006, the Institute's revenue from Professional Conduct was \$60,000. The revenue consists of fines and disciplinary recoveries imposed by tribunals (there are of course many other non-financial sanctions that are also imposed). Total expenses were \$623,000. This includes all personnel, professional and general office expenses.

### Cases heard

State	05/06	04/05
New South Wales (includes ACT and overseas)	9	14
Queensland	9	–
South Australia	2	–
Tasmania	–	1
Victoria	7	3
Western Australia	4	3
<b>Total</b>	<b>31</b>	<b>21</b>

### Nature of allegations

	05/06	04/05
Failure to observe proper standard of professional care skill and competence	10	6
Criminal conviction	2	1
Adverse finding in relation to professional or business conduct by court, statutory, regulatory or professional body	13	7
Breach of Charter, By-laws or Regulations (including ethical and professional standards)	4	6
Failure to comply with direction by Institute (including failure to respond to correspondence)	1	2
Member's insolvency	4	3
Conduct bringing discredit on member, Institute or profession	5	3

### Sanctions imposed

	05/06	04/05
Exclusion from membership	3	1
Cancellation of membership for up to five years	1	4
Cancellation of Certificate of Public Practice and/or declared ineligible to hold a Certificate of Public Practice	1	–
Fine	2	1
Severe reprimand	5	4
Reprimand	11	5
Practice review	1	2
Attending specified Training & Development	–	1
No sanctions imposed	6	6

### Achievements of the Professional Conduct function

The Institute is committed to ensuring the Professional Conduct function meets its objective of protecting the integrity of the Chartered Accountant designation. The function is under constant review to ensure it satisfies the requirements of procedural fairness, meets the expectation of the community (and Institute members) and matches or exceeds global best practice.

Many enhancements to the Professional Conduct process undertaken over the past year build on initiatives undertaken a number of years ago. Examples include the Institute commissioned Cameron Report, which examined the Institute's disciplinary process in 2002, and the taskforce the Institute established after the HIH Royal Commission in 2003 (both of which resulted in a number of enhancements to the Professional Conduct function).

### 2005/2006 activities

#### Global activities

- > The Institute benchmarked its processes with those of major accountancy bodies in other countries, including the UK, Ireland, New Zealand, Canada and the US. Taking into account variations in the roles and powers of these bodies (and the legal and regulatory environments in which they operate) the review confirmed that the Institute's processes meet or exceed global best practice
- > The Institute participated in a detailed survey issued by the International Federation of Accountants (IFAC) as part of its program to ensure that member bodies comply with its statement of member obligations. Early indications are that the Institute meets all of IFAC's Professional Conduct obligations

#### Relevant products and services

- > The Institute applied funds provided from a Star Initiatives Grant from the Professional Standards Council to develop a dispute resolution toolkit to help members minimise and resolve disputes with their clients. This will be available (at no cost to members) in late-September 2006
- > Brochures outlining the Institute's professional conduct role and process have been developed and are sent to members of the public enquiring about lodging a complaint. They are also sent to members who may be the subject of a complaint. Both brochures are also available from the Institute's website.

### Corporate governance

- > To complement these products and services, the Institute amended its regulations to require members to establish complaint-handling procedures within their practices and to address client complaints promptly and effectively, with the view to resolving complaints quickly. This is also designed to promote better communications between members and clients and to avoid unnecessary escalations of complaints
- > Advice was obtained from a former Supreme Court judge on various aspects of the Institute's disciplinary processes. One of the outcomes of this advice was the development of guidelines for members of tribunals when conducting hearings, to ensure they comply with the principles of independence and procedural fairness
- > The Institute has engaged with the chair and deputy chair of the Professional Conduct tribunal, and the chair of the Appeal tribunal to obtain feedback on the disciplinary process and to effect improvements
- > The Institute has appointed new members to the Professional Conduct tribunal. This ensures the tribunal reflects the ever-changing accountancy environment, bringing fresh ideas and expertise.

### Leadership

- > The Institute reviewed its policies regarding the tribunals' discretion to issue fines and/or costs. This confirmed that policies and procedures are appropriate and effective
- > Towards the end of the year the FRC began a review of the professional accounting bodies' professional conduct processes, especially as they relate to the audit function. The Institute has provided the FRC with detailed information concerning both the operation and outcomes of its professional conduct activities, and now looks forward to working with the FRC in considering any changes that may be recommended
- > The Institute obtained legal opinions from an independent law firm to confirm the validity of its powers and to ensure the principles of natural justice are met
- > The Institute has initiated dialogue with both its members and ASIC, raising concerns regarding the processes that lead to referrals to the CALDB. This will be pursued further in 2006/7.

## Moving into 2006/7

During the 2006/7 year the Institute will continue to monitor the effectiveness and transparency of its disciplinary procedures. It has also committed to a range of other activities designed to further enhance the Professional Conduct function.

### Global activities

- > The Institute is part of the Global Accounting Alliance (GAA) – an alliance of leading accounting bodies from the US, New Zealand, Canada, South Africa, Ireland, Scotland, Hong Kong and England and Wales. The Institute intends to share relevant information on disciplinary processes, issues and trends with the GAA bodies
- > The International Federation of Accountants (IFAC) recently released a revised code of ethics. The code was effective from 30 June 2006 and has been adopted by the Institute (with appropriate amendments to recognise the Australian environment) in place of the Code of Professional Conduct. The Professional Conduct function will play an important role in ensuring that members observe both the letter and spirit of this
- > The IFAC statement of member obligations SMO 6: Investigation and Discipline covers issues such as procedures for investigation and discipline; types of sanctions and information and guidance to members. The Institute will address any issues arising from the survey conducted by IFAC during 2005/6 to ensure the Institute complies with SMO 6.

### Corporate governance

- > The Institute welcomes the FRC's recent review of its disciplinary procedures. During the new financial year the Institute will work with the FRC, considering its recommendations and, where appropriate, incorporating them into ongoing efforts to enhance the Professional Conduct function
- > This work with the FRC will be part of the process of constant assessment and review designed to ensure any possible enhancements are implemented. A crucial part of this process is the Institute's commitment to work with regulators to ensure that members continue to meet the highest standards of technical performance and ethical conduct.

## Glossary of abbreviations

<b>AQRB</b>	Audit Quality Review Board
<b>ASIC</b>	Australian Securities and Investment Commission
<b>ATO</b>	Australian Taxation Office
<b>APRA</b>	Australian Prudential Regulation Authority
<b>CALDB</b>	Companies Auditors and Liquidators Disciplinary Board
<b>FRC</b>	Financial Reporting Council
<b>GAA</b>	Global Accounting Alliance
<b>IFAC</b>	International Federation of Accountants
<b>ITSA</b>	Insolvency and Trustee Service Australia
<b>SMO</b>	statement of membership obligations

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