

PRESENTATION AT

**PENSION LAWYERS**  
ASSOCIATION

ANNUAL  
CONFERENCE 2009



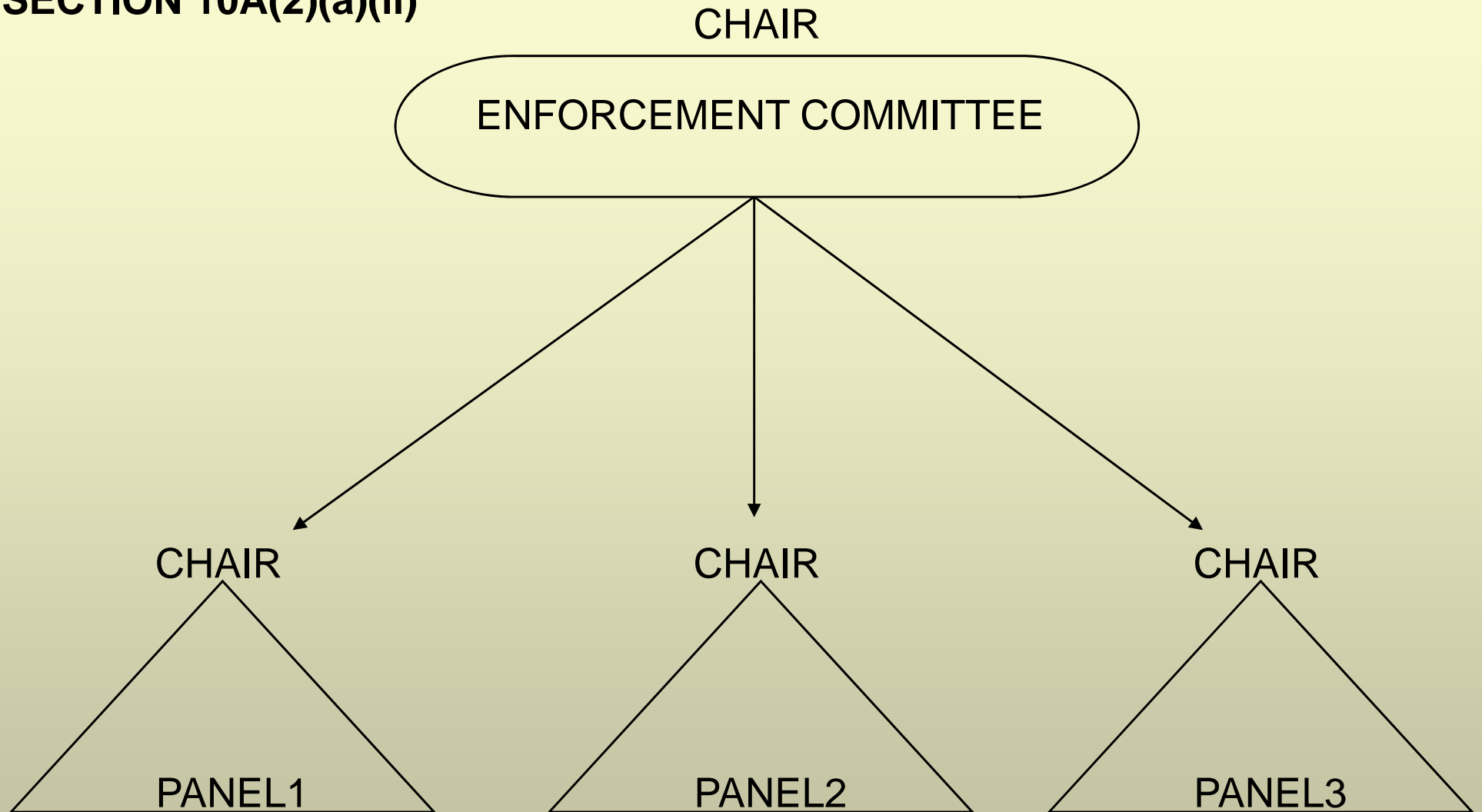
The FSB strategic plan stipulates **effective enforcement** as an important success factor.

To this end, the capital markets enforcement committee, established in 2005, was extended to the whole of the FSB.

# STRUCTURE AND APPOINTMENT OF MEMBERS (SECTION 10A(1))

- Board must appoint.
- EC must have sufficient members with appropriate knowledge and experience, and must include **with reference to all the industries**  
[advocates and attorneys of at least ten years' standing, or judges.] **Chairpersons of panels**

**SECTION 10A(2)(a)(ii)**



## **SECTION 10A(2)(b)**

*“The Chairperson of a panel must be the Chairperson or a Deputy Chairperson ... and has a casting vote.”*

## **SECTION 10A(4)**

*“If ... [a] member has an interest in a matter referred to the Enforcement Committee, the member must immediately disclose his interest ... and withdraw from any further involvement ...”*

## **SECTION 10A(5)**

*“If a member of a panel is unable to complete a hearing ... the Chairperson may*

- (a) Replace the member;*
- (b) Direct that the hearing proceed before the remaining members;*
- (c) Terminate the proceedings ... and constitute another panel.”*

## CASES TO BE REFERRED (SECTION 6A)

- **The Registrar** (or the DMA) may refer **any** contravention of an FSB Law **including** subordinate legislation.
- Also in cases of contraventions of FICA.
- **If** the Registrar may not impose a penalty himself (in cases of minor contraventions of late submissions etc.), i.e. *no dual jurisdiction (issue of early reviews)*.

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# EXAMPLES

- Unregistered pension fund business – sec 4 & 31  
(Jurisdiction beyond financial institutions)
- Failure of the board to comply with sec 7C (object of a board) and 7D (duties of a board)
- Failure to register rule amendments of a fund
- Failure to pay contributions to a fund (Section 13A)  
(caseload issue)
- Conduct unapproved administration business  
(Section 13B and adherence to Board Notice)

# EXAMPLES

- Non-adherence to the provisions of section 14 – transfers of benefits
- Non-compliance with the provisions of surplus legislation (Section 15)
- Failure to submit or adhere to a scheme in terms of section 18 (financially unsound position)
- Non-compliance with prudential investment guidelines (also sub-ordinate legislation and codes of conduct etc.)

# DOCUMENTS WITH REFERRAL (SECTION 6B)

**A referral must be accompanied by:**

- **A section 6B** Notice setting out the **details** and **nature** of the alleged contravention, and the **administrative sanction** that, in the opinion of the applicant, should be imposed.
- **An affidavit** setting out the facts and supporting documents.

# EXCHANGE OF PLEADINGS (SECTION 6B & 6C)

FSB CASE  
ON  
AFFIDAVIT  
&  
SECTION  
6B NOTICE

RESPONDENT  
ANSWER ON  
AFFIDAVIT  
(30 DAYS)

FSB REPLY  
ON  
AFFIDAVIT  
(30 DAYS)

# **RULES OF THE EC (SECTION 6C(5))**

The chairperson may make rules regarding:

- Heads of argument
- Legal representation
- Case presented as a stated case
- Abbreviated pleadings
- Oral evidence

# DETERMINATION BY THE EC (SECTION 6C AND 6D)

The EC must determine whether a respondent has contravened a provision. If so, the EC may:

- Impose a (unlimited but specified) penalty
- Make a compensation order
- Make a section 73 insider trading order
- Make a standard cost order
- Make an extended cost order

A determination is not a previous criminal conviction.

## **SETTLEMENTS (SECTION 6B(7))**

The applicant may, prior to the referral of a matter to the enforcement committee or during or after the enforcement committee proceedings, enter into a written settlement agreement with the respondent.

The agreement must be filed with the chairperson of the enforcement committee to be made an order of the enforcement committee, as contemplated in section 6D(2).

# **ENFORCING A DETERMINATION (SECTION 6E)**

A determination of the EC has the force of law as if it was made by the High Court.

If the respondent fail to pay the penalty or compensation, a copy of the determination may be filed with the High Court and civil execution steps will follow.



## **APPEAL (SECTION 6F)**

- The Committee may be taken on appeal to the High Court on the facts, the law and the penalty
- An appeal is confined to the record.  
(No new evidence on appeal)
- The launching of an appeal does not suspend execution, unless the chairperson directs otherwise.

End

