

Facing a Complaint

Guidance for members facing a Complaint

1 July 2024

1. Introduction

- 1.1 The public places trust in Members of The Institute of Actuaries of Australia (the Institute) to hold high standards. In acknowledging that trust the Institute strives to ensure that its Members uphold the highest technical, professional and ethical standards. The Institute is committed to holding its Members accountable to those standards.
- 1.2 The Institute has a Disciplinary Scheme to address conduct which falls short of the standards expected. This helps to protect the public as well as maintain and guard the standards, professionalism and reputation of our Members.
- 1.3 Complaints about the conduct of our Members are dealt with under the Disciplinary Scheme
- 1.4 This guidance has been issued by the Council of the Institute in accordance with [clause 13.2](#) of the Disciplinary Scheme (effective April 2018) (the Scheme).
- 1.5 This guidance is intended to help Members, former Members and Respondents who are the subject of a Complaint or an allegation, with understanding the Institute's disciplinary processes.
- 1.6 The Institute appreciates that being the subject of a Complaint, and making a Complaint, can be distressing and stressful. The Professional Standards Manager at the Institute can help you understand how the regulatory process works and if needed direct you to other useful support services. The well-being of all Scheme participants is important.
- 1.7 It is important to understand that the Scheme is limited to investigation of Misconduct, as defined in [clause 3 of the Scheme](#) document. The Institute cannot for example, resolve commercial disputes. Similarly, in other situations some Complaints may best be made to the Member's employer. Personal grievances might be the subject of civil action and issues relating to the Member's workplace or even under whistleblower legislation are not within our remit and may be a matter where a Member may choose to obtain their own legal advice. Sometimes there are matters where another relevant regulatory body or relevant authority will need to conduct their investigation first or in place of the Institute.
- 1.8 The Institute will consider Complaints about the conduct of Members, and former Members in relation to conduct that occurred while they were a Member. Independent Convenors, Committees, Tribunals and Appeal Boards will consider whether that conduct amounts to Misconduct, as defined at [clause 3 of the Scheme](#):

“Misconduct is defined as any acts or omissions by a Member that do not meet the standards as reasonably determined and expected by the Institute. The standards and expectations of the Institute are explained within the Institute’s [Code of Conduct](#)”

- 1.9 This guidance applies to all Complaints being considered under the Scheme as amended from time to time. For Complaints that are being considered under a former version of the Institute's Disciplinary Scheme, the version of the guidance applicable to the former version of the Disciplinary Scheme should be applied to the extent that it is possible to do so, otherwise this guidance will apply.
- 1.10 This guidance does not override any provision of the Scheme.
- 1.11 It is for use by:
 - (a) any Member who is the subject of a Complaint or who has made a disclosure giving rise to an investigation of their conduct under the Scheme so they are aware of the Complaint making mechanism and associated processes to be followed; and
 - (b) the Convenors, and any Conduct Committee, Investigating Sub-Committee, Tribunal, Appeal Board, or Panel appointed under [clause 5 of the Scheme](#), referred to in this and other guidance as the ‘Scheme decision maker’ to provide further detail on their powers and procedures to be followed; and
 - (c) Institute staff
- 1.12 This guidance should be read in conjunction with:
 - (a) the Scheme; and
 - (b) any rules or regulations issued by the Council; and
 - (c) any other relevant guidance published by the Council.
- 1.13 Where there is any conflict or inconsistency between the Scheme and this guidance, the Scheme shall be followed. Where there is any conflict or inconsistency between regulations and this guidance, the regulations shall be followed.
- 1.14 Definitions of defined terms used in this guidance are set out in the Scheme and regulations.
- 1.15 This guidance should not be treated as legal advice. When appropriate, the Scheme decision maker may seek legal advice from the Institute’s legal advisor(s) on questions of law and/or procedure, which may include advice on the use of this guidance.
- 1.16 The Council will review this guidance every five years or earlier if needed. It may be updated in the interim when circumstances require a change.

2. Aim

2.1 This guidance:

- (a) seeks to provide a Member who is the subject of a Complaint with information relevant to the investigation of a Complaint under the Scheme; and
- (b) provides additional information about the Complaint making mechanism under the Scheme.

3. What is a Complaint?

- 3.1 Complaints against Members come from a variety of sources including the public, other actuaries and other regulatory bodies. The Institute will consider Complaints made in writing to us to the effect that an individual Member (or former Member) has been found to have engaged in professional Misconduct.
- 3.2 Where a Member makes a disclosure to the Institute¹ about their own conduct, or where the Institute becomes aware of the conduct of a Member through the press or an anonymous source, the Institute will consider whether it is appropriate for any action to be taken, including whether a referral to the Scheme is appropriate.

4. Information about a Member's conduct that is not received by way of a written Complaint

- 4.1 The Scheme allows for a Member's conduct to be investigated other than by way of receipt of a written Complaint by the Institute. For example, a Member may make a disclosure to the Institute under their obligations set out in [clause 4 of the Scheme](#).
- 4.2 Further, an Executive Officer of the Institute may refer a Complaint to the Convenor of the Conduct Committee. This may happen if for example:
 - (a) concerns are raised anonymously (or by a person who wishes not to be identified); or
 - (b) a Member reports their own conduct to the Institute; or,
 - (c) if the Institute becomes aware of information about a Member through the media or other sources.

In these circumstances, an Executive Officer of the Institute will consider whether it is appropriate to refer a Complaint to the Convenor of the Conduct Committee. A Complaint made by an Executive Officer shall be considered in the same way as any other Complaint.

¹ Members should be aware of their obligations to disclose certain matters about their own conduct to the Institute. The obligation to disclose certain matters is not limited to the time of Membership application or renewal and is ongoing whilst a person remains a Member. The disclosure and reporting requirements are set out in [Clause 4 of the Scheme](#).

5. What happens when a Complaint is made to the Institute ?

- 5.1 It is important to note that Complaints are first assessed to determine whether or not they should be accepted for investigation.
- 5.2 The Convenor of the Conduct Committee will make a preliminary assessment of the Complaint against the following criteria:
 - (a) whether the Complaint could amount to Misconduct if the facts are proven; and/or
 - (b) whether there is a reasonable prospect of proving the matter giving rise to the Complaint; and/or
 - (c) whether the matter giving rise to the Complaint should be considered by another body and/or court before being reassessed.
- 5.3 The [Institute's guidance on Complaint Handling](#) provides further information about each of the criteria against which a Complaint will be assessed and the process for assessment.
- 5.4 If the Convenor of the Conduct Committee considers that the criteria are met, the Complaint will be accepted. The Convenor of the Conduct Committee may make enquiries of you and/or others before reaching a decision to progress the Complaint.
- 5.5 Depending upon the outcome of the preliminary assessment, the Convenor of the Conduct Committee may progress the Complaint. The Complaint may be referred for consideration by an Investigating Sub Committee.
- 5.6 The Investigating Sub-Committee will consider the Complaint and any additional information that the Convenor of the Conduct Committee has obtained. The Investigating Sub Committee's deliberations take place in private.
- 5.7 If the Convenor of the Conduct Committee decides that the Complaint will not be accepted for investigation, you will be advised in writing of the decision and reasons why.

6. What happens if the Complaint is accepted for investigation?

- 6.1 If the Complaint is accepted by the Convenor of the Conduct Committee you will then be known as the Respondent.

7. How will the Complaint be investigated?

- 7.1 As a start, you may find it helpful to refer to the [Disciplinary Process Overview Flowchart](#) which sets out a summary of the disciplinary process.
- 7.2 The Institute Professional Standards Manager will provide administration support to the operation of the Scheme. The Professional Standards Manager is a Member of our staff. During all stages of the disciplinary process they are neutral and impartial. Their role is to administer the process of the investigation and any subsequent hearing and to gather relevant information as requested and for consideration by the Scheme decision maker. You will be given the Professional Standards Manager's name and contact details and they will be your main contact throughout the investigation. Please note that they cannot give you legal advice.
- 7.3 At all stages of the process careful checks are made to avoid any conflicts of interest or biases. [Clause 12 of the Scheme](#) specifically addresses conflicts of interest.
- 7.4 The Professional Standards Manager will gather information relevant to the Complaint. This may include requesting copies of documentation from relevant parties, considering relevant professional guidance and perhaps obtaining witness statements.
- 7.5 You are required to cooperate fully and promptly with any investigation or proceedings under the Scheme. Failure to comply with this duty may result in a Complaint of non-cooperation being brought against you.
- 7.6 The Complaint will form the basis of the investigation, but the Conduct Committee and the Convenor of the Conduct Committee can take into account any additional conduct that comes to their attention during the investigation. If this occurs, you will be advised and given an opportunity to respond. .
- 7.7 The Professional Standards Manager cannot give you advice on how you should respond to the Complaint or how you should represent yourself through the process. You may wish to take independent legal advice, while carefully noting the Scheme does not provide an automatic right to legal representation at hearings.

8. What happens after the investigation stage?

- 8.1 The stages of the disciplinary process are set out below. Please note that the Institute will provide you with more information at the relevant time.

9. Professional Conduct Undertakings

- 9.1 Professional Conduct Undertakings can be used where the Respondent accepts that the disciplinary allegations amount to Misconduct. Professional Conduct Undertakings are available for less serious cases of Misconduct and will usually be used at the early stages of an investigation, before a determination is made. Please read the Guidance on Professional Conduct Undertakings for more information about this mechanism.
- 9.2 If the Convenor of the Conduct Committee and the Convenor of the Tribunal thinks that the case may be suitable for a [Professional Conduct Undertaking](#) they will contact you to discuss this. You can request that your case is dealt with by a Professional Conduct Undertaking but it is for the Convenor of the Conduct Committee and the Convenor of the Tribunal to jointly decide if it is appropriate.
- 9.3 The sanctions available include but are not limited to:
- (a) a reprimand; and/or
 - (b) a fine in the amounts as follows:
 - (i) for an admission of Misconduct with a Professional Conduct Undertaking – an amount of 5 x the annual Membership fee applicable to a Fellow; and
 - (ii) for other cases where Misconduct has been determined – recommended a fine of 10 x the annual Membership fee applicable to a Fellow; and/or
 - (c) a period of education, retraining, and/or supervised practice; and/or
 - (d) reporting and accountability.
- 9.4 If you agree to a Professional Conduct Undertaking this will be considered by the Convenor of the Conduct Committee and the Convenor of the Tribunal. The Convenor of the Conduct Committee and the Convenor of the Tribunal will meet in private and consider the matter based on the papers.
- 9.5 If a Professional Conduct Undertaking is approved, the terms of the Professional Conduct Undertaking may be published in accordance with the [Institute's guidance on Publication](#).
- 9.6 If the Professional Conduct Undertaking is rejected, the matter will be passed back to the Convenor of the Conduct Committee for further investigation.

Investigating Sub Committee

- 9.7 Usually, after an initial investigation into an allegation of Misconduct is complete, and if the matter has not been dealt with by a Professional Conduct Undertaking, the Convenor of the Conduct Committee will refer the matter to an Investigating Sub Committee (ISC). The findings of the Convenor of the Conduct Committee and their referral to the ISC is limited to whether there is a prima facie case of Misconduct and does not set out any recommendations. You will be provided with brief reasons for the referral.

- 9.8 Notice of the referral will be sent to you and you will be given the chance to submit material. It is expected that the ISC will interview you in person unless geographical circumstances prevent you from attending in person. It is important to note that [clause 7 of the Scheme](#) empowers you to ask to be interviewed by the ISC. Your submissions will be considered by the ISC provided that they are submitted in writing. The person who made the Complaint will not be sent a copy of the ISC report.
- 9.9 The ISC will be appointed to consider the Convenor's referral and determine the next step in the disciplinary process. The ISC meets in private which means that neither you, the Complainant or the Professional Standards Manager attends. The ISC is comprised of at least three people. At least one ISC member is always a "lay person" or a qualified legal professional, and at least one Member of the Institute.
- 9.10 An ISC may:
- make a finding of prima facie Misconduct and offer you an opportunity to accept a sanction, such as a reprimand, a fine, a period of retraining, supervision or further education. For former Members, where the allegation is particularly serious, they may offer an exclusion from Membership. The ISC may also require a contribution towards the Institute's expenses in investigating and determining the matter. If you accept the ISC's determination, including the costs contribution, this concludes the matter. The ISC's determination will be published in accordance with the Institute's [guidance on Publication](#);
 - make a finding of prima facie Misconduct and refer the case for a hearing before a Tribunal.

Disciplinary Tribunal

- 9.11 If Complaints/allegations are referred to a Tribunal the allegations become a formal Complaint of Misconduct.
- 9.12 The Professional Standards Manager will serve the ISC report and supporting documentation on you. This can include third party documents and witness statements.
- 9.13 The Tribunal will decide whether the Complaint of Misconduct amounts to Misconduct. The Tribunal is comprised of at least three people. At least one member is always a "lay person", one legal member and at least one member is always a Member of the Institute.
- 9.14 Tribunal hearings are usually held in person with the parties present, but sometimes they may be held virtually. If the hearing is in person, it will usually be held in Sydney at the Institute's offices.
- 9.15 Tribunal hearings are usually held in private. except, and to the extent that, other people or witnesses they are called by either the Institute or you to give evidence.

9.16 If a Tribunal makes a finding of Misconduct, they can impose a sanction. The sanctions available to a Tribunal are set out in the Scheme and include but are not limited to:

- a reprimand;
- a fine;
- a period of retraining, supervision or education; and
- suspension, expulsion or exclusion from Membership of the Institute.

9.17 The Tribunal can also make an order seeking contribution towards the Institute's costs against you or the Institute.

9.18 You will have the opportunity to make submissions on whether the decision is published. For more information please see the [Institute's guidance on Publication](#).

9.19 You will also be provided with a copy of the Tribunal's written determination.

10. Appeal from a Tribunal Decision

10.1 The Scheme provides for a party to the Tribunal proceedings to file an appeal .

10.2 The grounds for an appeal include but are not limited to:

- (a) inculpatory or exculpatory evidence or facts;
- (b) an error of process, procedural fairness, or natural justice by the Tribunal;
- (c) an error in the considerations or reasons provided by the Tribunal; or
- (d) the orders are demonstrably unfair, unreasonable, or excessive.

10.3 The grounds for an appeal do not include dissatisfaction with a determination or an order of the Tribunal.

11. Can the Institute investigate the conduct of a former Member?

11.1 Yes, but only if the Complaint or allegation concerns conduct which took place whilst they were a Member of the Institute.

12. What happens if a Member resigns from the Institute during the disciplinary process?

12.1 The disciplinary process continues as if they were still a Member of the Institute and they are still obliged to co-operate with the investigation.

13. What is the role in the disciplinary process of the person who made the Complaint?

- 13.1 Under the Scheme the person who made the Complaint does not have a formal role and they are not a party to the process. They will be kept up to date with the progress of the investigation and will be informed of the outcome.

14. How long will the process take?

- 14.1 It takes time for allegations to be investigated and considered under the Scheme. We do try and deal with allegations as quickly and efficiently as possible, whilst being fair to both you and the person who made the Complaint. Factors that affect the timescales include:

- the complexity of the allegation;
- the availability of those involved in the disciplinary process;
- the speed at which information or documents can be provided by Respondents and witnesses.

15. Is mediation available?

- 15.1 Mediation is a process whereby an experienced and neutral third party mediator assists parties in resolving disputes. The Institute does not offer mediation as part of its disciplinary processes.

16. If you need legal advice

- 16.1 You can obtain independent legal advice about your rights in relation to the disciplinary process. In speaking with people other than the Institute or your legal advisor, you must respect the confidential nature of any ongoing, live case. The Institute is happy to provide factual information about each stage of the disciplinary case but cannot advise you about your legal rights or position.

17. Wellbeing support and assistance

- 17.1 The Institute understands that being the subject of a Complaint can be stressful. If you need additional assistance to participate in the disciplinary process or you feel that you need support, please tell the Professional Standards Manager.
- 17.2 The Professional Standards Manager can put you in touch with a more senior Member of the profession who can provide you with independent support and guidance about the disciplinary process. At the end of this guidance is a list of crisis support and helplines available to Members who find their wellbeing is being negatively impacted and are not coping with the disciplinary process.

18. Levels of service

- 18.1 If you are unhappy with the way we have dealt with you please tell us. Concerns will always be treated seriously.

19. Contact details

- 19.1 The Professional Standards Manager, who deals with the receipt of Complaints and is responsible for administering the operation of the Scheme can be contacted at: disciplinaryscheme@actuaries.asn.au
- 19.2 Further information about the disciplinary process is available on the Institute's [website](#) where you can find other guidance about the Scheme processes and [flowcharts](#) which illustrate various processes under the Scheme.
- 19.3 The [Disciplinary Scheme](#) contains the Rules which govern the process and the regulations set out the process to be followed.

Document control

Version	Date of publication	Overview
1.0	1 July 2024	Guidance Facing a Complaint Disciplinary Scheme effective 1 July 2024

Disclaimer

This guidance has been prepared by the Institute to assist persons who wish to make a Complaint about the conduct of an Institute Member. This document is not legal advice and is not a substitute for the Scheme. Where there is any conflict or inconsistency between the Scheme and this guidance, the Scheme shall be followed. Where there is any conflict or inconsistency between regulations and this guidance, the regulations shall be followed.

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Resource Directory to Support Well Being of Scheme Participants

- [Lifeline](#) – 13 11 14
- [Beyond Blue](#) – 1300 224 636
- [Mental Health Line \(NSW\)](#) – 1800 011 511
- [Suicide Call Back Service](#) – 1300 659 467
- [1800RESPECT](#) – 1800 737 732
- [Kids Helpline](#) – 1800 55 1800
- [SANE Australia](#) – 1800 187 263

Online mental health resources

- [Head to Health](#) – An Australian Department of Health initiative bringing together comprehensive information about apps, online programs, online forums and phone services of respected Australian mental health organisations.
- [Beyond Blue](#) – Mental health information and support including access to a trained mental health professional via phone, text or email, and online supportive forums.
- [Black Dog Institute](#) – Mental health research, information and support.
- [Australian Psychological Society](#) – The APS is Australia's peak body for psychologists in Australia. The website contains a directory which can be used to locate a psychologist, information about seeing a psychologist and articles addressing common psychology topics/mental health concerns.

Online mental health treatment programs

There are other online services that can offer you support if you are not coping. Many of these are either free of charge or at reduced cost. The services and programs are completely independent of the Institute.

- [myCompass](#) – Free, personalised mental health strategies to help manage thoughts, feelings and behaviours that cause concern.
- [Black Dog Institute Online Clinic](#) – Free, mental health assessment tool and personalised report with suggested support services/resources.
- [This Way Up](#) – Online treatment programs, education and research to help improve mental health, wellbeing and physical health difficulties.
- [MindSpot](#) – Free, telephone and online clinic for people experiencing stress, worry, anxiety, low mood, depression and chronic pain.

- [moodgym](#) – Free, online self-help program designed to help users prevent and manage symptoms of depression and anxiety.
- [Beyond Blue New Access](#) – Free coaching program to help people cope if feeling stressed, anxious or overwhelmed about everyday life issues (such as work, study, relationships, health or loneliness).

Top 30 Mental Health Organisations

<https://www.australiacounselling.com.au/top-mental-health-organisations/>

Top 13 Mental Health companies and startups in Sydney in 2024

<https://www.f6s.com/companies/mental-health/australia/sydney/co>