

# Making a Complaint

## Guidance

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 protect the standards, professionalism and reputation of our Members.
- 1.3 Complaints about the conduct of our Members are dealt with under the Disciplinary Scheme (effective April 2018) (the Scheme). This guidance is intended to help you understand the steps for making a Complaint and the disciplinary process that will be followed.
- 1.4 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 Members workplace or even under whistleblower legislation are not within our remit and may be a matter where an individual 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.
- 1.5 The Institute will consider Complaints about the conduct of Members, and former Members in relation to conduct that occurred while they were a Member. A Scheme decision maker 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](#)"*
- 1.6 This guidance has been developed and issued by the Council of the Institute in accordance with [clause 13.2](#) of the Disciplinary Scheme (effective April 2018) (the Scheme).

- 1.7 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.
- 1.8 This guidance does not override any provision of the Scheme.
- 1.9 It is for use by:
- (a) any person wishing to make a Complaint about a Member of the Institute 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
- 1.10 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.
- 1.11 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.
- 1.12 Definitions of defined terms used in this guidance are set out in the Scheme and regulations.
- 1.13 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.
- 1.14 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) sets out the steps for making a Complaint about a Member or former Member of the Institute; and
  - (b) provides additional information about the Complaint making mechanism under the Scheme.

### 3. How to make a Complaint

- 3.1 You can discuss any potential Complaint with the Professional Standards Manager of the Institute but the Institute cannot give you advice on whether it is appropriate to make a Complaint or whether the Complaint may amount to misconduct.
- 3.2 It is important to note that Complaints are first assessed to determine whether or not they should be accepted for investigation.
- 3.3 The Complaint will be assessed on 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 relevant authority or regulatory body and/or court before being reassessed under the Scheme.

For example, if the matter you wish to complain about concerns allegations of criminal conduct, you should ask the police (or other relevant authority) to investigate it first.

- 3.4 The Institute has published a [flowchart overview of the disciplinary process](#) to assist you in your understanding of the Scheme. The Institute's guidance on [Complaint Handling](#) also provides further guidance about each of the criteria against which a Complaint will be assessed.
- 3.5 If you make a Complaint please use the [Complaint Form](#), available on our Disciplinary Scheme [webpage](#). If you are unable or do not want to use the form, you should write to us giving as much of the following information as you can, including:
  - The full name of the Member(s) concerned.
  - Details of what, in your view, the Member has done wrong, and which you believe may be misconduct. Please set out the facts as clearly as you can, in a logical order, focusing on what is relevant to the Complaint.
  - What the impact of the alleged Misconduct has been.
  - Dates when the relevant events took place.
  - Copies of any relevant documents.
  - Names and contact details of anyone who could support the Complaint from their own personal knowledge.
  - Whether you have raised this matter with the Member or with their employer.
  - Whether you have raised this matter with any other regulator (such as APRA or ASIC) or other investigative body.

## 4. Respecting privacy

- 4.1 The Institute will need to handle some of your personal information, such as your name, sometimes your address and email address, and the nature of your allegation. Please note that we may send a copy of the Complaint and any correspondence from you in relation to the investigation to the Member/former Member you are complaining about – which will include your personal information.
- 4.2 If you do not wish to be named, your concerns will be considered by the Convenor of the Conduct Committee. In these circumstances, you will not be treated as the Complainant in the Scheme and will not be provided with any further information about the Institute's consideration of the Complaint. It is important to be aware however that despite this you may still be called as witness in any disciplinary proceedings
- 4.3 Investigations are not public and if the allegations against a Member are dismissed by the Conduct Convenor, then no details will be made public. Any information you are provided with during an investigation, including copies of determinations, are provided on the understanding that you will maintain the confidentiality of the information/ documentation.

## 5. What happens if the Institute does not accept the Complaint for investigation?

- 5.1 The first stage of the Complaint process requires the Convenor of the Conduct Committee to make a preliminary assessment of your Complaint. If the Convenor of the Conduct Committee decides that the Complaint will not be accepted for investigation, you will be advised of this in writing and reasons why.

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

- 6.1 If the Complaint is accepted for investigation the relevant Member/former Member is known as the Respondent.
- 6.2 When an allegation is received, we first consider whether the issue amounts to a matter that:
  - (a) is required by law to be referred to another investigative body, relevant authority or another appropriate regulator; or
  - (b) the Institute is empowered by the Constitution, or under relevant delegations, or the Member contract to refer the matter to another appropriate regulator or investigative body. If the matter is accepted for investigation by any other appropriate regulator or investigative body the Institute will not take further action under the Scheme, pending the final outcome of that investigation. We will notify you if the other regulator or investigative body takes over the allegation.

- 6.3 All other allegations will be dealt with under the Scheme. However, if during the investigation any information is found that brings the case within another appropriate regulator, relevant authority or investigative body's remit, we can refer the matter at that time.
- 6.4 The Institute's Professional Standards Manager will manage the administration of the investigation process and if requested by the Convenor, gather relevant information for consideration by the Convenor of the Conduct Committee. This may include requesting copies of documentation from relevant parties, considering relevant professional guidance and perhaps obtaining witness statements.
- 6.5 The Professional Standards Manager is a member of our staff. At all stages during the Complaint and disciplinary processes, they are neutral and impartial. You will be given their name and contact details and they will be your contact throughout the investigation. Although they cannot give you legal advice they can inform you as to the Complaint process and progress.  
  
Further information is set out in the Institute's [guidance on Complaint Handling](#).
- 6.6 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.
- 6.7 It is the Convenor of the Conduct Committee who decides the best way to investigate the allegation and what relevant information they need to gather. The Professional Standards Manager may ask you to provide more details about the Complaint and relevant documentation in order to assist the investigation.
- 6.8 Correspondence from you to the Professional Standards Manager will be routinely acknowledged, so that you know it has been received.

## 7. How to find out if someone is a Member of the Institute

- 7.1 To check whether someone is a Member, visit our [website](#), or contact the Membership Team on 9239 6110 or email at [Memberservices@actuaries.asn.au](mailto:Memberservices@actuaries.asn.au)
- 7.2 Complaints can be made against any category of Member.

## 8. Can you make a Complaint against a former Member of the Institute?

- 8.1 Yes, but only if the Complaint concerns conduct which took place **while** they were a Member of the Institute.

## 9. What you can expect from us

9.1 We will:

- treat you with courtesy, consideration and respect
- be fair and reasonable and behave with integrity and honesty
- act impartially
- seek to answer your concerns, problems or Complaints as quickly as possible
- listen to your feedback to continue improving our profession
- collect, store, use and disclose your personal information in accordance with relevant law
- inform you about, and to explain, decisions that affect you

## 10. What is your role and what do we expect of you?

- 10.1 Under the Scheme you do not have a formal role and are not a party to the process. When someone makes a Complaint about a Member, the Institute takes over the matter and investigates it.
- 10.2 We may ask you to provide more details about the Complaint and relevant documentation to assist our investigation. In some cases we may ask to take a statement from you, which is a written record of the evidence of a witness. If the case is to be considered by a Tribunal (see section 8 below) we may ask you to appear as a witness. The Professional Standards Manager will notify you if this is the case.
- 10.3 In accordance with the Scheme and any relevant confidentiality and/or transparency considerations you will be informed of the outcome of the Complaint;
- 10.4 The Institute aims to provide a high level of service to all users. However, the Institute has a duty of care to its employees and needs to ensure that the ability of employees and volunteers to carry out their roles is not adversely affected by unacceptable actions or behaviours of individuals. In the very few occasions where actions or behaviour are considered unacceptable, the Institute has a policy to manage such behaviour and actions.
- 10.5 As such we ask that you treat us with the same courtesy, consideration and respect we are expected to give you. If we are subjected to rude or abusive behaviour, we may end an interview or phone call or we may choose to deal with you by correspondence only
- 10.6 You should also appreciate that the Professional Standards Manager acts impartially in dealing with Complaints. This means that Institute staff do not represent either the Complainant or the Respondent Member.= and for this reason cannot take instruction or direction from you as to how your Complaint is handled
- 10.7 If your contact details change please give us the details as soon as possible

- 10.8 It is most efficient if you contact the Institute in writing by email to [disciplinaryscheme@actuaries.asn.au](mailto:disciplinaryscheme@actuaries.asn.au)

## 11. What happens after the investigation stage?

### Professional Conduct Undertakings

- 11.1 A Professional Conduct Undertaking can be used at an early stage in the disciplinary process where the Respondent accepts the disciplinary allegations amount to Misconduct.
- 11.2 Professional Conduct Undertakings are available for less serious cases of Misconduct. Where a Respondent agrees to a Professional Conduct Undertaking this will be jointly considered by the Convenor of the Conduct Committee and the Convenor of the Tribunal who will approve or reject the Professional Conduct Undertaking. If the Professional Conduct Undertaking is approved, that will result in a finding of Misconduct against the Member and an outcome detailed in the Professional Conduct Undertaking. Whether the Professional Conduct Undertaking is published will be determined by the relevant Convenors. Information about publishing disciplinary matters is set out in the Institute's [guidance on Publication](#).

### Investigating Sub-Committee

- 11.3 Usually, after an 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 determine whether a Complaint should be further investigated and will establish an Investigating Sub-Committee (ISC) for that purpose.
- 11.4 The ISC meets in private which means that neither the Respondent nor the Professional Standards Manager attend. The ISC is comprised of at least three people. At least one Investigating Sub-Committee Member is always either a "lay person" or a qualified legal professional, and at least one is a Fellow of the Institute.
- 11.5 They must make a finding as to whether or not there is a prima facie case of Misconduct.
- 11.6 The ISC may:
- dismiss the case, which concludes the investigation subject to a referral to the disciplinary Tribunal which is explained below; or
  - make a finding of prima facie Misconduct and offer the Respondent an opportunity to accept a sanction, such as a reprimand, a fine up to \$10,000, a period of retraining, supervision or education. For former Members, where the allegation is particularly serious, they may offer an exclusion from Membership. If the Respondent accepts the ISC's determination, this concludes the matter; or

- for more serious cases, make a finding of prima facie misconduct and refer the case for a hearing before a disciplinary Tribunal.

## **Tribunals**

- 11.7 If Complaints are referred to a Tribunal, the allegations against the Respondent become a formal Complaint of Misconduct.
- 11.8 The independent Tribunal will decide whether the Complaint against the Respondent amounts to Misconduct. The Tribunal is comprised of at least three people. At least one Tribunal Member is always a “lay person”, at least one is always a legal professional and at least one Tribunal member is a Member of the Institute.
- 11.9 Tribunal hearings are usually held in person with the parties present but on some occasions, they may be held virtually. If the hearing is in person, it will usually be held in Sydney at the Institute’s offices.
- 11.10 Tribunal are private hearings. You may be called by either the Institute or the Respondent as a witness to give evidence. If you are called by the Institute to give evidence, you will be provided with further details about that process.
- 11.11 If a Tribunal makes a finding of Misconduct, they can impose a sanction. The sanctions available to a Tribunal may 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.

## **12. How long will the process take?**

- 12.1 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 the allegation is about. Factors that affect the timescales include:
- the complexity of the allegation;
  - the availability of those involved in the disciplinary process; and
  - the speed at which information or documents can be provided by Respondents and witnesses.

## **13. Can you get compensation?**

- 13.1 No, there is no power under the Scheme to award monetary compensation. The Scheme operates to serve the primary regulatory purpose of the protection of the public, as well as to uphold the confidence of the public in the actuarial profession, and in the Institute as its regulator.

## 14. Is mediation available?

- 14.1 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, but you may wish to consider exploring this separately and before you make your Complaint. Some issues may arise because of a misunderstanding or a lack of communication and before making a Complaint, you may want to consider whether the matter, or some elements of it, may be resolved through mediation.

## 15. Where can you get advice or support?

- 15.1 You are entitled to obtain independent legal advice about your rights in relation to any Complaint that you may make. In speaking with people other than the Institute or your legal advisor, you must respect the confidential nature of any ongoing, live investigation or hearing. 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.

## 16. Additional assistance

- 16.1 If you need additional assistance to participate in the disciplinary process, please tell the Professional Standards Manager.

## 17. Levels of service

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

## 18. Contact details

- 18.1 The Professional Standards Manager who deals with the receipt of Complaints and is responsible for the administration of the investigation of allegations, can be contacted at:  
[disciplinaryscheme@actuaries.asn.au](mailto:disciplinaryscheme@actuaries.asn.au)

## 19. Further information

- 19.1 Further information about the disciplinary process is available on the [Institute Website](#). The [Disciplinary Scheme](#) contains the rules which govern the process and the regulations and guidance set out the process to be followed.

## Document control

| Version | Date of publication | Overview                                                              |
|---------|---------------------|-----------------------------------------------------------------------|
| 1.0     | 1 July 2024         | Guidance Making 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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