

Publication of Disciplinary Action

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 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).
- 1.4 This guidance applies to all Complaints being considered under the Scheme as amended from time to time. It may be updated in the interim where circumstances require a change. 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.
- 1.5 This guidance does not override any provision of the Scheme.
- 1.6 It is for use by:
 - (a) 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;
 - (b) any other party, so they are aware of the powers of a Scheme decision maker, and procedures to be followed; and
 - (c) Institute staff.
- 1.7 This guidance aims to promote transparency and consistency in the approach of the Scheme decision maker, and the Institute staff.
- 1.8 This guidance should be read in conjunction with:
 - (a) the Scheme; and

- (b) any regulations issued by the Council; and
 - (c) any other relevant guidance published by the Council.
- 1.9 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.
- 1.10 Definitions of defined terms used in this guidance are set out in the Scheme and regulations.
- 1.11 This guidance should not be treated as legal advice. When appropriate, the Council's legal advisors will advise the Scheme decision maker, and the Institute staff, on questions of law and/or procedure, which may include advice on the use of this guidance.
- 1.12 The Council will review this guidance every five years or earlier if needed.

2. Aim

- 2.1 This guidance:
- (a) explains why the Institute publishes information about disciplinary hearings and decisions;
 - (b) sets out the principles to be followed in considering whether to publish information;
 - (c) sets out what information should and should not be published before and after a hearing takes place or an order is made under the Scheme;
 - (d) sets out where published information is located; and
 - (e) sets out how long information should be published for.

3. Why does the Institute publish information about disciplinary hearings and decisions?

- (a) For transparency of how decisions under the Scheme are reached.
- (b) To maintain public confidence in the Institute's disciplinary process and the profession as a whole.
- (c) To demonstrate how the Institute acts in the public interest.
- (d) To educate Members and their employers about behaviour which may amount to Misconduct.

4. Principles to be applied to a publication decision

4.1 This guidance note sets out what information should usually be published. The Scheme decision maker must consider the issue of publication, considering any submissions from the parties, and will decide what information should be published and what form publication should take. They may decide that the whole, or part, of those matters should not be published. They have full discretion over decisions relating to publication.

4.2 The Scheme decision maker should consider, and record their decision, in relation to

- (a) whether the determination/decision/order/outcome should be published in whole or in part; or
- (b) a summary or other material be published in relation to the case, being the Case Publication ; and
- (c) the duration of the publication on the Institute website.

4.3 The following should be taken into consideration when determining what information should be published:

(a) The public interest

The most important consideration for all publication decisions must be the public interest.

(b) Interests of the Respondent/ Appellant/ Applicant

The need to keep the public informed should be balanced against the consequences of publication for the Respondent and Complainant. Where the consequences of publication on the Respondent or Complainant outweigh the consideration to keep the public informed, the matter being published may be anonymised, redacted, or not published at all. The onus will be on the party requesting anonymisation, redaction or non-publication to persuade the Scheme decision maker that this is required.

(c) Confidentiality

- (i) If there is any information being published which may identify a third party or should remain confidential for other reasons such as the commercial interests of third parties, the Scheme decision maker should consider whether it is appropriate for parts of the matter being published to be redacted or for names to be anonymised (or, in some circumstances, not to publish the determination).
- (ii) Details of any medical conditions should be kept confidential.

(d) Case by case basis

Each decision on publication is taken on its own merits, considering the circumstances of the case.

5. Information published after a hearing or order being made

- 5.1 The Institute may publish, or notify, the following matters:
- (a) the making, cancellation, or amendment of an order;
 - (b) the making of an (agreed) Professional Conduct Undertaking;
 - (c) any final determination or orders of a Tribunal
 - (d) any final determination or orders of an Appeals Board,
- 5.2 Where a Scheme decision maker does not make a finding of Misconduct, they may decide that publication of the final determination is not necessary.
- 5.3 Determinations and orders should be published in accordance with the Scheme. Publication and is subject to any decision on publication by the Scheme decision maker.

6. Information that should not be published

- 6.1 Published determinations should not name any third party, including the Complainant or any witnesses.
- 6.2 If an Investigating Sub-Committee determines there is not a prima facie case of Misconduct, that determination should not be published. The Convenor of the Conduct Committee, the Professional Standards Manager and the Respondent will be provided with a confidential copy of the determination. This is because it is in the public interest for them to understand the outcome of the investigation. Providing a confidential report to the Convenor of the Conduct Committee, the Respondent and the Complainant does not amount to publication. This means that anyone who receives the report must treat it as confidential
- 6.3 If:
- (a) an Investigating Sub-Committee determines there should be a referral to a Disciplinary Tribunal; or
 - (b) the Respondent does not accept the determination and the matter is referred to a Tribunal hearing; that determination of the Investigating Sub-Committee should not be published.
- 6.4 Written decisions of the Investigating Sub-Committee should not be published. Where an Investigating Sub Committee decides that a Complaints should not be investigated, their decision will be shared with the Convenor of the Conduct Committee, the Complainant, the Professional Standards Manager and the Member or former Member the Complaints is about.
- 6.5 Details of a Respondent's medical condition and any health-related outcomes must not be published in any published order or outcome following the hearing
- 6.6 Determinations and orders that are not published may be shared on a confidential basis with the Conduct Committee.

7. Where is information published?

- 7.1 Determinations and orders are usually published on the Institute's website:
- 7.2 Sanctions and outcomes are usually recorded in the Institute's Actuarial Member Register.
- 7.3 A Case Publication is usually published:
 - (a) on the Institute's website; and
 - (b) an announcement is made in The Bulletin (weekly update to all Members) and ;
 - (c) sometimes referred to in an article in the Actuaries Digital - the Institute's online magazine for Members
- 7.4 Where it is considered appropriate, the relevant Scheme decision maker may decide that there should be additional publication (for example in a local newspaper, a trade magazine or an Institute press release). The Scheme decision maker should explain why additional publication is appropriate.
- 7.5 The Institute may issue a press release if it considers that the wider public should be informed about a case of particular public interest.

8. How long is published information available for?

- 8.1 All published determinations will have a publication date. At the time of making a determination, the Scheme decision maker will state how long the determination should be published for.
- 8.2 Misconduct determinations should usually remain on the Institute's website for a period of three years from the date of publication, or the period that any exclusion or expulsion is in force for, whichever is longer.
- 8.3 If a Respondent is excluded or expelled for five years and either does not reapply for Membership or the readmission application is refused, the determination should usually remain on the Institute's website for a period of 10 years after the end of the period of exclusion or expulsion.
- 8.4 Sanctions and outcomes will be removed from the Institute's Actuarial Member Directory at the same time that the relevant determination or order is removed from the website.
- 8.5 A disciplinary finding, or Professional Conduct Undertaking, will be recorded on a Respondent's Institute record but will not be publicly available on the Institute's website after the period of publication has ended. The determination may be referred to in future disciplinary proceedings against the Respondent but cannot be provided to third parties outside the Institute after the end of the publication period, subject to any Mutual Recognition Agreements the Institute may have with other professional actuarial bodies here and overseas, and/or any other legal requirements. The Institute cannot comment on disciplinary findings once the period of publication has ended.

- 8.6 Information will be removed from the Institute’s website in line with this policy. However, many internet search engines manage information by “caching”. The Institute has no control over the time it may take search engines to update their records. Any availability of information after it has been removed from the Institute’s website is beyond the Institute’s control.

Document control

Version	Date of publication	Overview
1.0	1 July 2024	Guidance for Publication of Disciplinary Action Disciplinary Scheme effective 1 July 2024

Disclaimer

This guidance has been prepared by the Institute to assist persons who wish to make a Complaints 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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