

ARITA Conduct Investigation Procedures

Purpose

This document sets out ARITA's conduct and disciplinary procedures for the investigation of complaints and concerns about the professional conduct of an ARITA member in accordance with clause 8.1(b) of the ARITA Constitution. ARITA's conduct and disciplinary processes can be found in clause 8 of the ARITA Constitution and clause 6 of the ARITA Regulations.

This document should be read in conjunction with the *ARITA Conduct Investigation Process – Overview* flow diagram that generally explains how the conduct and disciplinary process operates.

The purpose of this document is to provide further information about ARITA's conduct investigation procedures.

Complaints

A complaint under the ARITA Constitution is a written complaint made to ARITA about the professional conduct of a member as a practitioner. This refers to the conduct of work of a registered trustee, registered liquidator, other insolvency practitioner, or a legal practitioner.

An ARITA member includes:

- all classes of members, and
- all members except those that have had their membership terminated in accordance with Clause 7 of the ARITA Constitution¹.

Making a complaint

Complaints must be made to ARITA by completing the ARITA complaint form, which can be downloaded from ARITA's website, attaching any relevant documents, and sending it to:

Email: complaints@arita.com.au	Mail: CEO ARITA GPO Box 4340 SYDNEY NSW 2001
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Supporting documentation must be provided when you submit the form.

¹ Constitution 1.1, 6.2

Joint Appointments and Firm Procedures

The following scenarios and approaches are taken in relation to complaints received by ARITA involving joint appointments or firm procedures:

Scenario	Approach
Administrations conducted jointly by ARITA members	<p>Where a complaint relates to matters regarding the conduct of the administration, ARITA will investigate all of the ARITA members appointed to the administration on a joint basis.</p> <p>Where a complaint relates to matters regarding the personal conduct of an ARITA member, ARITA will investigate the conduct of that member.</p>
Administrations conducted jointly by ARITA members and non-members	<p>Where a complaint relates to matters regarding the conduct of the administration, ARITA will investigate the conduct of the administration on the basis that at least one of the appointees is a member. ARITA is unable to investigate practitioners who are not members of ARITA.</p> <p>Where a complaint relates to matters regarding the personal conduct of an ARITA member, ARITA will investigate the conduct of that member</p> <p>Where a complaint relates to matters regarding the personal conduct of a non-member, ARITA will be unable to investigate the matter.</p>
Firm procedural issues involving administrations conducted by ARITA non-members	<p>ARITA is unable to investigate complaints related to administrations that are conducted by practitioners who are not members of ARITA.</p> <p>Where a complaint relates to firm procedural issues of firms that have ARITA members who are registered liquidators and trustees, ARITA may commence a concern and investigate these matters further.</p>

Concerns

A concern under the ARITA Constitution is information available to ARITA about the professional conduct of a member as a practitioner other than by way of a complaint. This refers to the conduct of work of a registered trustee, registered liquidator, other insolvency practitioner, or a legal practitioner.

An ARITA member includes:

- all classes of members, and
- all members except those that have had their membership terminated in accordance with Clause 7 of the ARITA Constitution².

Identification of a concern

Circumstances giving rise to a concern may be identified to or by ARITA via a number of means. This includes, but is not limited to:

- Judgments or other court documents or transcripts that relate or refer to the conduct of a member
- Announcements or advice of action taken by a regulator or another professional body;
- Media articles, or
- General feedback from external parties, including other members.

Acknowledgement and allocation of Technical Specialist

All complaints received and concerns identified by ARITA are recorded on ARITA's internal database. This information is not available to the public. The receipt of a complaint is acknowledged in writing.

In accordance with procedures implemented by ARITA's Professional Conduct Committee ("PCC"), the initial review of a complaint or concern is undertaken by one of ARITA's Technical Specialists³.

Technical Specialists fulfil a secretariat role to the PCC. Technical Specialists also triage complaints and concerns to identify matters that are not suitable for formal investigations by the PCC or warrant educative advice to complainants. Other than dismissing complaints or concerns that do not require formal investigation, Technical Specialists have no other determinative role in the conduct investigation process.

Technical Specialists are selected to ensure that they are free from actual or perceived conflicts of interest. The following considerations are taken into account when determining a Technical Specialist's independence:

- whether the Technical Specialist has worked directly for or with the member, the complainant or a firm where the member or complainant is or was a Partner or Principal, in the preceding two years
- whether the Technical Specialist has a relationship with the member or complainant, unless that relationship is trivial⁴

² Constitution 1.1, 6.2

³ ARITA Regulation 6.1(a)

⁴ Refer to Clause 6.5 of the ARITA Code of Professional Practice for guidance on trivial relationships

- whether there is a history of animosity between the Technical Specialist and the member or complainant, and
- whether there are any other relationships between the Technical Specialist and the member or complainant.

The above independence guidelines also apply in relation to consideration of specific complaints or concerns by members of the PCC.

Consideration of independence is an on-going process.

Investigations

Investigations are conducted in accordance with the steps detailed in *ARITA's Conduct Investigation Process – Overview* flow diagram. Investigations are conducted in writing, including confirmation of the basis of the complaint and seeking consent from the complainant to contact the member and the provision of details of the complaint or concern to the member with a request for a response to the matters raised including any relevant documentation.

After consideration of the information provided, ARITA's Chief Executive Officer ("CEO"), in consultation with the Technical Specialist, will determine whether the complaint or concern warrants:

- resolution without further referral to the PCC– that is, that the complaint or concern is dismissed, or it is upheld but does not warrant further referral⁵. If it is upheld, one outcome may be the recommendation of remedial action by the member or the member's firm, or
- by decision of the CEO, referral to the PCC for further investigation and/or Company Disciplinary Proceedings⁶ (referred to below as ARITA Disciplinary Proceedings) against the member.

Consultation with others

From time to time the Technical Specialist may consult with ARITA's other Technical Specialists, the CEO or other subject matter experts when undertaking the initial review of a complaint or concern, subject to any issues of confidentiality or conflict of interest⁷.

In addition, the CEO may consult the members of the PCC prior to determining whether it is necessary to refer the matter for formal investigation and/or to commence ARITA Disciplinary Proceedings.

⁵ Remedial action may be required by the member or the member's firm

⁶ Defined in the ARITA Constitution to mean 'the process leading to a decision made by the Company [ARITA] in relation to any Member in accordance with clause 8 and as amended by the Regulations from time to time.'

⁷ ARITA Constitution clause 8.2(b)

ARITA may from time to time provide information regarding a complaint or concern to and consult with regulators as part of the investigation process.

Professional Conduct Committee

The PCC comprises at least three members, two of which must be members of the Board, subject to any limitations resulting from conflicts of interest.

In November 2015, the ARITA Board delegated the following constitutional powers to the PCC⁸:

- clause 7.2 (d) - The Board may terminate a Member's Membership as prescribed in the Regulations from time to time.
- clause 8.3 - Discretionary termination or suspension of Membership
- clause 8.5 - Notification and publication
- and all powers related to Section 8 of the Constitution that exist in the Regulations with the delegated authority to deal with complaints on its behalf.

Complaints or concerns may be referred to the PCC for formal investigation and/or ARITA Disciplinary Proceedings. The member must be informed of the commencement of ARITA Disciplinary Proceedings⁹

Investigations by the PCC may comprise a review of the information collated by the Technical Specialist as well as any additional information (written submissions, letters, emails or other documents) requested from or provided by the member. The PCC primarily conducts investigations and ARITA Disciplinary Proceedings via correspondence¹⁰. In addition, the PCC may invite members to be 'heard' via a zoom meeting prior to the determination of disciplinary proceedings.

Any invitation to address the PCC in relation to disciplinary proceedings will be subject to the following stipulations:

- the PCC will invite the member to address the PCC via zoom, however there is no obligation for the member to accept the invitation and the member will not be disadvantaged by electing not to address the PCC. A member may make a written submission in lieu of attending the meeting
- the PCC will notify the member of the meeting date and time and provide a link for their attendance. Due notice will be provided of the meeting
- the member may choose to have a legal representative attend the meeting and address the PCC on their behalf, however the invitation does not extend to other staff of the member or the legal representative. It should be noted that there is no requirement for legal representation

⁸ ARITA Constitution clause 22.6(a) (as at Nov 2015)

⁹ ARITA Constitution clause 8.1(f)

¹⁰ ARITA Regulation 6.1(c)

- any comments made by or on behalf of the member at the meeting are to be confined to the subject matter of the disciplinary proceedings and it should not be considered as an opportunity to provide commentary about ARITA's conduct processes
- the member or their representative will be invited to make an opening statement to the PCC regarding the subject matter of the disciplinary proceedings
- the PCC may request clarification from the member or their representative regarding matters raised in their address or in previous submissions made to the PCC or, without restriction, other matters as deemed appropriate by PCC members
- the meeting will be recorded for internal ARITA reference to ensure proper preparation of formal minutes and the recording will not otherwise be made available to the PCC or member/member's representative. The attendees will be advised of any such recording at the commencement of the meeting
- a determination of the disciplinary proceedings will not be provided at the meeting and will be made in writing in due course.

The PCC may determine that:

- the complaint or concern is unsubstantiated¹¹
- the complaint or concern is substantiated but no further action is appropriate as the matter has already been addressed and/or it is not in the interests of the public, the member, ARITA or the insolvency profession that any penalty be applied¹², or
- the complaint or concern warrants being escalated for further consideration by the PCC in accordance with the powers delegated to it by the Board.

The member will be informed of the intention of the PCC to escalate the complaint or concern for further consideration by the PCC in accordance with the powers delegated to it by the to the Board and will be given the opportunity to make a submission to the PCC as to why the matter should not be escalated.

Based on further information provided by the member, the PCC may reconsider its decision to escalate the complaint or concern on the basis that the matter has already been addressed and/or it is not in the interests of the public, the member, ARITA or the insolvency profession that any penalty be applied.

The PCC, in accordance with the powers delegated to it by the to the Board, may determine that the matter be referred to a Regulator or a Foundation body or appropriate law enforcement body should there appear to be a fraud, serious misconduct or breach of the law alleged whether or not the member has given a satisfactory response to ARITA¹³.

¹¹ Remedial action may be required by the member or the member's firm

¹² Remedial action may be required by the member or the member's firm

¹³ ARITA Regulations 6.2(g)

Consideration by the PCC in accordance with the powers delegated to it by the ARITA Board

The PCC may further consider the complaint or concern in accordance with the powers delegated to it by the Board and determine whether:

- there has been a breach of professional conduct, and/or
- a member has brought ARITA or the insolvency profession into disrepute.

The penalties that may be applied, as a result of the determination made in relation to the PCC's further consideration in accordance with the powers delegated to it by the Board, include:

- termination of membership, or suspension of membership for a period
- a reprimand, which will also be recorded on the member's disciplinary record and may be taken into account in considering penalties should the member be subject to any future ARITA Disciplinary Proceedings
- a direction that the member attend specific continuing professional education courses
- requiring the member to source peer review by another member nominated by the PCC or its delegate
- limitations on the member's professional practice
- attaching one or more conditions to the member's membership¹⁴
- the payment of compensation, damages or reparations to any person
- foregoing payment of any future remuneration from an engagement or activity the subject of the Disciplinary or Legal Proceedings¹⁵
- a requirement to reimburse remuneration paid to the member or the member's firm as a consequence of the engagement the subject of the Disciplinary or Legal Proceedings, and
- the imposition of a financial penalty which requires the member to pay a sum of money by way of fine, compensation or damages to ARITA or to another person.

The member will be notified of any proposed penalty and the member will be invited to make a submission in writing in relation to that proposed penalty.

Notwithstanding the above, the PCC in accordance with the powers delegated to it by the Board may, in its discretion, not impose a penalty.

Notification and Publication

Notification of any decision in relation to disciplinary proceedings and any penalty or sanction imposed may be:

¹⁴ Remedial action may be required by the member or the member's firm

¹⁵ Defined in the ARITA Constitution to mean 'proceedings taken in a court or in a tribunal or board or statutory committee whether under state or federal law in relation to the professional conduct of the member as a practitioner, including proceedings taken by a Regulator or a Foundation Organisation.'

- given to a Regulator, Foundation Organisation and any other bodies, and/or
- published in the official publication of ARITA and on ARITA's website or otherwise in such a manner and form as may be authorised by the PCC in accordance with the powers delegated to it by the Board.¹⁶

Communication

Complainant (if there is one)	<ol style="list-style-type: none"> 1. Initial receipt of complaint 2. Initial review by Technical Specialist <p>Further request for documents and/or information, if applicable</p> <ol style="list-style-type: none"> 3. Notification of determination of complaint
Member	<ol style="list-style-type: none"> 1. Initial review by Technical Specialist 2. Referral to PCC, including notification of commencement of ARITA Disciplinary Proceedings, if applicable 3. Determination of PCC and intention of PCC to further consider the complaint or concern in accordance with the powers delegated to it by the Board , if applicable 4. Further consideration by the PCC in accordance with the powers delegated to it by the Board), if applicable 5. Intention to impose penalty, if applicable 6. Final determination of complaint or concern and intention to refer to Regulator and/or Foundation Body, if applicable 7. Referral to Regulator and/or Foundation Body, if applicable

¹⁶ ARITA Constitution clause 8.5(b)