



ARITA Complaints Investigation Procedures

Purpose

This document sets out ARITA's conduct and disciplinary procedures for the investigation of complaints 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 5 of the ARITA Regulations.

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

The purpose of this document is to provide further clarity in relation to the internal protocols in place.

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 Constitution.¹

Notwithstanding the above, if a member's membership has been terminated, ARITA may still investigate a complaint against the member if the alleged conduct took place at a time when the membership was active.

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	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. Where a complaint relates to matters regarding the personal conduct of an ARITA member, ARITA will investigate the matter on an individual basis.

¹ Constitution 1.1, 6.2

Scenario	Approach
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 matter on an individual basis.</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>

Making a complaint

Complaints may 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 9985 SYDNEY NSW 2001	Facsimile: +61 2 9290 2820
--	--	-------------------------------

The complaint form details the information that should be provided with it when it is submitted.

Acknowledgement and allocation of Technical Specialist

All complaints received by ARITA are recorded on ARITA's database and acknowledged in writing.

Complaints are allocated to one of ARITA's Technical Specialists for attention. 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 trivial²;
- 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 members participating in ARITA's Professional Conduct Committee ("PCC") and any meetings of the National Committee ("NC") to consider matters referred to the NC by the PCC.

Consideration of independence is an on-going process.

Investigations

Investigations are conducted in accordance with the steps detailed in ARITA's Complaints Investigation Process – Overview flow diagram. Investigations may be conducted in writing, in person and/or via the telephone.

Generally, the investigation steps followed by the relevant Technical Specialist include, but are not limited to, the following:

- confirmation of the basis of complaint and consent to contact the member sought from complainant;
- provision of details of the complaint to the member with a request made for a response to the complaint including any relevant documentation;
- a meeting with the member and/or inspection of their files and/or firm processes, where this is considered warranted.

After consideration of the information provided, the Technical Specialist in consultation with ARITA's National Secretary, will determine whether the complaint should be:

- resolved without further referral to the PCC or NC – that is, that the complaint is dismissed, or it is upheld. If it is upheld, one outcome may be remedial action by the member or the member's firm; or
- by decision of the National Secretary, referred to the PCC for ARITA disciplinary proceedings to be commenced against the member.

Consultation with others

From time to time the Technical Specialist may consult with ARITA's other Technical Specialists, the National Secretary or other subject matter experts when considering a complaints matter, subject to any issues of confidentiality or conflict of interest (point 4).

In addition, the National Secretary may consult the members of the PCC prior to determining whether it is necessary to commence ARITA disciplinary proceedings.

² Refer to Clause 6.5 of the ARITA Code of Professional Practice for guidance on trivial relationships

ARITA may from time to time provide information regarding a complaint 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 National Committee, subject to any limitations resulting from conflicts of interest (refer point 4)³.

Investigations by the PCC may comprise a review of the information collated by the Technical Specialist as well as any additional information (letters, emails or other documents) requested from the member.

The PCC may determine that:

- The complaint is unsubstantiated⁴;
- The complaint 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 applied⁵; or
- The complaint warrants being referred to the NC.

The member is advised of the intention to refer the matter to the NC and is given the opportunity to make a submission to the PCC as to why the matter should not be referred.

Based on further information provided by the member, the PCC may reconsider its decision to refer the matter to the NC 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.

Where a matter is referred to the NC, the PCC must provide reasons for its determinations and provide detailed advice to the NC in relation to the matter. The PCC may also recommend to the NC 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 and about which the member has not given a satisfactory response to ARITA.⁶

National Committee

The NC may review the PCC's investigation and findings 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 following penalties may be applied as a result of the NC's determination:

- 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;

³ ARITA Constitution clause 8.2(b)

⁴ Remedial action may be required by the member or the member's firm

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

⁶ ARITA Regulations 5.2(e) and 5.2(g)

- a direction that the member attend specific continuing professional education courses;
- requiring the member to source peer review by another member;
- seeking agreement to other limitations on the member’s professional practice; and/or
- attaching one or more conditions to the member’s membership.

Notwithstanding the above, the NC may, in its discretion, not impose a penalty.

Notification and Publication

The NC may also determine whether any decision in relation to disciplinary proceedings and any penalty imposed should be:

- 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 NC.

Communication

At a minimum the complainant and member will be advised of the progress of the complaint at the following stages:

Complainant	<ol style="list-style-type: none"> 1 Initial receipt of complaint 2 Initial review by Technical Specialist 3 Final determination of complaint
Member	<ol style="list-style-type: none"> 1 Initial review by Technical Specialist 2 Referral to PCC, if applicable 3 Intention to refer to NC, if applicable 4 Referral to NC, if applicable 5 Intention to impose penalty, if applicable 6 Final determination of complaint and intention to refer to Regulator and/or Foundation Body, if applicable 7 Referral to Regulator and/or Foundation Body, if applicable