

ARITA Concerns Investigation Procedures

Purpose

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

This document should be read in conjunction with the *ARITA Concerns 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.

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 Constitution.¹

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

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.

¹ Constitution 1.1, 6.2

- Where circumstances that may give rise to a concern are identified to or by ARITA, ARITA will review the nature and potential seriousness of the circumstances, and the source of their identification, in order to determine if they warrant being identified as a concern.

Allocation of Technical Specialist

All concerns identified to or by ARITA are recorded on ARITA's database.

Concerns 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 Concerns 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:

- provision of details of the concern to the member with a request made for a response to the concern 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 concern should be:

- resolved without further referral to the PCC or NC – that is, that the concern 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

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

- 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 concern, 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.

ARITA may from time to time provide information regarding a 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 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 concern is unsubstantiated⁴;
- The 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 applied⁵; or
- The concern 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, Foundation body or appropriate law enforcement body, if considered appropriate.⁶

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)

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;
- 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 member will be advised of the progress of the concern at the following stages:

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 concern and intention to refer to Regulator and/or Foundation Body, if applicable 7 Referral to Regulator and/or Foundation Body, if applicable
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