

Complaints Procedures

06 March 2013

This document should be read in conjunction with the “ACAA Complaints Policy”, which may be found on www.access.asn.au.

1. Where a complaint is made against the Management Committee or one of its members and the complaint has not been resolved informally, the Management Committee shall refer the matter directly to a Complaints Tribunal convened for the purpose.
2. Where any other complaint (other than a complaint which in the opinion of the Management Committee is not genuine, is trivial or vexatious) is made,
 - a) and is one that is able to be considered according to the ACAA’s Complaints Policy;
 - b) and has not been resolved informally;
 - c) it shall be referred to a Complaints Review Committee (CRC). The CRC will be made up of the ACAA’s President (or nominee) and Secretary together with a third non-Executive Management Committee member appointed for the purpose, for review. The CRC shall then
 - d) refer the matter to the Management Committee, together with its recommendations as to whether it should be referred to a Complaints Tribunal convened for the purpose.
3. A complainant, and where appropriate a respondent(s) shall, at all times be notified of progress of the matter according to the provisions of the ACAA’s Complaints Policy:
4. A Complaints Tribunal convened pursuant to Clauses 1 or 2 shall consist of –
 - a) a lawyer (not being ACAA’s solicitor);
 - b) an ACAA member (not being a member of the relevant CRC); and
 - c) any other person of good character and repute nominated by the relevant Department of Fair Trading/Consumer Affairs.
5. The Complaints Tribunal shall elect one of its members to Chair the Tribunal, who shall appoint another of its members to be Secretary.
6. The Complaints Tribunal shall inquire into the substance of any complaint referred to it. Relevant parties shall comply with the directions of the Complaints Tribunal in the course of its investigation of its work.
7. Costs incurred by the ACAA Complaints Tribunal and/or its members associated with the complaint shall be borne by the unsuccessful party unless agreed otherwise by the parties before proceeding.

These costs may include, but not be limited to, the following: –

 - a) room hire for a hearing room plus two breakout rooms for use by both parties to the complaint for private discussions with advisors;

- b) time expended by members of the Tribunal;
- c) any travel costs necessarily incurred by members of the Tribunal;
- d) copying of transcripts and other incidental expenses of the Tribunal.

A detailed, itemised breakdown of costs will be provided.

8. The Complaints Tribunal shall decide all matters referred to it in accordance with the principles of equity and good conscience, but is not bound by the rules of evidence. The Complaints Tribunal shall conduct its proceedings in a fair and proper manner in accordance with the principles of natural justice.

9. Unless the Management Committee determines otherwise the Complaints Tribunal shall proceed as follows: -

- a) The Complaints Tribunal shall obtain a written undertaking from the complainant that, in consideration of the Complaints Tribunal inquiring into the complaint, the complainant will not commence or prosecute any action or legal proceedings for defamation or like action, or seek to recover any loss or damage arising out of the conduct of an inquiry by a Complaints Tribunal, against any person who gives evidence (orally or in writing) or exercises any power or performs any duty as a member of the Association, member of the Management Committee, or other ACAA Officer or Employee.
- b) The respondent/s and complainant/s shall both be notified in writing of the date, time and location that the Complaints Tribunal is scheduled to meet. The member shall also be provided in advance with a copy of the allegations to be considered.

c) The Complaints Tribunal may request from the respondent/s, within a specified time, a written response to the matters contained in the complaint, in which case the respondent member/s will provide the written response as requested.

Respondents and complainants shall be given sufficient time to prepare their cases and may call witnesses to support their cases.

d) When the Complaints Tribunal meets, its chairman shall explain to the parties the process, which the Complaints Tribunal intends to follow.

Unless leave has been sought and granted before the initial meeting, the parties shall appear in person (representatives of corporate bodies must have appropriate written authority to make legally binding decisions) and may, by leave of the Complaints Tribunal, have other persons present to assist them in presenting their case and/or have the proceedings recorded.

e) The chairman will require the complainant to outline the allegations against the member. Members of the Complaints Tribunal are encouraged to ask questions of clarification. The chairman will then require the respondent/s to provide answers or explanations in response. The parties will be given ample opportunity to answer any allegations and clarify any matters.

f) The parties may present oral and/or documentary statements and other material, and are entitled to call witnesses and to tender documents. Subject to law, the Complaints Tribunal may require the member to produce any documents relevant to the proceedings, which are in the member's custody and control. A party giving an oral statement may give sworn evidence if they wish, but in any case may be asked questions by the Complaints Tribunal and by the other party. The Complaints Tribunal shall give all evidence (sworn or unsworn) such weight as is appropriate, and shall weigh such evidence appropriately in making its decision.

g) The Complaints Tribunal may, if it sees fit -

i) inspect and copy any relevant documents of the parties;

ii) take any sample or make any test;

iii) obtain advice from any specialist consultant or other expert;

iv) inspect any work which is relevant to the subject of the complaint;

v) adjourn proceedings from time to time;

vi) suspend proceedings pending the determination, by arbitration, expert determination, litigation or otherwise, of contractual issues in dispute between the parties; or

vii) make recommendations to the parties aimed at resolving the complaint.

10. The Complaints Tribunal may decide the matter at the conclusion of the hearing or may adjourn the proceedings to consider its decision. If the Complaints Tribunal requires time to consider its decision, it shall make that decision within 10 working days or such time as may be agreed between the parties and the Complaints Tribunal. Both parties will be notified of the outcome in writing.

11. The Chair of the Complaints Tribunal shall prepare a written report on the inquiry stating the issues in dispute and the Complaints Committee's decision(s) together with reasons and shall forward a copy of this report, signed by all members of the Complaints Tribunal, to the member (respondent), the complainant and to the ACAA Management Committee.

12. The Complaints Tribunal, if it finds the complaint to be justified, may resolve that the Management Committee should: -

a) caution the member/s;

b) reprimand the member/s;

c) seek and obtain undertakings from the member/s in relation to future conduct;

d) the Committee may, by resolution, and pursuant to Article 10 of the Association's Articles of Association -

e) expel the member from the Association; or

f) suspend the member from such rights and privileges of membership of the Association as the Committee may determine for a specified period.

13. When it receives the Complaints Tribunal's resolution, the Management Committee will implement its decision as soon as possible and will notify the member/s in writing forthwith.

Notes:

(a) In the event that a professional Indemnity insurer accepts a member's claim in connection with aspects of the complaint matter it may not be possible for an ACAA Complaints Tribunal to continue with the matter. Further if the matter is settled 'out of court' the terms of settlement will normally include a mutual retraction of complaints.

(b) There is no ACAA Appeal procedure. A party wishing to challenge the outcome of the ACAA Complaints Tribunal has recourse to legal proceedings in the relevant State or Territory.

(c) It is the duty of all ACAA members, Officers and Employees to assist an inquiry by a Complaints Tribunal. No member shall, in connection with a complaint, be entitled to commence or prosecute any action or legal proceedings for defamation or like action, or to recover any loss or damage arising out of the conduct of an inquiry by a Complaints Tribunal, against any person who gives evidence (orally or in writing) or exercises any power or performs any duty as a member of the Association, member of the Management Committee, or other ACAA Officer or Employee, or a member of the Complaints Tribunal.

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