

Regulation 2. Disciplinary proceedings

Disciplinary Proceedings

1. Disciplinary Action – Definitions, Liability Under The Code And Summary Expulsion

1.1 Definitions

In this Regulation:

“**Allegation**” means a report asserting Misconduct by a Relevant Member, which:

- (a) is in writing, signed by the person or persons making an allegation of Misconduct;
- (b) specifies the place or places where the alleged Misconduct occurred;
- (c) specifies the time or times when the Misconduct was asserted to have occurred;
- (d) specifies the type of Misconduct asserted (preferably by reference to the particular relevant principles of the Code), and contains a supporting submission of relevant facts and circumstances; and
- (e) is delivered to the National Office or to any Chapter office of the Institute.

“**Assessor**” means the Fellows appointed in accordance with clause 6.2 of this Regulation, collectively, the “**Panel of Assessors**”.

“**Code**” means the Institute Code of Professional Conduct as approved and published by the National Council from time to time.

“**Complainant**” means the person or persons making an Allegation.

“**Conciliation**” means conciliation where the neutral third party conciliator is entitled to offer opinion and advise the parties about the interpretation of the facts put forward in the dispute, the merits of the positions of the parties and the terms of settlement, but has no determinative role in resolving the dispute.

“**Convenor**” means the Tribunal member appointed to the role in accordance with clause 6.3(a) of this Regulation.

“**Determination**” means a finding or order of the Tribunal.

“**Fellow**” means a Member who is a Fellow in accordance with that class of Membership set out in the Regulations.

“**Misconduct**” means conduct contrary to the Code.

“**person**” means a natural person (an individual).

“**Institute Conciliation**” means Conciliation in accordance with clause 3.4 of this Regulation.

“**Relevant Member**” means a person, asserted in the relevant Allegation to be guilty of Misconduct, who was a Member at the time that the asserted Misconduct or relevant event occurred, but in the circumstances of the asserted Misconduct, was not a Representative.

“**Representative**” means a Member who is a National Councillor, Chapter Councillor, Institute National Committee member, Chapter Committee member, Senior Counsellor; Assessor, Tribunal Member, Competition Advisor, National Awards Director, Awards Jury member, or Institute or related

body corporate staff member, while fulfilling the functions of that office or position, or any Member not falling into those categories who, in the opinion of the majority of the CEO of the Institute, chairperson of the Board, National President and Secretary was acting for and on behalf of the Institute, in the circumstances and at the time of the alleged Misconduct.

“**Senior Counsellor**” means a person appointed in accordance with clause 6.1 of this Regulation.

“**Tribunal**” means the tribunal established in accordance with clause 6.3 of this Regulation, made up of Tribunal members.

1.2 Liability under the Code

- (a) Any Relevant Member whose conduct is found by the Tribunal to be contrary to the Code is liable to the sanctions listed in clause 4.8 of this Regulation.
- (b) Where a Relevant Member is also a director of a company, or a partner of a partnership engaging in the practice of architecture, that Relevant Member is liable for any Misconduct by the company or partnership which, if it had been undertaken by the Relevant Member, would amount to Misconduct.

1.3 Summary expulsion

Any Member convicted of any indictable offence or serious indictable offence (or equivalent) or any offence which, if committed within the State or Territory in which he or she resides, would be an indictable offence or serious indictable offence (or equivalent) will, at the discretion of the National Council, be expelled from membership of the Institute effective upon service of a notice under the hand of the National President or the Secretary notifying the Member of the decision of the National Council.

2. Alternative Dispute Resolution Options

2.1 Any Member or member of the public with a dispute or grievance relating to a Relevant Member may pursue the matter outside the Institute’s procedures, through other dispute resolution processes not limited to:

- (a) mediation;
- (b) conciliation; or
- (c) litigation,

and if he or she does so, and the process outside the Institute involves any of the same facts and circumstances as the enquiry to the Institute, all Institute procedures will cease. In that case, the Institute’s informal procedures will not recommence. Institute’s formal procedures may recommence, or begin, once all outside procedures are completed, including any appeal periods, but only on written application by the Complainant, and at the Institute’s discretion.

2.2 In any disciplinary proceeding (including both informal and formal), no costs of these disciplinary procedures to any person may be recovered from the Institute, nor may the Institute order any person to pay any part of another person’s costs, except that in accordance with clause 4.9 of this Regulation, the Institute may recover its own costs from a Relevant Member found guilty of Misconduct.

3. Informal Complaint Procedure

3.1 Receipt of a query

- (a) Upon receipt by the Institute of:

- (i) a query from a Member or a member of the public regarding the service provided by a person acting as an architect, or
- (ii) a grievance regarding the service provided by a person acting as an architect, the

Institute must first establish whether or not the person is a Member.

- (b) If the person is not a Member, the enquirer must be advised by the Institute of this fact and informed that the Institute cannot assist for this reason. If the person is a Member, the enquirer will be offered free of charge assistance by a Senior Counsellor, and advised that if the enquirer and the Member agree, the query or grievance may be referred immediately to Institute Conciliation. If the enquirer does not wish to use the informal procedures, or the query or grievance relates to the conduct of a Member and not to the services provided by the Member as an architect, the enquirer will be advised that the only other Institute procedure available is to lodge a formal Allegation.

3.2 Senior Counsellor

- (a) The enquirer will be advised that the Senior Counsellor's services are free of charge and are offered on a voluntary basis to the Institute's Members and members of the public to assist in the resolution of disputes. The Institute will provide the enquirer with contact details and it is the responsibility of the enquirer to make the initial contact with the Senior Counsellor.
- (b) Upon initial contact by the enquirer, it is the duty of the Senior Counsellor to explain that:
 - (i) the role of the Senior Counsellor is to assist the parties to resolve a dispute;
 - (ii) the Senior Counsellor will neither impose a solution nor apportion blame;
 - (iii) if the Senior Counsellor is not able to satisfy the enquirer's query or grievance, the Senior Counsellor may seek permission from the enquirer to discuss the matter with the Relevant Member; and
 - (iv) if the query or grievance is referred to Institute Conciliation, or a formal Allegation is lodged, the Senior Counsellor's complimentary services will cease.

3.3 Private negotiations

- (a) Following any discussions with the Member, the Senior Counsellor will encourage the parties to resolve the query or grievance privately.
- (b) The Senior Counsellor may provide advice to one or more parties during this process but will not participate directly in the negotiations. If the parties are able to resolve the query or grievance, the matter is concluded for the purposes of this Regulation.

3.4 Institute Conciliation

- (a) Where the query or grievance was not able to be resolved by the parties with the assistance of a Senior Counsellor, and where the enquirer and the Member (or Relevant Member) have agreed to have the matter conciliated under Institute Conciliation, whether or not a formal Allegation in relation to any of these facts and circumstances has been received, a Senior Counsellor may be engaged by the enquirer and the Member (or Relevant Member) to act as a conciliator.
- (b) In such cases the relevant Chapter will provide the names of up to three Senior Counsellors, but not necessarily located in the Territory of the Chapter, who are able and willing to act as conciliators, one of whom may be the original Senior Counsellor.

- (c) The conciliator must establish a formal agreement between the parties to the query or grievance, regarding:
 - (i) the conduct of the Institute Conciliation (including the extent of the application of the rules of natural justice);
 - (ii) the degree to which any resolution the parties reach will be binding on the parties;
 - (iii) the rights of the parties to have third party representation;
 - (iv) the terms for payment of the conciliator; and
 - (v) any other matters the parties and the conciliator see fit.
- (d) If, with the assistance of the conciliator, the parties are able to resolve the query or grievance, the matter is concluded for the purpose of this Regulation, whether or not there is any subsequent breach of the terms of the resolution, or any formal Allegation in relation to the any of the same facts and circumstances has been received.

3.5 Failure in Institute Conciliation

If the parties are unable to resolve the query or grievance through Institute Conciliation, the conciliator must explain that the only remaining procedure within the Institute's disciplinary proceedings in this Regulation, is for a formal Allegation to be lodged by the enquirer.

3.6 Report from the Senior Counsellor

When a matter is finalised by a Senior Counsellor, the Senior Counsellor must prepare a report, preserving the anonymity of the parties, setting out the issues and the outcome, for consideration by the National Practice Committee (or other committee as determined by National Council) for research purposes and/or professional development planning.

4. Formal Complaint Procedure

4.1 Allegations against Relevant Members and companies or partnerships in which Member are directors or partners.

A formal allegation may be made against a Relevant Member or against a company or partnership of which one or more Members is a director or a partner, as the case may be. If the formal allegation is made against a company or a partnership, or a Relevant Member who is a director or partner, the formal allegation will be treated as if it was made against all directors or partners responsible for, or involved in, the alleged Misconduct.

4.2 Referral to the Assessor

- (a) Upon receipt by the Institute of an allegation against a Relevant Member, it will be referred to and considered by an Assessor appointed in accordance with clause 6.2, who is at arm's length from the Complainant and the Relevant Member and the facts and circumstances of the formal allegation.
- (b) The Assessor will first consider whether the formal allegation meets criteria of an Allegation. If the Assessor decides that further facts or information are required in relation to the matters set out in the formal allegation before reaching any conclusion, the Assessor may send a written request to the Complainant to provide further specified written material. If the Complainant does so, that material becomes part of the formal allegation. The Assessor may provide a copy of the Code to the Complainant, requesting the Complainant to identify the rules allegedly breached.

- (c) The Assessor will then decide whether he or she is satisfied that the facts and circumstances referred to in the formal allegation would, if proven on the balance of probabilities, amount to Misconduct by the Relevant Member. If the Assessor's decision is that there is no prima facie case of Misconduct, the investigation is concluded for the purpose of this Regulation, and the formal allegation is returned to the Complainant.

4.3 Contact with the Relevant Member

- (a) If the Assessor is satisfied that the facts and circumstances referred to in the formal allegation would, if proven on the balance of probabilities, amount to Misconduct by the Relevant Member, the Assessor must forward a copy of the Allegation, including any supporting material provided by any Senior Counsellor (all of which must be signed by the Complainant to signify that it is part of the Allegation) to the Relevant Member, requesting a written reply within the reasonable time fixed by the Assessor. This time may be extended by the Assessor at any time in writing.
- (b) The Allegation, including any supporting material, will be sent by registered post, electronic mail, or such other means as may be generally accepted in business from time to time, to the Relevant Member's contact address as recorded in the Institute's membership records.
- (c) The Assessor is not required or permitted to contact the Relevant Member except to forward a copy of the Allegation and material and to request a reply. The Assessor is not required to forward a copy of the Relevant Member's reply to the Complainant.

4.4 Consideration by the Assessor

The Assessor must reconsider the Allegation, the written reply (if any) and all of the relevant surrounding circumstances and decide again whether there is a prima facie case of Misconduct, and if so, whether the Allegation is nevertheless paltry, trivial or vexatious. In considering the Allegation and the reply, (if any), the Assessor may also obtain information or assistance, as appropriate, from colleagues, accountants or lawyers or others, provided that the Assessor is first satisfied they are at arm's length from the parties and the circumstances. The Assessor must advise the Institute in writing of his or her conclusion. If the Assessor's conclusion is that there is no prima facie case of Misconduct, or that if so, the Allegation is nevertheless, paltry, trivial or vexatious, the investigation is concluded for the purpose of this Regulation, and the Allegation is returned to the Complainant.

4.5 Referral to the Tribunal

- (a) If the Assessor's conclusion is that there is a prima facie case of Misconduct and that the Allegation is not paltry, frivolous or vexatious, the Institute must forward the Allegation and the reply (if any) to the Tribunal for consideration.
- (b) If the Allegation is sent to the Tribunal, the Convenor must form a Tribunal, whose members are at arm's length, to determine whether or not the Relevant Member has, on the balance of probabilities, engaged in Misconduct. The Convenor must notify the Complainant and the Relevant Member of:
 - (i) the persons forming the Tribunal, and
 - (ii) the date, time and place of a hearing.
- (c) The Convenor must remove from the Tribunal any Member the Complainant or the Relevant Member objects to on reasonable grounds and may substitute another Tribunal member.
- (d) The Institute must forward a copy of the reply (if any) to the Complainant.

4.6 The hearing

- (a) The Tribunal will hear persons, receive documents, ask questions and pursue such lines of enquiry as it sees fit, but only insofar as they are relevant to the subject matter of the Allegation before it. In addition, the Tribunal may obtain assistance or information from any employee of the Institute, any Member, any accountant, solicitor, other legal counsel or other agent or person.
- (b) The Complainant and the Relevant Member are entitled to appear before the Tribunal at the hearing in person. They are entitled to have such advisers (including legal) as they decide present at the hearing to advise them, but they are not entitled to be represented by a solicitor or legal counsel and except in extraordinary circumstances and at the discretion of the Tribunal, by any other person.
- (c) The Complainant or the Relevant Member cannot be compelled to attend the hearing. Where a party does not attend, the hearing will proceed at a subsequent session, however the Tribunal will first give reasonable notice in writing to the Relevant Member or the Complainant to re-attend and state that the Tribunal intends to proceed with the hearing, whether or not the Relevant Member or the Complainant attends.

4.7 Recordings

- (a) All the documents submitted to or considered by the Tribunal will be retained and a sound recording of the hearing will be made. All such documents as well as the sound recording will be forwarded to the Secretary for safekeeping and will be retained for at least 7 years.
- (b) The Secretary will, on request of, but at the expense of either the Complainant or the Relevant Member making the request, arrange for a transcript of the sound recording of the hearing to be made, if the request is made in writing and received within 30 days after the party has received the written Determination of the Tribunal. Copies of the transcript will be made available to the other party, also at the expense of the requesting party.

4.8 Determination

After the hearing, the Tribunal will consider whether or not it finds, on the balance of probabilities, that Misconduct has been proved against the Relevant Member. If it finds Misconduct proven, the Tribunal will consider submissions in mitigation by the Relevant Member and make a Determination stating the Misconduct that it has found proven, as well as its orders that any one, or more, of the following sanctions be levied against any Relevant Member found guilty of Misconduct:

- (a) no sanction be incurred by the Relevant Member;
- (b) that the Relevant Member be reprimanded;
- (c) that the Relevant Member undertake specified professional training in the form determined by Council from time to time, (and the order may include a time in which it is to be completed);
- (d) suspension of membership of the Institute for a stated period not exceeding 2 years; and
- (e) expulsion of membership of the Institute.

4.9 Costs

If the Relevant Member is found guilty of Misconduct the Tribunal may include in its Determination an order that the costs or any part of the costs of the Institute in respect of any aspect of the disciplinary proceedings be paid by the Relevant Member, but may not make any Determination that one party pay any of another party's costs.

4.10 Further Tribunal Determinations

If the Relevant Member does not comply with orders imposed by the Tribunal under clauses 4.8 or 4.9 of this Regulation above by the time stated in the orders, or if not stated, within a reasonable time, the Tribunal, (whether constituted by the same Tribunal members or not), may request the Relevant Member to appear before it, and whether or not the Relevant Member attends as requested, consider and make a further Determination in terms of clauses 4.8 or 4.9 of this Regulation.

4.11 Reporting

The Tribunal will inform the Relevant Member and the Complainant of its Determination and report to the Secretary and the National President. The facts of any Determination and such other information as the National President decides will be recorded in any publication that the National President directs. The Relevant Member is deemed to have consented to that record and publication. If the Tribunal makes any Determination against the National President or a Relevant Member who is a director of a company or partnership of which the National President is a director or a shareholder or a partner, then the report of the Tribunal will be referred to the National Council which will act as if it were the National President for the purposes of this Regulation.

4.12 Effect of suspension or expulsion

During a period of suspension, or after expulsion, the Relevant Member or former Relevant Member will not be entitled to:

- (a) use any words, letters, logo or other indication of membership of the Institute;
- (b) attend meetings of the Institute;
- (c) exercise a right to vote at meetings or elections of the Institute; and
- (d) will return any certificate of Membership to the Secretary.

4.13 Reinstatement

- (a) A Relevant Member that is found guilty of Misconduct and has resigned after the Institute received an Allegation, or a suspended Relevant Member, may apply to be and will be reinstated as a Member at the expiration of any period of suspension, provided that:
 - (i) no further Allegations have been received in that time, and
 - (ii) if any obligations imposed by sanctions applied to the Relevant Member by the Tribunal remain, clause 4.10 of this Regulation above applies.
- (b) An expelled Relevant Member may apply to the Board for reinstatement, addressed to the Secretary, not less than 3 years after expulsion. The Board may require the expelled Relevant Member to state his or her case for reinstatement in person and answer any questions, before it, or before a tribunal specially constituted to advise the Board. If the Board declines reinstatement, the expelled Relevant Member may not reapply for a further 3 years after the date of the Board's decision.

5. Arbitration

- 5.1 Relevant Member or Complainant may only dispute any findings or orders of the Tribunal contained in the written Determination, by giving the Secretary written notice of a dispute in respect of the Determination within 30 days of the date of receiving the written Determination ("**the notice of dispute period**"). If the disputing Relevant Member or Complainant delivers to the Secretary within a further 30 days, ("**the arbitration notice period**"), a written notice

stating that the dispute is to be submitted to arbitration in accordance with this clause, the dispute must proceed to arbitration and the Secretary must acknowledge receipt of the notice and request the nomination of an arbitrator by the Chairperson of the Chapter of the Institute of Arbitrators & Mediators in the Chapter in which the Tribunal hearing was held, at the equal expense of the parties.

- 5.2 If the disputing Relevant Member or Complainant has delivered a written request for a transcript of the record of the hearing within 30 days of receiving the Determination, the notice of dispute period or the arbitration notice period, as the case may be, will not commence until the transcript is delivered to the party requesting it.
- 5.3 If the disputing Relevant Member or Complainant fails to deliver the notice within the arbitration notice period stating that the dispute is to be submitted to arbitration, the disputing party may only take legal proceedings available to it.
- 5.4 Any arbitration under this Regulation will be conducted in accordance with the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations (except that the arbitration will proceed by way of appeal only from the record of the proceedings of the Tribunal).
- 5.5 No arbitration will commence while any litigation concerning the Determination of the Tribunal is on foot.

6. Senior Counsellor, Committee, Assessor, And Tribunal & Administration

6.1 Senior Counsellor

- (a) Senior Counsellors for the purpose of this Regulation are senior Members selected and appointed by the National Council to provide advice to members of the public regarding the practice of architecture, and who have agreed to participate for the purpose set out in clauses 3 and 4 of this Regulation.
- (b) Senior Counsellors are appointed on the basis of clear evidence of extensive professional experience, the broad respect of their peers and the profession and possession of a genuine commitment to the highest ethical standards.

6.2 Assessor

There will be a Panel of Assessors for the purposes of clause 4 of this Regulation consisting of Fellows of the Institute of at least 7 years standing appointed in accordance with clause 6.4 of this Regulation, an Assessor from the same Chapter as the Complainant will usually be appointed to consider an Allegation.

6.3 Tribunal

- (a) There will be a Tribunal for each Chapter of the Institute for the purposes set out in clause 4 of this Regulation. A Tribunal will be comprised of Fellows of the Institute of at least 10 years standing (but may also include a lawyer who is not a Member). A Tribunal will appoint one of the Tribunal members as the Convenor. The Convenor for the Chapter in which the Complainant resides is usually responsible for constituting a Tribunal for a particular Allegation and for communicating with the parties. Tribunal members hearing an Allegation must be at arms-length from the parties to, and to the circumstances of, the Allegation. To achieve this, the Tribunal may include, or consist of, Tribunal members from another Chapter.
- (b) The Tribunal constituted must elect a chairperson who is responsible for ensuring prompt

and proper performance of the Tribunal's functions, but otherwise has no special status or authority as chairperson, nor any casting vote. A quorum of the Tribunal for the exercise of its powers and functions consists of not less than three and not more than seven Tribunal members, plus any lawyer Tribunal member. A decision of a Tribunal is that of a majority of Tribunal members considering any question.

6.4 Appointment of Tribunal Members and the Panel of Assessors

- (a) The members of the Tribunal, and the Panel of Assessors, will be appointed by the National President for terms of approximately three years, from a list of names, nominated by the President of each Chapter. Tribunal members and Assessors are entitled to reappointment and no decision of, or act done by, or by the authority of, an Assessor or Tribunal will be invalid if the Assessor or any member of that Tribunal is not reappointed, or because of any defect that is afterwards discovered in the appointment or qualifications of any of them.
- (b) A member of a Tribunal or the Panel of Assessors will automatically vacate that office if the member:
 - (i) dies;
 - (ii) resigns;
 - (iii) is involuntarily institutionalised, or whose property is liable to be dealt with pursuant to a law about mental health;
 - (iv) (other than a lawyer member of the Tribunal), ceases to be a Member;
 - (v) becomes bankrupt;
 - (vi) is the subject of a Determination of having committed an act of Misconduct; or
 - (vii) is removed from office by the National President.
- (c) In the event of a casual vacancy in the Tribunal or the Panel of Assessors, the National President may appoint a Member of the relevant Chapter to fill the vacancy and the Member appointed will hold office for the remainder of the term of the Member who has vacated his or her office.

6.5 Person responsible for administration of Disciplinary Proceedings

The Board may appoint or delegate the appointment of an officer responsible for administering the conduct of disciplinary proceedings described in this Regulation who may or may not be a Member, and who may delegate responsibilities to his or her nominees, but if no appointment or delegation is made the Secretary is the responsible officer.