

Australian Property Institute Limited

POLICY

COMPLAINTS POLICY

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1. Objectives

1.1 The object of this Policy is to provide:

- (a) a means of redress for complaints about Members of the Australian Property Institute Limited (the API);
- (b) guidelines and procedures for the handling of complaints;
- (c) for the appointment of a Complaints Officer to investigate complaints received by the API;
- (d) for the formation and operation of a Complaints Committee to hear charges laid by the Complaints Officer; and
- (e) for the formation and operation of an Appeals Tribunal to hear appeals from decisions of the Complaints Committee.

2. Professional Misconduct

2.1 A Member is guilty of Professional Misconduct if:

- (a) they commit a breach of the Code of Professional Conduct;
- (b) they are found guilty by a court of law of a criminal offence which is punishable by imprisonment and the Board of the API (the Board) determines that their offence and the penalty imposed detrimentally impacts or has the potential to detrimentally impact on the good name and reputation of the API;
- (c) they engage in conduct which is dishonest or fraudulent;
- (d) they engage in conduct which is prejudicial to the good name and reputation of the API;
or
- (e) they obtained admission to the API by improper means.

3. Application of this Policy to Former Members

3.1 This Policy applies to a former Member of the API, in relation to conduct happening while the former Member was a Member, in the same way as it applies to a current Member.

4. Notification of Complaints

4.1 Members must promptly notify the Complaints Officer about every civil or criminal claim, complaint, accusation, charge, notification or settlement brought against them that has the reasonable potential to detrimentally impact on the reputation of the API or result in Professional Misconduct and must promptly notify the Complaints Officer of the outcome.

5. Making of Complaints

5.1 A person who is aggrieved by the conduct of a Member may complain to the API.

- 5.2** If considered necessary and in the interests of the API, the Complaints Officer may, of his or her own initiative, or if instructed by the Chief Executive Officer or the Board, commence an investigation into the conduct of a Member, in which circumstance the API will be considered to be the complainant.
- 5.3** A complaint must be in writing and addressed to the Complaints Officer.
- 5.4** A complaint must:
- (a) include a full name, address and valid telephone number of the complainant; and
 - (b) identify the Member who is being complained about; and
 - (c) describe the alleged conduct the subject of the complaint.
- 5.5** The Complaints Officer may, by written notice given to the complainant, require the complainant to do either or both of the following within the reasonable period stated in the notice:
- (a) to give further information about the complaint;
 - (b) to verify the complaint, or any further information, by statutory declaration.

6. Summary Dismissal of Complaints

- 6.1** The Complaints Officer may, upon the recommendation of the chairperson of the Complaints Committee or two Complaints Committee members, dismiss a complaint without completing an investigation if:
- (a) the complainant fails to supply the further information requested by the Complaints Officer by the notice served pursuant to section 5.5 within the time required by that notice;
 - (b) the complaint is vexatious, misconceived, frivolous or lacking in substance;
 - (c) the complaint was made more than 3 years after the conduct complained of is alleged to have happened;
 - (d) the conduct complained about has been the subject of a previous or current complaint to the API;
 - (e) the only issue of concern to the complainant is the quantum of a valuation; or
 - (f) the complainant does not agree, in writing, that their identity can be revealed to the Member complained about.
- 6.2** The Complaints Officer must notify the complainant in writing if a complaint is dismissed pursuant to section 6.1.
- 6.3** The notice must be given as soon as practicable after the day that the decision to dismiss the complaint is made by the Complaints Officer.
- 6.4** The notice must specify the grounds upon which the complaint has been dismissed.

7. Notice of Complaint

- 7.1** The Complaints Officer must give written notice to the Member about whom a complaint is made.
- 7.2** The notice must be given as soon as practicable after the day the complaint is received pursuant to section 5.
- 7.3** The notice must advise the Member about:
- (a) the nature of the complaint;
 - (b) the identity of the complainant;
 - (c) any action already taken by the Complaints Officer in relation to the complaint;
 - (d) the Member's right to make submissions to the Complaints Officer within the reasonable period stated in the notice, unless the Complaints Officer has told the Member that the complaint has been dismissed, or is intended to be dismissed.
- 7.4** This section 7 does not require the Complaints Officer to give written notice to the Member about whom a complaint is made until the Complaints Officer has had time to consider the complaint, seek further information about the complaint from the complainant or otherwise undertake preliminary inquiries into the complaint and properly prepare the notice.
- 7.5** The Complaints Officer must give written notice of any complaint as required by a scheme registered under the Professional Standards legislation in a State or Territory.

8. Withdrawal of Complaints

- 8.1** A complaint under this Policy may, subject to this section, be withdrawn by the complainant.
- 8.2** Withdrawal of a complaint may be made by oral, written or other form of communication to the Complaints Officer.
- 8.3** If a complaint is withdrawn orally the Complaints Officer must:
- (a) make a written record of the withdrawal; and
 - (b) give the complainant a copy of the record, or send a copy of it addressed to the complainant at the complainant's address.
- 8.4** A complaint may be withdrawn at any time however such withdrawal does not restrict any other complaint with respect to the same or similar facts being brought by the API against the Member.
- 8.5** If a complaint is withdrawn, a further complaint by the complainant about the matter that is the subject of the withdrawn complaint cannot be made to the API unless the Complaints Officer is satisfied that it is appropriate to make a further complaint in the circumstances.
- 8.6** If a complaint is properly withdrawn, no further action may be taken under this Policy in relation to the complaint, unless the Complaints Officer or the Board, as the case may be, is satisfied that investigation or further investigation of the facts surrounding the complaint is justified in the particular circumstances, as permitted under section 5.2 in which case a new complaint shall be brought by the API pursuant to section 5.2.

9. Investigation of Complaint

- 9.1** Subject to section 6, the Complaints Officer must investigate each complaint properly made.
- 9.2** The Complaints Officer must act independently based on information and evidence found during the investigation and use their own knowledge and expertise in their assessment of the complaint.
- 9.3** The Complaints Officer may be assisted by such Members as the Complaints Officer deems appropriate to carry out such investigations and may by written notice given to a Member, request that person:
- (a) to attend before the Complaints Officer, at a reasonable time and place specified in the notice, and there and then answer any questions; and
 - (b) to produce to the Complaints Officer, at a reasonable time and place specified in the notice, a document or thing in the person's custody or under the person's control.
- 9.4** A Member who receives a notice pursuant to section 9.3 must comply with the notice in the time specified in the notice. A complainant who receives a notice pursuant to section 9.3 must comply with the notice in the time specified in the notice for the complaint to remain current. If the complainant does not comply with such notice within a reasonable time the Complaints Officer may deem the complaint to have been withdrawn pursuant to section 8.
- 9.5** If the conduct complained about is subject to current proceedings before a Court or State licensing body, the Complaints Officer must suspend the investigation pending the outcome of those proceedings and any appeal of those proceedings.
- 9.6** At the completion of the investigation, the Complaints Officer must submit a report to the chairperson of the Complaints Committee.
- 9.7** The Complaints Officer is not required to provide a copy of the report to the complainant or the Member.

10. Action by Complaints Committee

- 10.1** Where the Complaints Officer refers a complaint to the Complaints Committee, the Complaints Committee must conduct enquiries or cause enquiries to be conducted following which the Complaints Committee must make findings on whether, in the Complaints Committee's view, the conduct referred to the Complaints Committee comprises a breach of the Code of Professional Conduct.
- 10.2** On receipt of the report from the Complaints Officer the Complaints Committee must consider the report at a meeting of the Complaints Committee and:
- (a) if the report indicates that no charge has been made out because there is no prima facie case of Professional Misconduct:
 - (i) the Complaints Committee may dismiss the complaint; or
 - (ii) the Complaints Committee may direct the Complaints Officer to make further enquiries or investigation as is reasonably considered necessary to ensure that a proper investigation of the complaint has taken place.

- (b) if the report indicates that a prima facie case for Professional Misconduct has been made out against the Member, the Complaints Committee may:
 - (i) lay a charge against the Member for Professional Misconduct and take such action as required by section 11;
 - (ii) direct the Complaints Officer to make further enquiries or investigation as is reasonably considered necessary to ensure that a proper investigation of the complaint has taken place; or
 - (iii) take no further action and give the complainant the reason/s in writing, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith; or
 - (iv) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing; or
 - (v) cause the Complaints Officer to engage another appropriately qualified person to make enquiries into the complaint; or
 - (vi) cause the cessation of enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this Policy, this will constitute finalisation of such matters and no further action is required.

10.3 If the Complaints Committee dismisses the complaint:

- (a) the Complaints Officer must notify the complainant and the relevant Member in writing of the dismissal;
- (b) the notice must be given as soon as practicable after the day that the complaint is dismissed; and
- (c) the notice must include a brief statement of reasons upon which the complaint has been dismissed

10.4 If the Complaints Committee directs the Complaints Officer to make further enquiries or investigation, the Complaints Officer must undertake those further enquiries or investigation within a reasonable time and must submit a further report to the Complaints Committee about the complaint.

10.5 If the Complaints Committee lays a charge against a Member for Professional Misconduct pursuant to 10.2(b)(i) the Complaints Officer must give written notice of the charge of Professional Misconduct to the Chief Executive Officer.

10.6 The Complaints Committee will conduct business in the absence of the public. It will ensure that proper records of its deliberations are maintained for such reasonable period as the Chief Executive Officer deems necessary.

10.7 In conducting enquiries, the Complaints Committee should follow the rules of procedural fairness and must -

- (a) provide the Member the subject of the complaint with a reasonable opportunity to respond to the substance of the complaint;
- (b) provide the Member the subject of the complaint with an opportunity to place before the Complaints Committee any information the Member considers relevant to the enquiry;

- (c) provide the Member the subject of the complaint with an opportunity to address the Complaints Committee in person;
- (d) hear all parties to a matter and consider submissions before deciding the substance of any complaint;
- (e) make reasonable enquiries before making any recommendations;
- (f) act fairly and without prejudice or bias;
- (g) ensure that no person decides a case in which they have a conflict of interest;
- (h) conduct the enquiries without undue delay.

Where the Member the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the Complaints Committee should proceed to finalise the matter in the Members absence.

11. Notice of Charge of Professional Misconduct

11.1 If the Complaints Committee lays a charge against the Member for Professional Misconduct pursuant to section 10.2(b)(i), the Complaints Committee must give to the Member written notice of the charge of Professional Misconduct.

11.2 The notice must state:

- (a) the Professional Misconduct alleged against the Member; and
- (b) the facts and circumstances forming the basis for the allegations;
- (c) a day, at least 14 days after the day the notice is given, by which the Member may, in relation to the allegations stated in the notice:
 - (i) make written representations about the facts and circumstances forming the basis for the allegations; or
 - (ii) request a hearing for the evidence supporting the charge of Professional Misconduct to be heard.

11.3 If the Member does not request a hearing, the Complaints Committee may conduct a hearing into the matter where it is of the reasonable opinion that it is necessary to properly consider the matter.

11.4 If the Member requests a hearing, or the Complaints Committee decides to conduct a hearing pursuant to section 11.3, the Member must be advised of the time and place of the hearing. If the Member proposes to attend with legal representation the Member must provide the Complaints Committee with at least 7 days' notice of such legal representation.

11.5 Any hearing conducted by the Complaints Committee must be pursuant to section 31.

11.6 After following the procedures set out in this section 11, the Complaints Committee may do any of the following:

- (a) Make a finding that the Member is guilty of Professional Misconduct and impose any one or more or none of the sanctions under section 12; or
- (b) Make a finding that the Member is not guilty of Professional Misconduct and dismiss the complaint.

11.7 The Complaints Officer must give a written notice of any finding of the Complaints Committee under section 11 to the Chief Executive Officer.

12. Sanctions

12.1 Subject to section 11, the Complaints Committee may impose any one or more or none of the following sanctions against a Member:

- (a) publicly reprimand the Member;
- (b) order the Member to give an undertaking to abstain from particular conduct;
- (c) order the Member to give an apology for particular conduct;
- (d) counsel the Member;
- (e) order the Member to pay to the API a penalty of an amount no more than an amount equivalent to twenty times the annual membership fee for the current year;
- (f) order that the Member undertake additional CPD training as specified;
- (g) order that the Member must undertake such other education or compliance program as the Complaints Committee thinks fit;
- (h) suspend the Member from membership of the API, for such period and on such terms or conditions as the Complaints Committee thinks fit;
- (i) where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Complaints Committee thinks fit;
- (j) require the Member to take such steps as the Complaints Committee may determine to correct the effects of any Professional Misconduct found to have been engaged in;
- (k) expel the Member from membership of the API;
- (l) order that the Member pay the costs of the investigation and the hearing;
- (m) suspend or expel the Member from membership of any Board, committee, panel or group of the API.
- (n) censure the member;
- (o) cause to be published in the Australian Property Journal or such other publication, details of the Professional Misconduct. In doing so it may cause the Member's identity to be disclosed or to be withheld.
- (p) Refer the matter to the Board with a recommendation that the Member be prosecuted for a breach of the law;
- (q) Refer the matter to any relevant statutory investigative or law enforcement authority.

12.2 Before taking disciplinary action against a Member the Complaints Committee shall have regard to the following:

- (a) any penalty already imposed on the Member as a result of external legal proceedings (including without limitation, proceedings or investigations by State or Territory regulatory bodies, and any other external bodies) brought against that Member in relation to the same facts and circumstances giving rise to the complaint before the Committee.

- (b) the seriousness of the breach;
- (c) whether the breach can be easily remedied or rectified;
- (d) whether the Member has remedied or rectified their conduct;
- (e) whether the Member has expressed contrition;
- (f) whether the breach is technical or trivial only;
- (g) whether the breach represents repeated conduct;
- (h) the age, physical or mental health or special infirmity of the Member;
- (i) the degree of reckless intention or negligence of the Member;
- (j) the extent to which the breach has affected other parties or the API as a whole;
- (k) the harm or potential harm to the reputation of the API arising from the conduct;
- (l) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny;
- (m) whether an educative approach would be more appropriate than a punitive approach;
- (n) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action; and
- (o) what action or remedy would be in the public interest.

12.3 The Complaints Committee must give the Member a written notice of its decision to take action against the Member under this section 12, together with a statement of reasons for the decision and advising the Member of their right of appeal.

12.4 The Complaints Committee must advise the complainant in writing the details of any decision made against the Member under this section 12.

12.5 The Complaints Committee may publish, in a newspaper, journal or on its website, notice of any action taken under this section 12.

12.6 The Complaints Committee may recommend to the Board such revisions to the Code of Professional Conduct as it deems reasonably appropriate.

13. Appeal of Decision

13.1 A Member against whom a decision of the Complaints Committee is made pursuant to section 11.5 (decision of Complaints Committee) and section 12 (Sanctions) may apply to the Appeals Tribunal for a review of such decision(s).

13.2 The API shall establish the Appeals Tribunal pursuant to the Appeals Tribunal Policy.

13.3 A complainant is not entitled to appeal against a decision of the Complaints Committee.

13.4 Any appeal to the Appeals Tribunal must be commenced by submitting a notice of appeal to the Complaints Officer within 21 days after receiving written notice of the Complaints Committee's decision.

13.5 The notice of appeal must, at the time of lodgment, specify:

- (a) the decision and the date of the decision being appealed;

- (b) whether the appeal is from all or part of the decision of the Complaints Committee;
- (c) if the appeal is from part of the decision—the part appealed from;
- (d) the grounds of the appeal; and
- (e) the order(s) sought.

13.6 The notice of appeal cannot raise any issue that was not before the Complaints Committee in relation to the subject of the complaint.

13.7 If a valid notice of appeal is lodged pursuant to this section 13, the Complaints Officer must, within 14 days from receiving the notice of appeal:

- (a) provide notice in writing of the appeal to:
 - (i) the chairperson of the Appeals Tribunal;
 - (ii) the Member who is the subject of the complaint;
 - (iii) the complainant; and
 - (iv) the Chief Executive Officer of the API; and
- (b) provide the Appeals Tribunal and the Member with an Appeal Book containing the following documents:
 - (i) the original complaint;
 - (ii) all correspondence and written communication in relation to the complaint;
 - (iii) the report(s) prepared by the Complaints Officer and submitted to the Complaints Committee, if such report(s) were admitted into evidence before the Complaints Committee;
 - (iv) the charge formulated from the complaint;
 - (v) a record of the Complaints Committee hearing;
 - (vi) the decision and statement of reasons of the Complaints Committee; and
 - (vii) a copy of the notice of appeal.

13.8 Within 21 days from receiving the Appeal Book, the appellant may serve any further submissions on the Appeals Tribunal and the Complaints Officer in support of the grounds of the appeal.

14. Withdrawal of Appeal

14.1 A Member who has appealed against a decision of the Complaints Committee may withdraw an appeal by giving notice in writing to the Chair of the Appeals Tribunal.

14.2 The notice referred to in Section 14.1 must be received by the Chair of the Appeals Tribunal no later than seven (7) days before the day scheduled for the hearing. After this time, the Member will be responsible for any costs incurred by the Appeals Tribunal and the API.

15. Powers of Appeal Tribunal

15.1 The Appeals Tribunal may do any one or more of the following:

- (a) confirm, amend or set aside the decision of the Complaints Committee;
- (b) vary the sanction imposed by the Complaints Committee; and
- (c) make such other order that it considers appropriate.

- 15.2** The Appeals Tribunal must notify the Complaints Officer, the Member and the complainant of its decision and must give the parties written reasons for its decision.
- 15.3** If the appeal is unsuccessful, the Appeals Tribunal may, if it sees fit, order the Member to pay the reasonable costs of the Appeals Tribunal and the API. The Member will be suspended from membership until such costs are paid. If the costs are not paid by the next renewal date for membership the Member's membership will be terminated. The Member will not be entitled to be readmitted as a member until the costs are paid together with interest calculated pursuant to the Supreme Court rules (or equivalent jurisdiction) of the State or Territory to which the Member's prior membership was related.
- 15.4** A decision of the Appeals Tribunal is binding upon the complainant and the Member who is the subject of the complaint, and the Board cannot overrule or vary the decision of the Appeals Tribunal.
- 15.5** The Complaints Officer must give a written notice of any decision of the Appeals Tribunal under section 15 to the Chief Executive Officer.

16. Record of Complaints

- 16.1** The Complaints Officer must make and keep a record of all of the complaints dealt with under this Policy, and must keep a copy of all decisions of the Complaints Committee and the Appeals Tribunal.
- 16.2** The Complaints Officer shall have the discretion, subject to direction by the Board, to decide what is contained on the register in relation to each complaint.
- 16.3** The Complaints Officer may, upon request by the Board, publish the outcome of any decisions by the Complaints Committee or the Appeals Tribunal or any details contained in the register maintained by the Complaints Officer.
- 16.4** The API shall publish regular information about the outcome of complaints against Members including an annual overview of the operation of the API's complaints procedures.

17. Reporting of Complaints, Claims, Notifications and Settlements

- 17.1** The Complaints Officer will report every civil or criminal claim, complaint, accusation, charge, notification and settlement involving a Member, of which the API has notice pursuant to this Policy, to the Professional Standards Council as required by a scheme registered under the Professional Standards legislation in a State or Territory.
- 17.2** Where a Member has been expelled the Chief Executive Officer may notify the ASIC and any relevant State and Territory regulators where required to do so.
- 17.3** Where a Member has engaged in conduct which relates to a potential breach of the Financial Services Reform Act 2001 (as amended from time to time) the Chief Executive Officer may notify the relevant statutory authority.

18. Confidentiality

18.1 This section 18 applies to:

- (a) a complainant;
- (b) a Member complained about under this Section;
- (c) the Complaints Officer;
- (d) the members of the Complaints Committee; and
- (e) the members of the Appeals Tribunal.

18.2 The persons to whom this section applies must not disclose information obtained relating to a complaint, except to any of the following—

- (a) any court, tribunal or other person acting judicially;
a regulatory authority of any State or Territory;
- (b) any officer of, or Australian legal practitioner instructed by---
 - (i) a regulatory authority of any State or Territory; or
 - (ii) any State or Territory, or the Commonwealth; or
 - (iii) an authority of any State or Territory or the Commonwealthin relation to any proceeding, inquiry or other matter pending or contemplated arising out of the complaints procedure of the API;
- (c) a police officer of any State or Territory or the Commonwealth if the relevant person believes, on reasonable grounds, that the information relates to an offence that may have been committed by a Member;
- (d) a client or former client of the Member, if the information relates to that client or former client;
- (e) as otherwise permitted by this Policy;
- (f) any other person as permitted in writing by the Member complained about.

19. Keeping Complainants Informed

19.1 The Complaints Officer may keep the complainant informed of the progress of a complaint provided always that the Complaints Officer must not provide any information to a complainant in relation to the progress of the complaint where in the opinion of the Complaints Officer, to do so:

- (a) may expose the Complaints Officer or any officer of the API to liability for civil damages;
- (b) would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint; or
- (c) would deny procedural fairness to the Member, the subject of the complaint.

20. Enforcement of Sanctions

- 20.1** All sanctions ordered against a Member pursuant to this Policy will be enforced and implemented by the Complaints Officer.
- 20.2** In the event that an application is made to the Appeals Tribunal for a review of a decision of the Complaints Committee pursuant to section 13, the API must stay any sanction against a Member, pending a final determination by the Appeals Tribunal.
- 20.3** Where a Member is suspended from membership of the API, the Member must continue to satisfy the API's CPD requirements.

21. Suspension of Membership

- 21.1** Where a person's membership of the API is suspended in accordance with this Policy:
- (a) the API may publish a notice of the suspension in the journal;
- AND that person:
- (b) must not use the API Members' logo;
 - (c) shall not be entitled to use any post nominals relating to his or her position or membership of the API;
 - (d) shall not be entitled to receive any referral of work from the API; and
 - (e) shall not be entitled to vote,
- for the period determined at the time of suspension.

22. Transitional Provision

- 22.1** Any complaint which was notified to the API prior to the commencement of an amendment to this Policy, shall be dealt with in accordance with the Policy which was in force as at the date the complaint was first notified to the API.

23. Appointment of Complaints Officer

- 23.1** The Board will appoint a person to manage, investigate and respond to complaints relating to Professional Misconduct. Such person will be known as the Complaints Officer.
- 23.2** The role of the Complaints Officer is to:
- (a) assist members of the public with enquiries relating to the API's complaints procedure;
 - (b) issue notices to various persons relating to complaints made under this Policy;
 - (c) coordinate and investigate complaints made under this Policy;
 - (d) make summary determinations about complaints made under this Policy;
 - (e) present charges to the Complaints Committee for disciplinary action against a Member;

- (f) assist the Complaints Committee in its consideration of complaints made under this Policy;
- (g) assist the Appeals Tribunal in its consideration of appeals made under this Policy;
- (h) keep a record of all complaints and notifications received by the API relating to a Member;
- (i) report to various authorities as required by law; and
- (j) such other roles as directed in writing by the Board from time to time.

23.3 The conduct of the Complaints Officer will be subject to the terms and conditions of his or her employment, as agreed in writing with the Board from time to time.

24. Powers of Complaints Officer

24.1 The Complaints Officer may make any inquiry that he or she considers necessary or expedient for the purposes of carrying out the Complaints Officer's role, including –

- (a) investigating any complaint lodged pursuant to this Policy; and
- (b) determining whether any other cause exists that might be considered a proper cause for disciplinary action.

24.2 Subject to the approval of the Chief Executive Officer, the Complaints Officer may engage persons with such expertise that the Complaints Officer deems necessary to assist the Complaints Officer to carry out the Complaints Officer's role.

25. Vacancy in the Position of Complaints Officer

25.1 If a casual vacancy occurs in the position of the Complaints Officer, the Board shall appoint the professional standards manager, or such other appropriate person to fill the vacancy until such time as a suitably qualified person is employed to carry out the role of Complaints Officer.

26. Appointment of a Complaints Committee

26.1 There shall be a committee established to be known as the Complaints Committee. The Complaints Committee will have a chairperson and a deputy chairperson. The Complaints Committee will be properly comprised and able to consider and determine a matter if the chairperson of the Complaints Committee sits alone or at least three eligible members of the Complaints Committee which include the chairperson of the Complaints Committee and/or the deputy chairperson of the Complaints Committee sit to consider and determine a matter.

26.2 The Complaints Committee, its chairperson and deputy chairperson shall be appointed by the Board and shall report directly to the Board.

26.3 Divisional Councils have the right, but are not obliged, to provide a minimum of two and a maximum of four nominees, who are suitably experienced and qualified, to be members of the Complaints Committee.

- 26.4** The Board must consider and appoint nominees to the Complaints Committee annually and where convenient to the Board at the Board Meeting held immediately before the Annual General Meeting of the API.
- 26.5** When appointing Members to the Complaints Committee, the Board must:
- (a) Appoint a minimum of one representative from each Division who has made nominations, to be members of the Complaints Committee ('Committee Members');
 - (b) be cognisant of achieving a representation of the various disciplines of membership of the API; and
 - (c) nominate one Committee Member as chairperson of the Complaints Committee and one as deputy chairperson of the Complaints Committee.
- 26.6** A Committee member shall be appointed to the Complaints Committee for a minimum of 2 years.
- 26.7** Subject to section 26.8, for each complaint to be considered by the Complaints Committee under this Policy, either the chairperson of the Complaints Committee must:
- (a) independently consider the complaint; or
 - (b) appoint not less than two additional Complaints Committee members to jointly consider the complaint. Such appointment may take into account the complexity of the complaint but will at all times be at the discretion of the chairperson of the Complaints Committee.
- 26.8** A Committee member will not be eligible for appointment for a particular complaint where that member has a conflict of interest.
- 26.9** For the purposes of section 26.8, a Committee member will have a *conflict of interest* in any of the following circumstances –
- (a) the member complained about is a Member of the Division who nominated the Committee member;
 - (b) the Committee member is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;
 - (c) the Committee member has or has had an existing commercial or personal relationship with the complainant or the member accused; or
 - (d) the Committee member is or has been in any way involved in the circumstances giving rise to the complaint.

27. Vacancy

- 27.1** The Board may terminate the appointment of a Committee Member for inability, inefficiency, or misbehaviour.
- 27.2** The office of a member of the Complaints Committee becomes vacant if —
- (a) an alternative nomination is made by the relevant Divisional Council in accordance with section 26.4 and such alternative is endorsed by the Board; or
 - (b) his or her appointment is terminated pursuant to section 27.1; or

- (c) he or she is declared bankrupt or is a person whose affairs are administered under insolvency laws; or
- (d) he or she becomes permanently incapable of performing his or her duties as a member of the Complaints Committee as determined by the Board; or
- (e) he or she withdraws from his or her acceptance of the nomination by written notice addressed to the chairperson of the Complaints Committee or in the case of the chairperson of the Complaints Committee to the Board; or
- (f) he or she ceases to hold any qualification required for his or her becoming or being a member of the Complaints Committee.

28. Validity of acts of Complaints Officer or Committee

- 28.1** No act, proceeding, or determination of the Complaints Officer or Complaints Committee shall be invalid on the ground only of any vacancy in the office of any member of the Complaints Committee or of any defect in the appointment of any member of the Complaints Committee or the Complaints Officer.

29. Remuneration of Members

- 29.1** The members of the Complaints Committee shall be paid such remuneration, allowances and expenses as may from time to time be approved by the Chief Executive Officer, in his or her absolute discretion.

30. Meetings of the Committee

- 30.1** The Complaints Committee shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Policy and the Chief Executive Officer may at any time require the chairperson to convene a meeting of the Complaints Committee.
- 30.2** When considered necessary and in the interests of efficiency, it will be appropriate for the Complaints Committee to conduct a meeting by teleconference or videoconference.
- 30.3** The chairperson of the Complaints Committee shall preside at all meetings of the Complaints Committee at which he or she is present and the deputy chairperson shall preside at all meetings at which he or she, but not the chairperson, is present.
- 30.4** A quorum of the Complaints Committee will comprise either:
- i) The chairperson of the complaints committee sitting alone; or
 - ii) at least three eligible members of the Complaints Committee one of whom is either the chairperson of the Complaints Committee or the deputy chairperson of the Complaints Committee.
- 30.5** All determinations and decisions to be made by the Complaints Committee shall be decided by a majority of the votes of the members present and voting. When required to make a final determination, the chairperson will have a casting vote.

30.6 The Complaints Committee shall cause accurate minutes to be kept of its proceedings at its meetings.

31. Hearings before the Committee

31.1 The Complaints Committee must give reasonable notice to the Member who is the subject of a complaint, of the time and place at which it intends to hear the complaint, and must advise the Member of his or her right to appear, give evidence and be represented at the hearing.

31.2 The Committee must give reasonable notice to the complainant of the time and place at which it intends to hear the complaint, and must advise the complainant whether they will be required to give evidence at the hearing.

31.3 If a person to whom notice has been given pursuant to sections 31.1 or 31.2 does not attend at the time and place fixed by the notice, the Committee may hear the proceedings in his or her absence.

31.4 At the hearing of a complaint:

- (a) the Complaints Officer must present the charge to the Committee on behalf of the complainant; and
- (b) every Member who is the subject of the complaint must be given a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Committee.

31.5 The Complaints Committee may appoint a person with such qualifications as it thinks fit to assist in proceedings before the Committee, provided however that such person must at all times act impartially and must not have a conflict of interest.

31.6 For the purposes of section 31.5, a person will have a *conflict of interest* in any of the following circumstances –

- (a) the person is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;
- (b) the person has or has had an existing commercial or personal relationship with the complainant or the Member accused; or
- (c) the person is or has been in any way involved in the circumstances giving rise to the complaint.

31.7 Any member the subject of a complaint before the Complaints Committee:

- (a) shall be entitled to appear personally or by a legal practitioner; or
- (b) may, by leave of the Committee, be represented by a person other than a legal practitioner.

31.8 Documents should not be admitted into evidence if:

- (a) they have not been made available to the Member complained of within a reasonable time prior to the hearing; or
- (b) their introduction causes prejudice to the Member except where such prejudice can be adequately dealt with by the Member.

This timeframe and the determination of prejudice will be at the discretion of the chairperson of the Complaints Committee. If any party wishes to introduce additional documentary evidence

outside of this time frame, the chairperson may, if necessary, adjourn the hearing to allow the other party sufficient time to consider the evidence.

- 31.9** Minutes of the hearing of the Complaints Committee must be kept and upon request a copy given to the Member who is the subject of the complaint. The complainant may obtain a copy of the minutes, only as relevant to the complaint, upon request to the Complaints Officer, and shall be provided with a copy upon payment of a fee prescribed by the API.
- 31.10** To the extent that it is not prescribed in this Policy or a statute, the Committee shall determine its own procedure, including directions for the provision of written submissions and evidence and will not be bound by any rules of evidence that may bind a court or tribunal of a State or Territory of Australia.

32. Powers of the Committee

- 32.1** In the exercise of its powers in proceedings under this Policy, the Complaints Committee may —
- (a) require the attendance before the Committee of the complainant and/or the presentation of such evidence (as is deemed necessary by the Complaints Officer), to be provided to the Committee;
 - (b) require the attendance before the Committee of the Member complained about;
 - (c) require the production of any books, papers, or documents by the complainant or the Member complained about;
 - (d) inspect any books, papers or documents produced before it, and subject to the owner's consent make copies of any of them, or of any of their contents;
 - (e) require any person to make oath or affirmation that he or she will truly answer all questions put by the Committee relating to any matter being inquired into by the Committee; and
 - (f) request any person and require any Member appearing before the Committee to give evidence, to answer any relevant questions put by the Committee, or by any other person appearing before the Committee.
- 32.2** In the course of any proceedings, the Complaints Committee may—
- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact there from that it considers proper; or
 - (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.
- 32.3** In any proceedings the Complaints Committee shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.