



# Professional Conduct Policy

## 2024

Reference: Professional Conduct Policy

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## Introduction

The Professional Conduct Policy (**Policy**) provides a Complainant the opportunity to bring to the attention of the Australian Property Institute Limited (**API**) circumstances which may give rise to a finding of Professional Misconduct against an API Member or an Australian Property Institute Valuers Limited (**APIV**) Member. Similarly, this Policy provides the Chief Executive Officer an opportunity to undertake a Disciplinary Assessment into the conduct of a Member.

Prior to raising a Professional Review and/or undertaking a Disciplinary Assessment, it is expected that the Member be given an opportunity to address the conduct which is of concern.

Once a Professional Review has been raised with the API or a Disciplinary Assessment is initiated by the API, the API appointed Professional Conduct Officer will undertake a preliminary assessment in the first instance, followed by a substantive investigation into the conduct of the Member.

The Professional Conduct Officer will maintain communication with all parties and will remain impartial throughout the process. A Professional Conduct Panel will be formed in accordance with the Professional Conduct Committee Charter, to consider and hear a particular matter. The Professional Conduct Panel will consider all information provided by the Professional Conduct Officer and will make a determination whether there is evidence to establish a finding of Professional Misconduct against a Member.

The API has no authority or Jurisdiction to:

- determine negligence;
- assess the accuracy of a valuation;
- investigate or determine the outcome of a dispute, or difference of opinion between a Complainant and a Member as to the assessed Market Value, Market Rent or any other International Valuation Standards basis of value;
- request an amendment to be made to the report;
- order a Member to provide a refund of fees or reimbursement of professional fees to a Complainant;
- award any form of compensation to any parties subject to a Professional Review;
- investigate a Professional Review raised where legal avenues of redress should be or are being pursued; and
- overturn any decision made by courts, tribunals, other associations or regulator bodies when investigating a Professional Review.

If the alleged Professional Misconduct or the Member who is subject to a Professional Review and/or Disciplinary Assessment, is the subject to current proceedings before a court, tribunal, state licensing body, or other bodies, the API investigation will be suspended pending the outcome of those proceedings and any appeal of those proceedings.

Should you have any queries or feedback regarding this process, please do not hesitate to contact us on 1800 111 274 or write to us at [professionalconduct@api.org.au](mailto:professionalconduct@api.org.au).

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## 1. Purpose

- 1.1 The purpose of this Policy is to provide:
- (a) a Complainant the opportunity to raise issues of concern about the conduct of a Member;
  - (b) the CEO the opportunity to undertake a Professional review and/or Disciplinary Assessment of the conduct of a Member;
  - (c) guidelines and procedures for the handling of a Professional Review raised and/or undertaking of a Disciplinary Assessment;
  - (d) for the appointment of a Professional Conduct Officer to manage and to investigate any Professional Review raised with the API;
  - (e) for the appointment of a Professional Conduct Officer to manage and to investigate any Disciplinary Assessment initiated by the API;
  - (f) for the formation and operation of a Professional Conduct Panel to consider a Professional Review raised and/or the undertaking of a Disciplinary Assessment against a Member, and where appropriate make a finding of Professional Misconduct and determine the appropriate sanction(s) to be imposed; and
  - (g) protection to the consumer, the community and the reputation of the professional property industry.

## 2. Definitions

- 2.1 The definitions below have been included in this Policy for the interpretation and understanding of certain stated terms.
- 2.2 Where a defined term is included in this Policy it is identified as a capitalised term.

<b>Active Disciplinary Assessment</b>	A Disciplinary Assessment that is not a Closed Disciplinary Assessment or is suspended under this Policy.
<b>Active Professional Review</b>	A Professional Review that is not a Closed Professional Review or is suspended under this Policy.
<b>API</b>	The Australian Property Institute Limited (ACN 608 309 128).
<b>API Board</b>	Individuals nominated and appointed in accordance with the API Constitution and Nomination Policy to sit as API Board directors.
<b>API Member</b>	An individual who holds a current financial membership with the API.
<b>APIV</b>	The Australian Property Institute Valuers Limited (ACN 143 638 975).

<b>APIV Member</b>	An individual/ corporate entity who holds a current membership with the APIV and is a participant in the APIV Scheme.
<b>APIV Scheme</b>	The professional standards scheme established under professional standards legislation administered by the APIV.
<b>Appeals Tribunal Panel</b>	A panel established under the Appeals Tribunal Policy to hear an appeal by the Member.
<b>Appeals Tribunal Policy</b>	An API policy which sets the guidelines and procedures for the formation and operation of an Appeals Tribunal Panel to hear appeals.
<b>Chief Executive Officer</b>	An individual appointed by the API Board to manage the overall operations and resources of the API and APIV.
<b>Closed Disciplinary Assessment</b>	A Disciplinary Assessment for which a decision has been made by the Professional Conduct Panel for the Disciplinary Assessment to be closed.
<b>Closed Professional Review</b>	A Professional Review for which a decision has been made by the Professional Conduct Panel for the Professional Review to be closed.
<b>Complainant</b>	An individual or entity who provides written notification to the Professional Conduct Officer alleging Professional Misconduct by a Member.
<b>Disciplinary Assessment</b>	Formal written notification of the API's allegations of Professional Misconduct contained in a Disciplinary Assessment Form completed in full by the Chief Executive Officer.
<b>Disciplinary Assessment Form</b>	A form prescribed by the API completed by the Chief Executive Officer.
<b>Former Member(s)</b>	An individual who does not hold a current membership with the API and/or APIV.
<b>Market Value</b>	The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.
<b>Market Rent</b>	The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each added acted knowledgeably, prudently and without compulsion.
<b>Member</b>	A current or former API and/or APIV Member.
<b>Notice of Prima Facie Findings of Professional Misconduct</b>	A formal written notice prepared by the Professional Conduct Panel detailing their prima facie finding(s).

<b>Panel Report</b>	A report prepared by the Professional Conduct Panel containing the decision of the Professional Conduct Panel on a Professional Review and/or Disciplinary Assessment.
<b>Procedural Fairness</b>	The elements of affording natural justice to a Member described within section 17 of this Policy.
<b>Professional Conduct Committee</b>	Individuals appointed by the API Board, from which the Professional Conduct Panel is formed to consider and hear a Professional Review and/or Disciplinary Assessment.
<b>Professional Conduct Committee Charter</b>	An API charter which sets the guidelines and procedures for the formation and operation of the Professional Conduct Committee.
<b>Professional Conduct Officer</b>	An individual appointed by the API Board to manage, investigate and respond to a Professional Review raised and/or the undertaking of a Disciplinary Assessment.
<b>Professional Conduct Panel</b>	A panel formed from eligible members of the Professional Conduct Committee to consider and hear a Professional Review and/or Disciplinary Assessment pursuant to this Policy and the Professional Conduct Committee Charter.
<b>Professional Misconduct</b>	The conduct of a Member that is in breach of their Professional Member Obligations.
<b>Professional Member Obligations</b>	The obligations of a Member described within section 3 of this Policy.
<b>Professional Review</b>	Formal written notification of the Complainant's allegations of Professional Misconduct contained in a Professional Review Form completed in full by the Complainant.
<b>Professional Review Form</b>	A form prescribed by the API completed by the Complainant.
<b>Response Submission Form</b>	A form prescribed by the API completed in full by the Member who is the subject of a Professional Review and/or Disciplinary Assessment.

### 3. Professional Member Obligations

- 3.1 An API and/or APIV Member must, at all times, observe and comply with the following as applicable to their membership, any certifications held, and the professional services undertaken by an API and/or APIV Member:
- (a) the API Constitution.
  - (b) the APIV Constitution;
  - (c) any policies set by the API and/or APIV;
  - (d) any rules and/or codes set by the API and/or APIV;
  - (e) any valuation standards or valuation protocol or valuation and property guidelines, prepared and published or adopted by the API and/or APIV;

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- (f) carrying out their professional services ethically, with honesty, competence, in good faith without personal bias and without detrimentally impacting the good name and reputation of the API; and
  - (g) carrying out of their engagement/professional dealings, with respect, with clients, other Members, the API and APIV and its staff.

## 4. Application of this Policy to Former Member(s)

- 4.1 The Professional Conduct Officer may investigate a Professional Review raised against a Former Member, if the alleged Professional Misconduct occurred while the Former Member was a Member.
- 4.2 The API may undertake a Disciplinary Assessment against a Former Member, if the alleged Professional Misconduct occurred while the Former Member was a Member.
- 4.3 A Professional Conduct Panel may consider a Professional Review and/or Disciplinary Assessment made against a Former Member and make a determination under this Policy, if the alleged Professional Misconduct occurred while the Former Member was a Member.
- 4.4 If a finding of Professional Misconduct is established against a Former Member, the Professional Conduct Officer may not be able to enforce sanction(s) against the Former Member.

## 5. Raising a Professional Review

- 5.1 A Complainant who is of the opinion that a Member (including a Former Member) has engaged in Professional Misconduct, may raise a Professional Review into the conduct of a Member to the Professional Conduct Officer.
- 5.2 The Complainant must lodge the required Professional Review Form, completed in full.
- 5.3 The Professional Conduct Officer will not commence a preliminary assessment until a completed Professional Review Form is lodged by the Complainant.
- 5.4 If the Complainant partially completes the Professional Review Form, the Professional Conduct Officer may, by written notice given to the Complainant, request the Complainant to lodge a completed Professional Review Form and all supporting documentation they wish to rely on.
- 5.5 The Professional Conduct Officer will provide the Complainant ten (10) business days to respond to the notice served under section 5.4.
- 5.6 If at the expiry of the ten (10) business days under section 5.5, the Complainant has not complied with the notice served, the Professional Conduct Officer will take no further action with respect to the incomplete Professional Review.

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## 6. Acknowledging receipt of a Professional Review

- 6.1 The Professional Conduct Officer will confirm receipt of a Professional Review raised as soon as practicable.

## 7. Undertaking a Disciplinary Assessment

- 7.1 The Professional Conduct Officer may:
- (a) raise additional issues of concern with the Chief Executive Officer in relation to the conduct of a Member, which has not been identified by the Complainant when raising a Professional Review; or
  - (b) raise other issues of concern in relation to the conduct of a Member, either identified by the Professional Conduct Officer or brought to the attention of the Professional Conduct Officer.
- 7.2 The Chief Executive Officer may, independently or upon review of the information under section 7.1, formally request the Professional Conduct Officer undertake a Disciplinary Assessment into the conduct of a Member.
- 7.3 A Disciplinary Assessment Form completed by the Chief Executive Officer will constitute a formal request under section 7.2 of this Policy.
- 7.4 A Disciplinary Assessment will be managed in accordance with this Policy by the Professional Conduct Officer.

## 8. Preliminary assessment of a Professional Review by the Professional Conduct Officer

- 8.1 Upon receipt of a completed Professional Review Form and all supporting evidence which the Complainant wishes to rely on, the Professional Conduct Officer will undertake a preliminary assessment into the conduct of a Member.
- 8.2 The Professional Conduct Officer will:
- (a) refer the Professional Review to the Professional Conduct Panel for dismissal; or
  - (b) progress the Professional Review pursuant to section 9 of this Policy.
- 8.3 The Professional Review may be referred to the Professional Conduct Panel for dismissal if:
- (a) the Professional Review is made later than twelve (12) months from the date of the conduct which is the subject of the Professional Review;
  - (b) the Complainant does not agree, in writing, that their identity can be revealed to the Member;
  - (c) the Professional Review relates to the conduct that is the subject of a Closed Professional Review or an Active Professional Review under this Policy;
  - (d) the Professional Review is misconceived and/or made without reasonable grounds to substantiate the Complainant's allegation(s);

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- (e) the Professional Review relates solely to a dispute or difference of opinion as to the assessment of the Market Value, Market Rent or any other International Valuation Standards basis of value; or
  - (f) the Professional Review does not fall within the jurisdiction of the API.
- 8.4 If a Professional Review is referred to a Professional Conduct Panel under section 8.2(a), the Professional Conduct Panel may dismiss the Professional Review.
- 8.5 If section 8.4 applies, the Professional Conduct Officer will provide the Complainant a copy of the dismissal notice prepared by the Professional Conduct Panel as soon as practicable.
- 8.6 The dismissal notice prepared by the Professional Conduct Panel will include the:
- (a) name of the Complainant;
  - (b) name of the Member;
  - (c) timeline of events;
  - (d) Complainant's allegation(s); and
  - (e) reason(s) for the dismissal.

## 9. Notification of a Professional Review and/or Disciplinary Assessment to the Member

- 9.1 Upon completing a preliminary assessment, if the Professional Review is not dismissed by the Professional Conduct Panel, the Professional Conduct Officer will provide written notice of the Professional Review to the Member.
- 9.2 Upon receipt of a Disciplinary Assessment Form under section 7.3, the Professional Conduct Officer will provide written notice of a Disciplinary Assessment to the Member.
- 9.3 The notice will provide the following to the Member;
- (a) a copy of the Professional Review Form and/or Disciplinary Assessment Form and supporting documentation provided by the Complainant and/or the API;
  - (b) the Member's right to respond; and
  - (c) a copy of a Response Submission Form with written notice specifying an expiry date of not less than twenty (20) business days from the date in which the notice is provided to the Member.
- 9.4 The Professional Conduct Officer may grant an extension of the expiry date provided in the notice under section 9.3(c), where reasonably required.
- 9.5 If at the expiry of the notice period under section 9.3(c) or any extension granted under section 9.4, the Member fails to provide a Response Submission Form, the Professional Conduct Officer will undertake a substantive investigation into the Professional Review and/or Disciplinary Assessment, and prepare and submit a report to the Professional Conduct Panel in the absence of a response from the Member.

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## 10. Substantive Investigation of a Professional Review and/or Disciplinary Assessment

- 10.1 The Professional Conduct Officer will undertake a substantive investigation of a Professional Review and/or Disciplinary Assessment upon receipt of a completed Response Submission Form.
- 10.2 The Professional Conduct Officer will act with honesty, integrity and impartiality when investigating and making recommendations in relation to a Professional Review and/or Disciplinary Assessment.
- 10.3 The Professional Conduct Officer may, by written notice given to the Complainant, require the Complainant to do any of the following:
  - (a) to provide further information about the Professional Review raised;
  - (b) to clarify details in the Professional Review Form or supporting documentation;
  - (c) to verify the details of the Professional Review, or any further information, by statutory declaration.
- 10.4 The Professional Conduct Officer will provide the Complainant ten (10) business days to respond to the notice served under section 10.3.
- 10.5 If at the expiry of the ten (10) business days under section 10.4, the Complainant has not complied with the notice served, the Professional Conduct Officer is not prevented from proceeding with the substantive investigation of a Professional Review.
- 10.6 The Professional Conduct Officer may seek advice from a third party when assessing the Professional Review and/or Disciplinary Assessment.
- 10.7 The Professional Conduct Officer may by written notice to a third party, request the third party:
  - (a) to attend before the Professional Conduct Officer, at a reasonable time and place specified in the notice, to answer any questions; or
  - (b) to provide to the Professional Conduct 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.
- 10.8 Where a third party who receives a notice under section 10.7, does not comply with the notice, the Professional Conduct Officer is not prevented from proceeding with the substantive investigation of a Professional Review and/or a Disciplinary Assessment.
- 10.9 At the completion of the substantive investigation, the Professional Conduct Officer will prepare and submit a report to the chairperson or to the deputy chairperson of the Professional Conduct Committee, who will then form a Professional Conduct Panel in accordance with the Professional Conduct Committee Charter.
- 10.10 The report prepared for the Professional Conduct Panel will include:

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- (a) the name and details of the Complainant where a Professional Review has been raised;
  - (b) the details of the API where a Disciplinary Assessment has been raised;
  - (c) the name and details of the Member who is the subject of a Professional Review and/or Disciplinary Assessment;
  - (d) a timeline of events;
  - (e) the considerations of the Complainant where a Professional Review has been raised;
  - (f) the considerations of the API where a Disciplinary Assessment has been raised;
  - (g) the considerations of the Member who is the subject of a Professional Review and/or Disciplinary Assessment; and
  - (h) any recommendations.
- 10.11 In addition to the report under section 10.10, the Professional Conduct Officer will provide to the Professional Conduct Panel:
- (a) the Professional Review Form and/or Disciplinary Assessment Form and any supporting documentation submitted by the Complainant and/or the API; and
  - (b) the Response Submission Form and any supporting documentation submitted by the Member.

## 11. Prima Facie Finding of Professional Misconduct by the Professional Conduct Panel

- 11.1 The Professional Conduct Panel must meet at a mutually suitable time and date, either in person or via telecommunication to consider the merits of a Professional Review and/or a Disciplinary Assessment. At the Professional Conduct Panel meeting:
- (a) the Professional Conduct Panel will consider and deliberate the facts and circumstances surrounding the allegation(s) and any responses provided; and
  - (b) the Professional Conduct Panel will make a determination whether:
    - (i) the evidence submitted by the Complainant and/or the API establishes a prima facie finding of Professional Misconduct; or
    - (ii) the evidence submitted by the Complainant and/or the API does not establish a prima facie finding of Professional Misconduct.
- 11.2 The Professional Conduct Panel may decide that further information or clarification is required from either party, at which the Professional Conduct Panel will instruct the Professional Conduct Officer to seek such information and/or clarification before proceeding.

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- 11.3 If further information and/or clarification is sought in accordance with section 11.2 of this Policy, the Professional Conduct Committee Panel will re-schedule a meeting once the information and/or clarification is received and the Professional Conduct Committee Panel are satisfied with such information and/or clarification.
- 11.4 Where the Professional Conduct Panel has determined a prima facie finding of Professional Misconduct under section 11.1(b)(i), the Professional Conduct Panel will direct the Professional Conduct Officer to provide written Notice of Prima Facie Findings of Professional Misconduct to the Member.
- 11.5 The Notice under section 11.4 will include:
- (a) the facts and circumstances forming the basis for the allegation(s);
  - (b) the allegation(s) made by the Complainant and/or the API against the Member;
  - (c) the findings of the Professional Conduct Panel;
  - (d) the reason(s) for laying a charge against the Member; and
  - (e) a date, not less than ten (10) business days after the date the Notice is given, where the Member may:
    - (i) elect to provide written representations contesting the facts and circumstances forming the basis for the findings; or
    - (ii) elect to appear in person or via telecommunication before the Professional Conduct Panel.
- 11.6 The Member must provide their response under section 11.5(e) to the Professional Conduct Officer.
- 11.7 Where the Professional Conduct Panel has determined there is no prima facie finding of Professional Misconduct under section 11.1(b)(ii), the Professional Conduct Panel will dismiss the Professional Review and/or the Disciplinary Assessment and prepare a report outlining its finding(s) and reason(s). The Professional Conduct Panel will direct the Professional Conduct Officer to provide a copy of the report to the Complainant and/or the Chief Executive Officer and the Member.

## 12. Notice of Hearing

- 12.1 If the Member has elected to provide written representations under section 11.5(e)(i), the Professional Conduct Officer will provide written notice of not less than fifteen (15) business days to the Member to submit their written representations to the Professional Conduct Panel.
- 12.2 If the Member has elected to appear before the Professional Conduct Panel under section 11.5(e)(ii), the Professional Conduct Officer will provide written notice to the Member advising the:
- (a) date, not less than fifteen (15) business days from the date the Member elected to appear before the Professional Conduct Panel;
  - (b) time of hearing;

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- (c) place of hearing; and
  - (d) the Member's right to appear, give evidence and/or to be represented at the hearing.
- 12.3 The Professional Conduct Officer will provide written notice to the Professional Conduct Panel that a hearing has been scheduled advising the:
- (a) date;
  - (b) time; and
  - (c) place of hearing.
- 12.4 Where the Member retains legal representation to act on their behalf, the Member must provide the Professional Conduct Officer notice of such legal representation within ten (10) business days of receiving a notice pursuant to sections 12.1 and 12.2 of this Policy.
- 12.5 Where section 12.4 applies, the Professional Conduct Officer will acknowledge the Member's notice and advise the Professional Conduct Panel of such notice as soon as practicable.
- 12.6 The Professional Conduct Officer will notify the Complainant and/or the Chief Executive Officer that a hearing before the Professional Conduct Panel has been scheduled.

## 13. Hearings before the Professional Conduct Panel

- 13.1 At a hearing, the Professional Conduct Panel may:
- (a) find the Member is guilty of Professional Misconduct and impose any one or more, or none, of the sanctions under section 14; or
  - (b) find the Member is not guilty of Professional Misconduct and dismiss the Professional Review and/or the Disciplinary Assessment.
- 13.2 Any hearing held by the Professional Conduct Panel is conducted in the absence of the public.
- 13.3 If the Member fails to attend before the Professional Conduct Panel in accordance with a notice provided to the Member under section 12, the Professional Conduct Panel may hear the proceedings in the absence of the Member.
- 13.4 At a hearing before the Professional Conduct Panel the Professional Conduct Officer will:
- (a) present the details of the Professional Review and/or Disciplinary Assessment;
  - (b) present the allegation(s) and evidence submitted by the Complainant and/or the API;
  - (c) present the prima facie findings of the Professional Conduct Panel and reason(s) for laying a charge on the Member;
  - (d) provide the Member an opportunity to call or give evidence, if applicable;

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- (e) provide the Member an opportunity to examine or cross-examine witnesses, if applicable; and
    - (f) provide the Member an opportunity to make submissions to the Professional Conduct Panel.
  - 13.5 The Professional Conduct Panel may appoint a person(s) with appropriate qualifications and experience to assist with the hearing, where necessary.
  - 13.6 Any person(s) appointed by the Professional Conduct Panel under section 13.5 will act impartially and will make a declaration that they do not have a conflict of interest in the subject matter of the hearing.
  - 13.7 A person will be deemed to 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;
    - (b) the person has or has had an existing commercial or personal relationship with the Complainant or the Member; or
    - (c) the person is or has been in any way involved in the circumstances giving rise to a Professional Review and/or a Disciplinary Assessment.
  - 13.8 Any Member may:
    - (a) appear personally; or
    - (b) retain legal representation to act on the Member's behalf.
  - 13.9 If there is an additional document(s) that either the Professional Conduct Panel or the Member seeks to admit into evidence, the additional document must not be considered at the hearing unless:
    - (a) the documents have been made available to the Member and the Professional Conduct Panel, within a reasonable time prior to the hearing; or
    - (b) the Member and the Professional Conduct Panel have agreed at the hearing that the documents may be admitted into evidence.
  - 13.10 The reasonable timeframe for the admission of additional documentation under section 13.9, will be at the discretion of the Professional Conduct Panel.
  - 13.11 The Professional Conduct Panel may adjourn the hearing, if necessary, to allow sufficient time for all parties to consider the additional documentation sought to be admitted into evidence.
  - 13.12 The Professional Conduct Panel must ensure that minutes of the hearing are taken and properly recorded.
  - 13.13 At the conclusion of the hearing, the Professional Conduct Panel will prepare a Panel Report.
  - 13.14 The Panel Report under section 13.13 will include:
    - (a) the details of the parties subject to the Professional Review and/or Disciplinary Assessment;
    - (b) the prima facie findings and reason(s) of the Professional Conduct Panel for laying a charge against the Member;
    - (c) the hearing details, including the day, time and place;
    - (d) the findings of the Professional Conduct Panel;

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- (e) the reason(s) for a finding of Professional Misconduct against the Member;
  - (f) outline of any sanction(s) imposed on the Member; and
  - (g) notification of the Member's right of appeal pursuant to section 16.
- 13.15 The Member may request a copy of the minutes of the hearing from the Professional Conduct Panel.
- 13.16 The Complainant may request a copy of the minutes of the hearing from the Professional Conduct Panel.
- 13.17 Pursuant to section 13.16, where a request is made by the Complainant, the API will prescribe an administrative fee for provision of the minutes. Upon payment of the fee, the Professional Conduct Officer will provide the Complainant a copy of the minutes.
- 13.18 The Professional Conduct Panel will provide the Professional Conduct Officer a copy of the minutes within five (5) business days of the hearing taking place.
- 13.19 The Professional Conduct Officer will provide a copy of the Panel Report to the Complainant, Chief Executive Officer and the Member.

## 14. Sanction(s)

- 14.1 If the Professional Conduct Panel finds the Member is guilty of Professional Misconduct, the Professional Conduct Panel may impose any one or more, or none, of the following sanctions against the Member:
- (a) censure the Member;
  - (b) counsel the Member;
  - (c) order the Member to give an undertaking to abstain from particular conduct;
  - (d) order the Member to give an apology for particular conduct;
  - (e) order the Member to undertake such other education or compliance program(s) as the Professional Conduct Panel thinks fit;
  - (f) publish the findings of the Professional Review on the API website in its entirety or in redacted form;
  - (g) place the Member on formal warning and record the warning on the Member's membership file;
  - (h) order the Member to pay the API or APIV a penalty of an amount no more than \$5,000;
  - (i) order the Member to pay the costs of processing the Professional Review and/or Disciplinary Assessment;
  - (j) refer the matter to the API Board with a recommendation that the API or APIV undertake a Disciplinary Assessment against the Member;
  - (k) refer the matter to the API Board with a recommendation to suspend or remove the Member from membership of any API Board, committee, panel or group of the API and/or APIV;

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- (l) refer the matter to the API Board with a recommendation to instruct the Member to remove them self from any API Board, committee, panel or group as a representative of the API;
  - (m) refer the matter to the API Board with a recommendation to suspend the Member's API and/or APIV membership, for a period and on such terms or conditions as the Professional Conduct Panel thinks fit;
  - (n) where the Member is already subject to a suspension order under 14.1(k) continue that suspension for a period, and on such terms or conditions as the Professional Conduct Panel thinks fit; or
  - (o) refer the matter to the API Board with a recommendation to refer the matter to any relevant statutory investigative or law enforcement authority.
- 14.2 The Professional Conduct Committee Panel may only impose sanction(s) against a Member once with respect to a Professional Review and/or Disciplinary Assessment.
- 14.3 Before imposing sanction(s) against a Member the Professional Conduct Panel shall have regard to the following:
- (a) any penalty already imposed on the Member as a result of external proceedings brought against the Member in relation to the same facts and circumstances giving rise to the Professional Review and/or Disciplinary Assessment before the Professional Conduct Panel;
  - (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 represents repeated conduct;
  - (g) the age, physical or mental health, or special infirmity of the Member;
  - (h) the degree of reckless intention or negligence of the Member;
  - (i) the extent to which the breach has affected the parties subject to the Professional Review;
  - (j) the extent the breach has harmed or has the potential to harm the reputation of the API and/or APIV;
  - (k) whether an educative approach would be more appropriate than a punitive approach;
  - (l) whether the findings are in the public interest and would withstand public scrutiny; and
  - (m) whether the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action.
- 14.4 The Professional Conduct Panel will instruct the Professional Conduct Officer to advise the Complainant in writing the details of any decision and/or sanction(s) imposed against the Member under sections 13 and 14 of this Policy.

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## 15. Enforcement of Sanction(s)

- 15.1 All sanction(s) imposed against the Member under this Policy will be enforced and implemented by the Professional Conduct Officer.
- 15.2 All sanction(s) imposed against the Member under this Policy will not be enforced until one (1) day after the expiry date of the Member's right of appeal provided under section 16.2 of this Policy.

## 16. Right of Appeal

- 16.1 A Member may apply to the Appeals Tribunal Committee for a review of the sanction(s) imposed against the Member by the Professional Conduct Panel or should they believe a lack of procedural fairness has been afforded and followed.
- 16.2 A Member may exercise their right of appeal within fifteen (15) business days of receipt of the notice of decision of the Professional Conduct Panel.
- 16.3 A Complainant does not have a right of appeal with regards to a decision of the Professional Conduct Panel.
- 16.4 The API Board shall establish the Appeals Tribunal Panel to hear an appeal by the Member pursuant to the Appeals Tribunal Policy.

## 17. Procedural Fairness

- 17.1 A Complainant and Member must be afforded the requisite natural justice whereby the rules of Procedural Fairness are followed.
- 17.2 The rules of Procedural Fairness include:
  - (a) managing any issue(s) of concern through a transparent process;
  - (b) creating and maintaining a respectful environment for all parties involved;
  - (c) ensuring there is neutrality carried throughout the process via a lack of bias towards all parties involved;
  - (d) ensuring all issue(s) of concern raised or identified are reviewed and investigated;
  - (e) ensuring the Member is aware of the issue(s) of concern raised and/or identified;
  - (f) ensuring the Member has the opportunity to respond to any issue(s) of concern raised and/or identified;
  - (g) ensuring that a hearing, whether oral or written, takes place where appropriate;
  - (h) ensuring proper reason(s) are provided with respect to the evidence submitted, in support of any decision made; and
  - (i) ensuring parties are notified throughout the process.

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## 18. Notification to the APIV

- 18.1 If the Member is an APIV Member, or is eligible to be an APIV Member, the Professional Conduct Officer will notify the APIV in writing of any Active Professional Review and/or Active Disciplinary Assessment against the Member.

## 19. Suspension of a Professional Review and/or Disciplinary Assessment

- 19.1 The Professional Conduct Officer will suspend a Professional Review and/or a Disciplinary Assessment when:
- (a) the conduct complained about is subject to current proceedings before a court, tribunal, state licensing body or similar; or
  - (b) the Member is subject to current proceedings before a court, tribunal, state licensing body or similar.
- 19.2 A Professional Review and/or a Disciplinary Assessment may be suspended for a maximum of twelve (12) months.
- 19.3 The Professional Conduct Officer will notify the Complainant and/or the Chief Executive Officer and/or the Member that the Professional Review and/or a Disciplinary Assessment has been suspended and specify the expiry date of the suspension.
- 19.4 If at the expiry date of the suspension period pursuant to section 19.3, there has been no resolution by a body referred to under section 19.1, the Professional Review and/or a Disciplinary Assessment will be a Closed Professional Review and/or a Disciplinary Assessment.
- 19.5 The Professional Conduct Officer will notify the Complainant and/or the Chief Executive Officer and/or Member if a Professional Review and/or a Disciplinary Assessment is a Closed Professional Review and/or a Disciplinary Assessment pursuant to section 19.4 of this Policy.
- 19.6 The Complainant may notify the Professional Conduct Officer upon the conclusion of external proceedings with a copy of the outcome, and the Professional Conduct Officer may re-open the Professional Review and/or a Disciplinary Assessment.
- 19.7 This section applies to any Professional Review suspended, including a Professional Review suspended pursuant to a prior policy of the API with respect to the handling of allegation(s) and findings of Professional Misconduct.

## 20. Withdrawal of a Professional Review

- 20.1 A Professional Review may be withdrawn by a Complainant.
- 20.2 Withdrawal of a Professional Review must be in writing to the Professional Conduct Officer.

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- 20.3 If a Professional Review is withdrawn, the Professional Conduct Officer will confirm in writing to the Complainant and/or Member of the withdrawal.
  - 20.4 Following the confirmation of the withdrawal, the Professional Review will be a Closed Professional Review.
  - 20.5 The withdrawal of a Professional Review against a Member does not prevent the API from undertaking a Disciplinary Assessment against the same Member.

## 21. Recording and Reporting of a Professional Review and/or a Disciplinary Assessment

- 21.1 The Professional Conduct Officer will make and keep a record of any Professional Review raised and/or a Disciplinary Assessment managed under this Policy and will keep a copy of all decisions of the Professional Conduct Panel and Appeals Tribunal Panel.
- 21.2 The Professional Conduct Officer will have the discretion, subject to the direction by the API Board, to decide what is contained on the register in relation to each Professional Review and/or Disciplinary Assessment.
- 21.3 The Professional Conduct Officer will report every Professional Review and/or Disciplinary Assessment to the Professional Standards Council as required by a scheme registered under the Professional Standards legislation in a State or Territory.

## 22. Confidentiality

- 22.1 This section 22 applies to:
  - (a) a Complainant;
  - (b) a Member;
  - (c) the Professional Conduct Officer;
  - (d) the Chief Executive Officer;
  - (e) members of the Professional Conduct Committee, including the Professional Conduct Panel;
  - (f) members of the Appeals Tribunal, including the Appeals Tribunal Panel;
  - (g) staff and contractors employed by the API; and
  - (h) any third party involved in the processing of the Professional Review and/or Disciplinary Assessment as stipulated in the Policy.
- 22.2 Any information in relation to the proceeding, inquiry or other matter pending or contemplated which has arisen out of the Professional Review and/or Disciplinary Assessment process, must not be disclosed by any person listed under section 22.1, except to any of the following:
  - (i) any court, tribunal or other person acting judicially;
  - (j) a regulatory authority or authority of any State or Territory, or the Commonwealth;
  - (k) an Australia legal practitioner for the purposes of legal representation;

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- (l) 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;
  - (m) a client or former client of the Member, if the information related to that client or former client;
  - (n) as otherwise permitted by this Policy; or
  - (o) any other person as permitted in writing by the Member.
- 22.3 The Professional Conduct Officer may not disclose any information with respect to the details of any Active and/or Closed Professional Review and/or Disciplinary Assessment if:
- (a) the information may expose the Professional Conduct Officer or any other officer of the API to liability for civil damages;
  - (b) the information would or could prejudice, impede or in any other manner adversely affect the investigation of a Professional Review and/or Disciplinary Assessment; or
  - (c) would deny procedural fairness to the Member.

## 23. Appointment of the Professional Conduct Officer

- 23.1 The API Board will appoint a person to manage, investigate and respond to any Professional Review raised and/or a Disciplinary Assessment relating to Professional Misconduct. The person appointed under section 23.1 will take the role as the Professional Conduct Officer.
- 23.2 The Professional Conduct Officer will:
- (d) assist members of the public with enquiries relating to the procedures and process when raising a Professional Review with the API;
  - (e) maintain communication with the Complainant, the Member, the Chief Executive Officer and the Professional Conduct Panel; and
  - (f) undertake tasks as stipulated under this Policy throughout the Professional Review and/or Disciplinary Assessment process.
- 23.3 The conduct of the Professional Conduct Officer will be subject to the terms and conditions of their employment, as agreed in writing with the API Board from time to time.
- 23.4 If the Professional Conduct Officer has an actual, potential or perceived conflict or is otherwise unable to act in relation to any Professional Review and/or a Disciplinary Assessment relating to Professional Misconduct another person determined by the CEO or Chair of API (as appropriate in the circumstances) may perform the role of Professional Conduct Officer under this Policy.

## 24. Powers of the Professional Conduct Officer

- 24.1 The Professional Conduct Officer may act in accordance with this Policy.
- 24.2 The Professional Conduct Officer may:
- (a) make any inquiries they consider necessary for the purposes of managing a Professional Review raised; and/or

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- (b) make any inquiries they consider necessary for the purposes of managing a Disciplinary Assessment.

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## **25. Vacancy in the position of the Professional Conduct Officer**

- 25.1 If a casual vacancy occurs in the position of the Professional Conduct Officer, the API Board shall appoint any other appropriate person to undertake the role of the Professional Conduct Officer.
- 25.2 The person appointed under section 25.1 will undertake the role as acting Professional Conduct Officer in accordance with this Policy.

## **26. Review of the Policy**

- 26.1 This Policy will be reviewed annually to ensure continued relevance to the operations of the API.
- 26.2 This review will include consultation with the API Board.
- 26.3 Amendments to this Policy must be approved by the API Board.