

SMSF Professionals' Association of Australia Ltd

Conduct and Disciplinary Procedures[®]

September 2008



SELF-MANAGED SUPER FUND
PROFESSIONALS' ASSOCIATION
OF AUSTRALIA



Overview

The SMSF Professionals' Association of Australia Limited (SPAA) is a self-regulating professional association whose members voluntarily agree to be bound by various professional, technical and ethical standards.

These standards aim to ensure that the self managed superannuation fund (SMSF) advisory profession exercises the highest level of professionalism; providing a quality of service which achieves credibility among, and the confidence of, Australian SMSF consumers, government, regulators and other stakeholders. The SPAA – SMSF Specialist Advisor™ and SMSF Specialist Auditor™ are the consumers' professional of choice for SMSF advice and services.

Membership of SPAA requires a professional to conduct himself/herself in a professional business like manner at all times. These Conduct and Disciplinary Procedures are the expected minimum requirement for all SPAA members.

The Conduct and Disciplinary Procedures are designed to ensure that any complaints and disciplinary processes are handled effectively, expeditiously, and in a manner that observes the principles of natural justice and procedural fairness.

The Conduct and Disciplinary Procedures are to be read in conjunction with the Constitution, the SPAA Accreditation Program SMSF Specialist Auditor™ Rules and Conditions, the SPAA Accreditation Program SMSF Specialist Advisor™ Rules and Conditions and the SPAA SMSF Specialist Auditor™ Standards of Professional Conduct for SMSF Specialist Auditors™ (including By Laws).

Table of Contents

1. Objective	4
1.1 Commitment	4
1.2 Fairness	4
1.3 Resources	4
1.4 Access	4
1.5 Assistance	4
1.6 Responsiveness	4
1.7 Charges	4
1.8 Remedies	4
1.9 Data Collection	4
1.10 Reviews	4
2. SPAA Constitution	5
3. Code of Professional Conduct & Code of Ethics (Including By-Laws)	5
3.1 Safeguard the Public Interest	5
3.2 Integrity	5
3.3 Objectivity and Independence	5
3.4 Confidentiality	5
3.5 Competence	5
3.6 Currency of Knowledge	5
3.7 Ethical Behaviour	6
3.8 SPAA Quality Review Program (QRP)	6
4. Additional expectations of SPAA Specialist Members	6
4.1 Program Rules and Conditions – SMSF Specialist Advisor™ and SMSF Specialist Auditor™	6
5. Misconduct	6
6. Ethics and Disciplinary Committee & Appeals Committee	7
6.1 Ethics and Disciplinary Committee	7
6.2 Appeals Committee	7
6.3 Conflict of Interest	7
7. Lodging a Complaint	7
8. Investigation of Complaints	7
9. Ethics and Disciplinary Committee Procedure	8
9.1 Member Response	8
9.2 Form of Charge	8
9.3 Service of a Charge	8
9.4 Procedure on a Hearing	9
10. Sanctions and Penalties	9
11. The Appeals Process	9
11.1 Rights of Appeal	9
12. Grievances	10
12.1 Grievances Procedure	10
13. Amendments to the SPAA Code of Professional Conduct and Code of Ethics	10

1. Objective

SPAA will endeavour to ensure that all complaints are resolved satisfactorily and in a timely manner by the Ethics and Disciplinary Committee, SPAA Professional Standards Committee or any other form of Appeal considered appropriate.

SPAA's Conduct and Disciplinary Procedures demonstrate:

1.1 Commitment

SPAA is committed to an efficient and fair resolution of complaints against its members. SPAA acknowledges affected parties' rights to complain and actively solicit feedback from SPAA regarding the conduct of SPAA members.

1.2 Fairness

SPAA recognises the need to be fair to both the complainant and the member against whom the complaint is made.

1.3 Resources

SPAA has adequate resources for complaints handling with sufficient levels of delegated authority from the SPAA Board. SPAA recognises the need for complaints to be reviewed by someone in an independent position (that is, someone who has not been involved in the matter complained about), hence the establishment of the Ethics and Disciplinary Committee, SPAA Professional Standards Committee or an Appeals process.

SPAA's complaints handling process will be available on the SPAA website for consumers and members to access.

1.4 Access

SPAA's complaints handling process is accessible to all and ensures that information is readily available on the details of making and resolving complaints.

1.5 Assistance

SPAA will offer assistance to complainants in the formulation and lodgement of complaints should they require the assistance of SPAA.

1.6 Responsiveness

Complaints received by SPAA will be dealt with on a timely basis where appropriate and the complaints will be treated courteously.

1.7 Charges

Subject to statutory requirements, SPAA does not impose a charge on the complainant, to lodge a complaint. Please refer to the details of subsequent actions by the complainant where charges may apply.

1.8 Remedies

SPAA has the capacity to determine and implement remedies.

1.9 Data Collection

Complaints and outcomes will be recorded in the SPAA Complaints Register located at SPAA Head Office. The Chief Executive Officer (CEO) of SPAA has the absolute discretion to determine if the outcome and results should be recorded or pronounced.

1.10 Reviews

As determined by the SPAA Board, a review of the Conduct and Disciplinary Procedures may be conducted.

2. SPAA Constitution

Upon joining SPAA as a member, an individual agrees to abide by the SPAA Constitution as well as other codes and By-Laws.

Within the Constitution, includes clear guidance as to the possible repercussions where a member infringes the Association's rules (clause 11) and the acts that may lead to suspension or expulsion (clauses 11 and 12) as a member of SPAA.

3. Code of Professional Conduct & Code of Ethics (Including By-Laws)

The SPAA Code of Professional Conduct and Code of Ethics (including By-Laws) referred to herein as the 'Code' are designed to provide SPAA members with authoritative guidance on minimum acceptable standards of professional conduct.

The Code focuses on essential matters of principle and is not to be taken as a definitive statement on all matters.

The Code recognises that the objectives of SPAA are to work towards the highest standards of professionalism, to attain the highest levels of advice and generally to meet the public interest requirements. Members should be guided not merely by the terms but also by the spirit of the Code.

The Code contains seven (7) fundamental principles to professional conduct which are:

3.1 Safeguard the Public Interest

Members must safeguard the interests of their clients provided that this does not conflict with the duties and loyalties owed to the community, its laws and regulatory and government institutions.

3.2 Integrity

Members must not breach public trust in the SMSF profession or the specific trust of their clients, Association members and other stakeholders.

Members must always act with the utmost honesty, integrity and sincerity in their approach to professional work.

3.3 Objectivity and Independence

Members must be objective, impartial and free of conflicts of interest in the performance of their professional duties.

In each professional assignment undertaken for a client, members should be seen to be free of any interest which might be regarded, whatever its actual effect, as being incompatible with objectivity.

3.4 Confidentiality

Members must not disclose information acquired in the course of their professional work to a third party except where consent has been obtained from the rightful legal owner, unless there is a legal, statutory or professional duty to disclose it.

3.5 Competence

Members must accept only such work as they believe they are competent to perform. Members are encouraged to obtain expert advice from appropriately qualified parties where the member does not have the necessary competency or skill to adequately discharge their professional duties.

Members should always be aware of their own limitations and not knowingly imply that they have competence they do not possess. This is distinct from accepting engagements for which the successful completion requires expertise additional to the services, for which the member has been appointed or will engage the services of another.

3.6 Currency of Knowledge

Members must keep themselves informed of current legislation, practices and standards as are relevant to them being able to properly discharge their duties on all engagements and in support of the requirements of their membership of SPAA.

3.7 Ethical Behaviour

Members must at all time refrain from conduct or action that may tarnish the image of the SMSF sector, or unjustifiably detract from the good name of SPAA in the community.

It is imperative that members endeavour to at all times maintain professional standards that improve and enhance the image of SPAA and the SMSF sector. The Code also includes professional standards which are mandatory for members.

3.8 SPAA Quality Review Program (QRP)

SPAA conducts independent random quality reviews of its membership. A random selection of ten percent (10%) of General and SMSF Specialist Advisor™ (SSA™) members and twenty percent (20%) of SMSF Specialist Auditor™ (SSAud™) members will undergo a quality review each year.

Quality reviews may also be conducted at the discretion of the SPAA Professional Standards Committee (PSC) or as part of a disciplinary process.

The SPAA Quality Review Program (QRP) is a review of all members' professional behaviour, including compliance with CPD requirements. Specialist Members (SSA™ and SSAud™) will also be required to participate in an online self assessment to ensure they are maintaining the standards of their designation.

4. Additional expectations of SPAA Specialist Members

In addition to the requirements of General Membership of SPAA, the Specialist Member must satisfy the conditions of their designation.

4.1 Program Rules and Conditions – SMSF Specialist Advisor™ and SMSF Specialist Auditor™

When joining the SPAA Specialist Advisor and Auditor program, a member signs a declaration agreeing to abide by the rules and conditions of the program.

5. Misconduct

The aim of the Disciplinary Rules is to deal with the following types of conduct ('Misconduct'):

- Professional Misconduct;
- Unsatisfactory Professional Performance; and
- Conduct likely to bring SPAA into disrepute or reflect adversely on SPAA.

Misconduct may be constituted by, but is not limited to, the following:

- Misrepresenting any material facts in relation to an application for membership of SPAA.
- Misrepresenting any material fact in respect of any ongoing accreditation requirements.
- Misleading or deceptive conduct by a member in relation to their dealings with clients or the public or with SPAA.
- Conduct that falls short of the standard of competence and diligence that a member of the public is entitled to reasonably expect of a member of SPAA.
- Breaching the Constitution, the Code or the By Laws.
- Fraud or other dishonest conduct.
- Any act or omission injurious to SPAA.
- The suffering of an Insolvency Event as defined in clause 2.1.17 of the Constitution.
- Conviction of an indictable offence or offence involving dishonesty.

6. Ethics and Disciplinary Committee & Appeals Committee

6.1 Ethics and Disciplinary Committee

There will be an Ethics and Disciplinary Committee for the purpose of carrying out the delegated authority of the Board of Directors pursuant to clause 34 of the Constitution in relation the powers of the Board of Directors referred to in clauses 11 and 12 of the Constitution.

The Ethics and Disciplinary Committee will consist of three persons as appointed by the Board of Directors pursuant to clause 34 of the Constitution. The Ethics and Disciplinary Committee will elect one of its members to be the Chair.

6.2 Appeals Committee

There will be an Appeals Committee for the purpose of carrying out the Appeals function pursuant to these rules.

The Appeals Committee will consist of three persons as appointed by the Board pursuant to clause 34 of the Constitution, including, unless he or she has a conflict of interest, the Chairman of the Board. The Appeals Committee will elect one of its members as the Chair.

Members of the Ethics and Disciplinary Committee are not eligible to be members of the Appeals Committee.

6.3 Conflict of Interest

Members of the Appeals Committee and the Ethics and Disciplinary Committee must not participate in any matter of which they are or would be reasonably perceived to be in a position of conflict with that matter. In the event of conflict of interest the Chair may replace that member (including if need be his or herself) with another member.

7. Lodging a Complaint

Complaints may be made by any person and are to be made directly to the CEO of the SMSF Professionals' Association of Australia Limited to either of the following addresses:

PO BOX 6540, Adelaide, South Australia, 5000; or,
SPAA House, Level 1, 366 King William Street, Adelaide, South Australia, 5000.

The Complaint must:

- be in writing;
- clearly identify the member against whom the complaint is made;
- clearly outline the exact nature and detail of the complaint;
- be accompanied with documentary evidence supporting it;
- show the name and address of the complainant; and
- be signed by the complainant.

8. Investigation of Complaints

SPAA must appoint one or more persons to the position of Complaints Officer. The role of Complaints Officer is to investigate complaints and suspected breaches of the Constitution, the Code of Professional Conduct and Code of Ethics and other SPAA procedures and to prepare a report to the Company Secretary (Secretary) or SPAA CEO. The report is to be prepared as expeditiously as possible, and ordinarily within 10 working days of the complaint being made.

The purpose of the investigation and report is to:

- Ascertain whether a complaint is one of substance or whether it is frivolous, vexatious, trivial, misconceived or lacking in substance.
- Ascertain whether there is a reason to believe that the allegations made against the member are factual and accurate.

The Complaints Officer may commence an investigation and prepare a report where:

- A complaint is made;
- They become aware that an offence has been committed or that a member has engaged in misconduct; or
- They are directed to by the SPAA CEO.

The Complaints Officer may:

- If the allegation falls short of misconduct as defined in paragraph 5 above attempt to deal with the matter informally;
- Inspect SPAA's membership and other records; and or
- Interview the complainant and other parties mentioned in the complaint.

Upon receiving a report the Secretary or SPAA CEO shall determine whether or not to refer the complaint to the Ethics and Disciplinary Committee.

The Secretary or SPAA CEO need not refer the report to the Ethics and Disciplinary Committee if he/she considers it is frivolous, vexatious, trivial, misconceived or lacking in substance.

9. Ethics and Disciplinary Committee Procedure

9.1 Member Response

If a report has been referred to the Ethics and Disciplinary Committee, the Secretary or SPAA CEO should forward a copy of the complaint with a letter to the member asking the member for a written response within twenty one (21) days.

On receipt of the written response from the member, the Secretary or SPAA CEO shall forward the matter to the Ethics and Disciplinary Committee who shall review the complaint, the report and the member's response to determine the disciplinary action required. The Ethics and Disciplinary Committee may:

- If the response and supporting information conclusively demonstrates that the member has not committed any misconduct, dismiss the complaint and inform the complainant of that fact and the reasons for that decision;
- If the response and supporting information indicates that misconduct did occur, but the misconduct was trivial, that they deal with the complaint informally and inform the complainant of that fact and the reasons for that decision; or
- Make a charge in accordance with 4.1.2.

A Charge must be made if the Ethics and Disciplinary Committee concludes that a member engaged in misconduct and the misconduct was not trivial.

9.2 Form of Charge

A Charge must –

- Be in writing and contain particulars of the alleged misconduct;
- Specify when and where a hearing into the charge is to be conducted; and
- Request the member to provide in writing whether or not he or she admits or denies the charge specifying the timeframe within which the member must respond. If the member admits to the charge, the member may submit in writing an explanation of the charge. The explanation must be provided to the Ethics and Disciplinary for any hearing.

If the member does not respond within the time specified the Ethics and Disciplinary Committee can proceed to determine the matter in the absence of the member, provided that the Ethics and Disciplinary Committee reasonably believes that the member has been served with the charge in accordance with these rules.

9.3 Service of a Charge

Notice of a charge and a hearing date may be given to a member by electronic means or by post to the usual place of business or residence of the member.

If a notice is served by post the notice shall be presumed to have been received on the fourth business day after the notice was posted unless evidence to rebut the presumption is provided.

9.4 Procedure on a Hearing

A hearing will be conducted in a form and manner acceptable to the Ethics and Disciplinary Committee:

- The procedure of the hearing is at the discretion of the Ethics and Disciplinary Committee, and the proceedings shall be conducted with whatever level of formality they believe allows for the proper consideration of the matter.
- The Ethics and Disciplinary Committee may give such procedural directions prior to the hearing as they believe appropriate including directions for the provision of written submissions, disclosure of documents or taking of transcript at the hearing.
- The Ethics and Disciplinary Committee is not bound by the legal rules of evidence but may inform itself in any way it sees fit.
- The Ethics and Disciplinary Committee must act without bias and conduct the hearing in accordance with the rules of natural justice.
- The Ethics and Disciplinary Committee must act expeditiously in hearing and determining any proceedings brought before it.
- The Ethics and Disciplinary Committee must provide reasons for its determination and provide a copy of those reasons to both the complainant and the member. Any determination is to be made by simple majority of the members of the Ethics and Disciplinary Committee.
- In the event that the Ethics and Disciplinary Committee is satisfied that the member has had adequate notice of the hearing but has not attended or made submissions, then the Ethics and Disciplinary Committee may proceed in the absence of the member.
- The Ethics and Disciplinary Committee may obtain legal advice and may have legal advisors present at the hearing.
- A member may if they so desire be represented at the hearing by a legal practitioner.

10. Sanctions and Penalties

The Ethics and Disciplinary Committee will consider all the available facts relevant to the complaint/report and determine whether the charge has been proved.

If a charge is proved against a member, the Ethics and Disciplinary Committee shall permit the member to put forward any relevant evidence and make submissions as to mitigation before imposing an appropriate sanction.

The SPAA Ethics and Disciplinary Committee may:

- dismiss the matter absolutely;
- make a finding of guilt;
- counsel the member;
- reprimand the member;
- impose correctional steps or conditional undertakings;
- suspend the person's membership of SPAA for a period of no more than two (2) years;
- fine the member; or
- expel the member from the association.

Any sanction imposed upon a SPAA member should be communicated within ten (10) working days.

11. The Appeals Process

11.1 Rights of Appeal

A member (including a person whose membership was suspended or who has been expelled as a result of any decision of the Ethics and Disciplinary Committee) may appeal a decision made by the Ethics and Disciplinary Committee on the grounds of:

- error or omission of process;
- error of law; or
- severity of sanction or penalty.

Any appeal must be lodged in writing with the SPAA Secretary or CEO within twenty one (21) days after communication of the determination. The Secretary will provide a copy of the appeal to the complainant, the Appeals Committee and the Ethics and Disciplinary Committee.

If the appeal is against the imposition of a suspension or expulsion, the member remains suspended or expelled as the case may be until the appeal is finalised.

Appeals heard by the Appeals Committee may;

- conduct the appeal hearing in any manner it sees fit, subject to the rules of natural justice, and may require written submissions to be made prior to the appeal hearing.
- ordinarily conduct the appeal by way of a review of the matter on the basis of material before the Ethics and Disciplinary Committee. They may, in their absolute discretion, allow the rehearing of evidence or the taking of further evidence if it is in the interests of justice to do so.
- allow the appellant representation by a legal practitioner at any appeal hearing.
- may obtain legal advice.

The Appeals Committee may affirm, amend, vary or rescind any determination of the Ethics and Disciplinary Committee and exercise any of the powers of the Ethics and Disciplinary Committee.

Any decision of the Appeals Committee may;

- be made by simple majority;
- must be communicated in writing to the complainant, the member, and the Ethics and Disciplinary Committee. The Appeals Committee is to act expeditiously in making its decision and must give reasons for its decision is final.

The Appellant shall be afforded the right to withdraw the appeal at any stage of the appeal process.

In the event that the appeal is unsuccessful the appellant shall pay the costs associated with the appeal.

12. Grievances

12.1 Grievances Procedure

In addition to the complaints procedure it is recognised that issues may arise where conduct is alleged to have taken place that is of concern either to the public or to SPAA but which either falls outside the definition of misconduct, or if it falls within that definition is of a trivial or minor nature. Such matters may be handled as a 'grievance' and may be dealt with on a less formal basis, at the discretion of the Complaints Officer or SPAA CEO, for example by direct communication with the member. Without limiting the discretion of the Complaints Officer or SPAA CEO where a matter the subject of a grievance takes place, the Complaints Officer or SPAA CEO may:

- Advise the member in writing or orally that an issue about their conduct has arisen.
- Speak with the member and seek an explanation for conduct.
- Write to and request a written explanation or show cause for conduct.
- Request that the member not engage in certain conduct, or take certain steps to ensure that certain conduct is not engaged in.

If the response by the member to any raised grievance is unsatisfactory the grievance may be elevated to complaint status in which case the provisions of section 7 will be complied with.

13. Amendments to the SPAA Code of Professional Conduct and Code of Ethics

SPAA may amend the Constitution, Code and other procedures at any time but an amendment will not apply in respect of a complaint, charge or report already received.