

## **AusIMM Professional Conduct Regulations 2019**

### **PREAMBLE**

All members of the AusIMM must comply with the Institute's Charter, By-Laws, Code of Ethics, regulations and any professional codes adopted by the Board, at all times. Compliance is monitored and enforced through the AusIMM Professional Standards Compliance Process (**PSCP**), the purpose of which is to uphold professional standards for the benefit of the community and members<sup>1</sup>.

The PSCP is initiated when a complaint is made concerning the professional activities of a current member whilst a member of the AusIMM; there is no jurisdiction for action taken while a non-member or for activity outside of the profession unless this is supported by civil or criminal proceedings.

The AusIMM will conduct the PSCP in accordance with the following regulations and in a timely manner.

Complaints which are trivial and vexatious in nature will not be accepted. The PSCP does not resolve complaints and disputes relating to payment or other commercial arrangements between parties. Such complaints will not be accepted but may be recommended to be resolved through alternative dispute procedures.

The Professional Conduct Committee confirms the acceptance of a complaint and adjudicates all complaints that are accepted. The Ethics Committee adjudicates any complaint considered by the Professional Conduct Committee to potentially involve a breach of the Code of Ethics. This dual committee approach allows the majority of complaints to be handled without implication of unethical behaviour.

The onus is on the complainant to provide information supporting a complaint. The Professional Conduct and Ethics Committees can seek additional information and/or advice as deemed appropriate and decide what is relevant. Either committee may, if necessary, redefine a complaint or expand a complaint based on available information if considered appropriate in order to maintain professional standards. Either committee may recommend the referral of a complaint to a relevant regulatory or statutory body.

Procedural fairness dictates that a member whose professional conduct is in question will be provided with details of the allegations deemed admissible by the adjudicating Committee and the relevant supporting documentation and invited to provide a written response.

## **AusIMM Professional Conduct Regulations 2019**

### **Commencement**

1. These Regulations are the Professional Conduct Regulations 2019 and commence on 1 January 2019.

### **Interpretation**

2. In these Regulations, words and expressions have the same meanings as in the Charter and By-Laws

### **Responsibilities**

3. By-Laws 8.3 and 9.2 require that all members comply at all times with the AusIMM's Charter, By-Laws, Code of Ethics, Regulations and any professional codes adopted by the AusIMM Board (**'the Board'**). These are published on the AusIMM's website. Adherence to these requirements applies to all members of any grade.
4. Professional codes adopted by the Board include, but are not limited to, The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (**JORC**)

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<sup>1</sup> The PSCP applies to members globally. Members should familiarise themselves with the relevant legal and regulatory requirements in the environments in which they are working.

**Code**) and the Australasian Code for Public Reporting of Technical Assessments and Valuations of Mineral Assets (**VALMIN Code**).

5. The AusIMM Chief Executive Officer (**CEO**) must ensure the publication of an annual report summarising the adjudication of matters investigated for alleged non-compliance with the AusIMM's Charter, By-Laws, Code of Ethics, Regulations and any Professional Codes adopted by the Board.
6. The CEO may delegate their responsibilities outlined in these Regulations to any member of staff of the AusIMM.

## **Complaints**

7. Any member, individual or organisation may lodge a complaint in respect of the actions of a member or members.
8. Every complaint shall be made in writing using the appropriate forms which must be lodged with the CEO (or nominee) and must include:
  - a) the full name and contact details for the complainant
  - b) the name and any other available identifying details for the respondent(s) to the complaint
  - c) an unambiguous, comprehensive and clear description of the alleged breaches of the AusIMM's Charter, By-Laws, Code of Ethics, Regulations and/or any Professional Codes adopted by the Board
  - d) documentation supporting the allegations
  - e) a description of any commercial relationship or potential for perceived conflict of interest between the complainant and the respondent to the complaint.

An incomplete or nonspecific complaint will not be accepted for investigation, and the complainant(s) will be advised accordingly.

9. Upon receipt of a complaint which meets the requirements of Professional Conduct Regulation 8, the CEO (or nominee) will:
  - a) confirm the person named as respondent to the complaint is a current member and a member at the time the alleged breach occurred. If a member resigns during the investigation of a complaint, then that member shall not be eligible to reapply for membership for a minimum period of five years or longer if agreed by the Board.
  - b) refer the matter to the Professional Conduct Committee for investigation.
  - c) advise the complainant that the matter has been referred to the Committee.
10. The CEO may recommend to the Board that the respondent's membership be suspended or withdrawn during the investigation and determination of a complaint where there are very serious allegations underpinned by strong supporting documentation.

## **Professional Conduct and Ethics Committees**

11. The Board must establish a Professional Conduct Committee and an Ethics Committee. A member is unable to serve on both committees simultaneously.
12. The Professional Conduct Committee shall be constituted with a minimum of six Honorary Fellow or Fellow members. A quorum of the Professional Conduct Committee shall be three members.
13. The Ethics Committee shall be constituted with a minimum of six Honorary Fellow or Fellow members. One member of the Ethics Committee shall be a Board director. A quorum of the Ethics Committee shall be three members.
14. The Board will appoint all members of the Professional Conduct and Ethics Committees. Professional Conduct and Ethics Committee members may be appointed for terms of up to

three years and may serve on the committee for up to six consecutive years at the Board's discretion.

15. The Board will appoint the Chair and may appoint a Deputy Chair to each Committee. The Board director shall not be the Chair or Deputy Chair of the Ethics Committee.
16. Members of the Professional Conduct and Ethics Committees must declare and have formally recorded in meeting minutes any potential, real or perceived conflicts of interest in a complaint matter under consideration and must excuse themselves where appropriate. If a Committee is unable to achieve a quorum due to the enactment of this provision, the Board may appoint additional members for the purposes of dealing with the relevant complaint matter.
17. All deliberations of the Professional Conduct and Ethics Committees are confidential, and the name of the complainant must not be revealed to the respondent unless this is considered necessary for the proper investigation of the claim. This will only occur with the written permission of the complainant or as required by a judge, court or other relevant authority. Should the complainant not provide permission as requested, the committee may terminate further investigation into the complaint.
18. The name of a respondent must not be revealed to any parties external to the AusIMM Board, Professional Conduct and Ethics Committees, advisory panels and independent experts except on a "need to know" basis and as necessary to maintain professional standards, protect the community or comply with legal requirements. This may involve communication with companies, other professional bodies, regulatory and statutory bodies. Additionally, the Board may approve the public naming of a member in accordance with Clause 31.
19. The Professional Conduct and Ethics Committees must operate within the requirements of the Charter, By-Laws and these Regulations, and in doing so may vary or develop further procedures and protocols to guide their operations, within the intent of the PSCP as outlined in the preamble.
20. The CEO must ensure secretariat support services are available to assist the effective operation of the Professional Conduct and Ethics Committees.

## **Investigations**

21. The Chair of the Professional Conduct Committee (or designate) must consider all complaints received which meet the requirements of Professional Conduct Regulation 8 and refer the complaint to the full Professional Conduct Committee.
22. In investigating a complaint, the Professional Conduct Committee must invite the respondent to provide a written response within a specified timeframe to the matters raised, and consider any response provided.

In addition, the Professional Conduct Committee may:

- a) seek advice from the Board, CEO, regulators, securities exchanges, independent experts and other relevant third parties
- b) seek professional advice about the matters raised in the complaint
- c) seek additional information relating to the complaint from the complainant and/or the respondent
- d) make use of relevant information available in the public domain (for example, company records, Public Reports, court documents).
- e) redefine or expand a complaint if this is considered necessary to uphold professional standards

In considering a complaint in which there may have been a breach of the respondent's legal obligations or the AusIMM Code of Ethics, the JORC or VALMIN Codes, the Professional Conduct Committee may consult with independent experts to appropriately investigate a complaint or refer the matter to relevant regulators or the police. The processes of the Professional Conduct Committee may be suspended if a complaint is the subject of or directly connected to alternative resolution, a trial or being considered by a judge or court.

23. At the conclusion of its investigation, the Professional Conduct Committee will:
- a) dismiss a complaint which it finds is unsubstantiated;
  - b) dismiss a complaint due to lack of sufficient details requested from the complainant;
  - c) dismiss a complaint arising from a lack of timeliness by the complainant in complying with any request for further information;
  - d) dismiss a complaint which it determines is trivial or vexatious;
  - e) recommend a matter be settled by alternative dispute procedures;
  - f) determine the outcome of a complaint which it deems is a minor breach of the respondent's obligations under the AusIMM Charter, By-laws, Regulations, Code of Ethics or other professional codes; or
  - g) determine the outcome of any complaint, except those which potentially involve a material breach of any clause of the Code of Ethics (which may include unprofessional behaviour, serious and material breaches of Codes); the latter are referred to the Ethics Committee for determination
24. If the Professional Conduct Committee determines that a complaint is substantiated, it may impose a sanction, which may include a reprimand, formal warning, direction for re-training, mediation and/or counselling. The Professional Conduct Committee may also require the respondent to take actions to redress the breach including notifying any related parties or regulatory or statutory bodies. The Professional Conduct Committee may not impose a suspension of membership or expulsion from membership.
25. At the conclusion of the Professional Conduct Committee investigation, the CEO must write to the complainant and respondent to advise them of the Committee's determination, the reasons for that determination, and any sanction imposed. In the case of the Professional Conduct Committee determining to refer the matter to the Ethics Committee, the CEO must make all material from the Professional Conduct Committee investigation available to the Ethics Committee, including a summary of information considered to be relevant to the case.
26. Any party to the complaint may appeal the decision of the Professional Conduct Committee to the Ethics Committee. An appeal must be lodged in writing with the CEO within 30 days of the date of the outcome advice.
27. The Ethics Committee must consider any matter referred to it by the Professional Conduct Committee, or any decision of the Professional Conduct Committee appealed in accordance with Professional Conduct Regulation 26.
28. In considering a complaint, the Ethics Committee will prepare and issue to the respondent a summary statement outlining the allegations and where appropriate will provide supporting documentation including redacted expert reports. The Ethics Committee must invite the respondent to provide any further written response to the matters raised. The Ethics Committee must review the Professional Conduct Committee's investigation, taking into consideration any further information provided by the parties to the complaint.

In addition, the Ethics Committee may:

- a) Seek professional advice
  - b) Seek advice from the Board, CEO, regulators, securities exchanges, independent experts and other relevant parties
  - c) Make use of relevant information available in the public domain (for example, company records, Public Reports, course documents)
  - d) Redefine or expand a complaint if deemed necessary to uphold professional standards.
29. In considering an appeal against determinations of the Professional Conduct Committee, the Ethics Committee may uphold or vary those determinations. The Ethics Committee may refer a matter back to the Professional Conduct Committee for further investigation.
30. At the conclusion of its investigation, the Ethics Committee must:
- a) dismiss a complaint which it finds is unsubstantiated;
  - b) dismiss a complaint due to lack of sufficient details requested from the complainant;
  - c) dismiss a complaint arising from a lack of timeliness by the complainant in complying with any request for further information;
  - d) dismiss a complaint which it determines is trivial or vexatious;

- e) recommend a matter be settled by alternative dispute procedures; or
  - f) determine the outcome of a complaint which it deems is a significant breach of the respondent's obligations under the Code of Ethics.
31. The Ethics Committee may impose sanctions that it determines are appropriate to the circumstances, including a reprimand, formal warning, mediation and/or counselling and may require the respondent to take actions to redress the breach. The Ethics Committee may also recommend the suspension of membership or the expulsion from membership, and the public release of details of the Ethics Committee's adverse findings against the respondent. Such recommended penalties must be reviewed and, if deemed appropriate, endorsed by the Board before they can be applied.
  32. At the conclusion of the Ethics Committee's investigation (including any review and endorsement required by the Board), the CEO must write to the complainant and respondent to advise them of the Committee's determination, the reasons for that determination, and any sanction imposed.
  33. Any party to the complaint may appeal the determinations of the Ethics Committee to an independent third party appointed by the Board. An appeal must be lodged in writing with the CEO within 30 days of the date of the outcome advice.
  34. The independent third party appointed to consider an appeal will do so as soon as practicable after their appointment. They shall be provided with all of the relevant material before the Ethics Committee when making the decision under appeal. They may seek clarification of any aspect from either the appellant or the Ethics Committee but cannot consider any new material during the adjudication of the appeal.
  35. The determination of the independent third party appointed to consider an appeal shall be final. No further avenue of appeal is available, and the parties to the complaint and the Board must accept and implement the determinations made by the independent third party.
  36. All deliberations of the Professional Conduct Committee, the Ethics Committee, and an independent third party appointed to consider an appeal against an Ethics Committee determination shall be confidential, excluding the need to advise others when deemed necessary to uphold professional standards and protect the community.

### **Disciplinary procedures**

37. All members are required to respond to complaints investigations in a timely, open and honest manner. The Professional Conduct and Ethics Committees may impose a sanction, such as a warning, or recommend penalties such as membership suspension or expulsion of any member found to have obstructed or provided misleading or incomplete information to a complaint investigation. Such recommended penalties must be reviewed and, if deemed appropriate, endorsed by the Board before they can be applied.
38. Upon recommendation from the Professional Conduct Committee or the Ethics Committee, the Board may require recovery of external costs incurred by the AusIMM in investigating a complaint matter from a member deemed to be in breach. Failure by a member to pay costs which the Board determines should be recouped from a member deemed to be in breach will result in suspension of membership if payment is not received three months after the issue of an invoice or expulsion from membership if payment is not received nine months after the issue of that invoice.
39. Determinations by the Professional Conduct and Ethics Committees, or the independent third party hearing an appeal against the Ethics Committee's determinations must be implemented by the CEO, the Board and the relevant member(s) upon the expiry of any opportunities for appeal as set out in these Regulations.