



Strata Community Australia (NSW)
ABN: 74 001 767 977

CODE OF CONDUCT **(CONSTITUTION RULE 33)**

Complaints Management Process (CMP) for **Strata Community Australia (NSW) Limited**

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1 Principles of the Complaints Management Process (CMP)

The fundamental goal of this Complaints Management Process is to promote best practice, and encourage ethical and professional practice and conduct by all Members of Strata Community Australia (NSW) Limited (SCA) pursuant to Rules 33 to 39 inclusive of the SCA Constitution.

The principles that the CMP seeks to apply are:

Accessible	the CMP should be available to Members and the public, in plain language, at no cost.
Accountable	the CMP should report outcomes of hearings and give reasons for its decisions.
Data collection	the CMP should provide for collection and analysis of complaint data.
Efficient	the CMP should be conducted in a timely manner with adequate assistance provided to Complainants to help them prepare a Complaint.
Effective	the CMP should provide sanctions appropriate to an offence committed and provide an opportunity to monitor.
Fairness	the CMP should be fair and transparent to all parties.
Process review	the CMP should be reviewed periodically by the Board to ensure SCA's standards of ethical and professional practice and conduct by its Members are effective, and Complaints are handled efficiently.
Professional integrity	the CMP should be adequately resourced and ensure sanctions are seen to be effective and enforceable.

2 To whom does this Complaints Process apply?

- 2.1 Any person or Organisation may contact SCA with a query in relation to the Board's "Code of Conduct" adopted pursuant to Rule 33 in the SCA Constitution without resorting to the CMP. Such an inquiry may clarify whether lodging a Complaint Management Form is warranted in relation to particular activities or actions of a Member, and whether these activities or actions constitute a possible breach of the Code of Conduct (COC).
- 2.2 A Member is encouraged to self report possible breaches of the Code of Conduct and seek assistance from the EO in relation to remedying the breach.
- 2.3 Any person or Organisation may lodge a Complaint under this CMP alleging a breach of the Code of Conduct by a Member. The person or Organisation lodging the Complaint need not be a Member.
- 2.4 The CMP neither replaces nor overrides any rights available to a person or Organisation at law, subject to clause 2.5.

- 2.5 Members acknowledge that they have:
- (a) no right of action in any court or jurisdiction; and
 - (b) no right to damages or any form of compensation or indemnity;
- as against:
- (c) SCA (NSW);
 - (d) any Officer of SCA (NSW); or
 - (e) any Complainant;
- as a consequence of:
- (f) any costs of any nature which the Member may incur (including, but not limited to, legal costs) in answering a Complaint; or
 - (g) any losses or damages of any nature which the Member may incur directly or indirectly due to the Professional Standards Committee (**PSC**) making a finding as against that Member.

3 Definitions

In this document, unless the context otherwise requires:

Appeals Officer	means a person appointed by the Board to conduct an appeal under this CMP
Board	means the board of directors of SCA
Code of Conduct (COC)	means the Code of Conduct (COC) setting out the standards of ethical and professional practice and conduct for Members as referred to in clause 33 of the SCA Constitution.
Complainant	means a person or Organisation who or which makes a Complaint to SCA
Complaint	means a notice in writing sent by any person or Organisation to SCA, by way of a completed Complaint Management Form (CMF), concerning an alleged breach by a Member of any part of the COC
Complaint Management Form (CMF)	means the CMF accessible on SCA's website, a sample of which is included as Appendix 1 of this document.
Complaints Process	means this complaints process as amended from time to time by the Board, which is the process which promotes and ensures compliance with the COC.
EO	means the Executive Officer of SCA.

Member	includes a financial member of SCA's Strata Manager Chapter, Strata Supplier Chapter or Strata Owner Chapter.
Officer	has the meaning given to it in the <i>Corporations Act (Cth) 2001</i> .
Organisation	means an unincorporated entity or an entity incorporated under Commonwealth, State or Territory legislation.
Panel	means a panel of PSC Members as referred to in clause 4.25. (The Board may establish the Panel by virtue of the power it is granted pursuant to clause 36 of the SCA Constitution.)
Professional Misconduct	means conduct by a Member that is a violation of the COC that: (a) has serious adverse consequences to a Complainant; or (b) was committed intentionally by the SCA Member; or both.
Professional Standards Committee (PSC)	means the committee established by the Board for the purposes of making determinations on Complaints against a Member for breaching the COC.
PSC Member	means a current member of the PSC.
SCA	means Strata Community Australia (NSW) Limited ABN 74 001 767 997.
Stage 1	means the procedure set out in clauses 4.2 to 4.11 inclusive of the CMP
Stage 2	means the procedure set out in clauses 4.12 to 4.22 inclusive of the CMP
Stage 3	means the procedure set out in clauses 4.23 to 4.46 of the CMP
Subject Member	means a Member who is alleged to have breached the COC and is the subject of a Complaint.

- Unsatisfactory Conduct** means conduct by a Member that:
- (a) fails to abide by the standards of practice and conduct expressed in the COC as amended from time to time, or
 - (b) has minor adverse consequences to a Complainant;
- or both.

4 Complaints Process

4.1

- (a) If a person or Organisation wishes to make a Complaint about the conduct of a Member, the process in clauses 4 and 5 applies.
- (b) The process is in 3 stages:
 - (i) Stage 1 *Lodging a Complaint and Initial Processing of a Complaint*;
 - (ii) Stage 2 *Investigation of a Complaint*; and
 - (iii) Stage 3 *Review and Hearing of a Complaint*.

Stage 1

Lodging a Complaint

- 4.2 A Complaint must:
- (a) be in writing;
 - (b) be lodged with SCA online following the process and using the CMF provided on SCA's website; and
 - (c) contain sufficient details to enable SCA to identify the Complainant, the Subject Member and the nature of the Complaint.
- 4.3 The Complainant must complete an online CMF, an example of which is located at Appendix 1. The Complainant is required to indicate on the CMF the part(s) of the COC alleged to have been breached by the Subject Member.
- 4.4 In lodging a Complaint, the Complainant accepts that (s)he may be required to explain and answer questions in relation to the Complaint to an Officer(s) nominated by SCA. The purpose of this requirement is to discourage frivolous or vexatious Complaints and enable the Subject Member an opportunity to respond in relation to the allegations made against him/her.
- 4.5 If the Complaint concerns **UNSATISFACTORY CONDUCT**, it must be lodged within twelve (12) months of discovery of an alleged breach of the COC.
- 4.6 If the Complaint concerns **PROFESSIONAL MISCONDUCT**, it may be lodged at any time after discovery of an alleged breach of the COC.

Initial processing of a Complaint

- 4.7 The Complaint must be directed initially to the EO of SCA who:
- (a) must promptly acknowledge receipt of the Complaint to the Complainant; and

- (b) may request further information from the Complainant if the EO considers it necessary for the resolution of the Complaint; and
 - (c) if there is insufficient information to warrant investigation or it appears, in the EO's reasonable opinion, that the Complaint is frivolous, vexatious or otherwise without merit as determined by guidelines nominated by the Board from time to time, will reject the Complaint; or
 - (d) if there is sufficient information to warrant investigation, must refer the Complaint to the Subject Member for a response.
- 4.8 The EO will provide to the Subject Member a hardcopy and/or a soft copy of the latest COC, the Complaint and further information obtained pursuant to clause 4.7(b) within 14 days of the EO receiving the Complaint.
- 4.9 If any party to a Complaint has any questions in relation to the Complaint prior to the review by the PSC, these questions will be put to the EO in writing, by hand and/or soft copy:
- (a) if the party is the Complainant, within 14 days of having lodged the Complaint; or
 - (b) if the party is the Subject Member, within 14 days of the Subject Member receiving the documents referred to in clause 4.8.
- 4.10 The Subject Member may respond to the Complaint by writing to the EO, and if (s)he chooses to do so, must submit his/her response within:
- (a) 28 days of receiving the Complaint pursuant to clause 4.8; or
 - (b) such longer time as notified by the EO to the Subject Member if further information is required from the Complainant under clause 4.7(b).
- 4.11 If the Subject Member does not respond to the Complaint within the permitted time pursuant to clause 4.10, the EO will continue the CMP and ensure the Subject Member is informed of the outcome.

Stage 2

Investigation of a Complaint

- 4.12 The EO must investigate the Complaint in such manner as (s)he deems appropriate and may delegate investigation of the Complaint to SCA staff members, Officers or another nominee of the EO as previously approved by the PSC.
- 4.13 Within 30 days of:
- (a) receiving the Subject Member's response to the Complaint pursuant to clause 4.10 (or such longer time as the EO deems necessary); or
 - (b) the deadline referred to in clause 4.10 in the event that the Subject Member did not respond;
- the EO must:
- (c) review and investigate the Complaint;
 - (d) make a preliminary assessment of the Complaint;
 - (e) seek such further information as may be necessary; and
 - (f) attempt to resolve the Complaint with the Complainant and Subject Member and in so doing may use any means including, but not limited to, informal settlement

conference and mediation. (Any PSC Member who takes part in an attempt to resolve the Complaint by such means must not take any further part in relation to the hearing of the Complaint.)

- 4.14 In conducting the investigation, the EO may deal with the Complaint summarily as set out in clause 4.15.
- 4.15 If the EO makes a finding that the Complaint is without substance, the EO must:
- (a) dismiss the Complaint summarily; and
 - (b) report the dismissal to the PSC.
- 4.16 A Complaint concerning **UNSATISFACTORY CONDUCT** may be resolved by either of the following procedures:
- (a) by written agreement between the Complainant and the Subject Member; or
 - (b) if, with the consent of the Complainant, the Subject Member undertakes in writing to SCA (NSW) to take corrective action at the Subject Member's expense, including compulsory attendance at an SCA seminar, appropriate counselling or undergoing some other undertaking as determined by the EO to resolve the Complaint.
- 4.17 If at any time both the Complainant and the Subject Member are satisfied with the resolution of the Complaint, and acknowledge their satisfaction in writing to the EO, the Complaint will be deemed to be resolved as between them.
- 4.18 When a Complaint is resolved under clause 4.17, the EO will report in writing the Complaint and its resolution to the PSC.
- 4.19 The EO must refer Complaints to the PSC for review and hearing in the following circumstances:
- (a) subject to clause 4.21, if the Complaint concerns Professional Misconduct; or
 - (b) if the Complaint concerns Unsatisfactory Conduct and is not resolved under clauses 4.16 or 4.17; or
 - (c) if the Subject Member fails to respond to the Complaint under clause 4.11.
- 4.20 If a Complaint concerns **PROFESSIONAL MISCONDUCT**, it cannot be withdrawn after being made by the Complainant. SCA (NSW) will retain all documents provided to it by the Complainant:
- (a) to facilitate the EO's investigation; and
 - (b) for the information of the PSC to facilitate the PSC's review and determination of the Complaint.
- 4.21 If the EO makes a finding of Professional Misconduct which involves a potential criminal component (including, without limitation, fraud, embezzlement, theft or illegal sexual activity), the EO must:
- (a) refer the Complaint to the police for further investigation; and
 - (b) revoke the membership of the Subject Member.
- 4.22 A failure by the Subject Member to co-operate with investigations by or on behalf of the EO or the PSC may constitute either Unsatisfactory Conduct or Professional Misconduct, depending on the EO's assessment of the nature of the Complaint and the nature of the Subject Member's failure to co-operate.

Stage 3

Review and hearing of a Complaint

- 4.23 When a Complaint is referred to the PSC, the EO will provide the following information about the Complaint to the PSC:
- (a) the Complaint;
 - (b) the Subject Member's response to the Complaint (if any); and
 - (c) the outcome of the EO's investigation of the Complaint, together with any relevant documents.
- 4.24 The PSC may:
- (a) seek legal advice in relation to the handling of the Complaint; or
 - (b) (if the EO has not already done so under clause 4.21) refer the Complaint to a government agency (such as the Police, ASIC or Fair Trading) where appropriate; or
 - (c) defer the review of a Complaint where legal proceedings have commenced pending the outcome of those proceedings.
- 4.25 Complaint Management:
- (a) the PSC may, if it deems appropriate to do so, for the purpose of investigating a Complaint, appoint a Panel comprising three (3) persons, such persons to be present PSC Members.
 - (b) if the PSC considers it appropriate to do so, the PSC may review the Complaint without appointing a Panel.
 - (c) the EO will notify the Complainant and the Subject Member of the time and date at which the PSC/Panel will review the Complaint, and the parties may inform the EO of their intention to attend the review at least two (2) days prior to the date scheduled for the review.
 - (d) parties may attend the review in person or via telephone link or such other means as may be available and approved (for example, by video link) by the EO.
- 4.26 The Complainant and the Subject Member may also be invited or directed by the EO to produce documents and provide witness statements relevant to the Complaint. A party producing documents to the PSC/Panel must provide copies of those documents to the other parties as well.
- 4.27 The PSC/Panel must review the Complaint as soon as practicable and may:
- (a) determine the Complaint; or
 - (b) adjourn the Complaint; or
 - (c) refer the Complaint to the EO to undertake or arrange for further investigation.
- 4.28 The PSC/Panel may adopt specific procedures for the review in order to provide a fair hearing. The EO may determine that when the PSC/Panel reviews the Complaint, the Complainant and the Subject Member may be:

- (a) given an opportunity to be heard and make submissions to the PSC/Panel; or
 - (b) directed by the EO to attend a PSC/Panel hearing and/or make submissions.
- 4.29 Subject to the EO's approval, the PSC/Panel and the Subject Member may be given an opportunity to ask questions of the Complainant. The PSC/Panel will also have an opportunity to ask questions of the Subject Member.
- 4.30 The review referred to in clause 4.27 is not subject to formal rules of evidence and a transcript will not be made of the review. Parties have no right to legal representation at the review. However, the PSC/Panel may, at its absolute discretion, permit the parties to be legally represented provided that the parties agree to bear their own costs of such legal representation.
- 4.31 The PSC/Panel may, at its discretion, allow one or more of the parties to apply to adjourn the review of the Complaint being considered under this Stage 3.

Findings and disciplinary action

- 4.32 In relation to a Complaint, by majority vote, the PSC/Panel may:
- (a) dismiss the Complaint; or
 - (b) uphold the Complaint and find that the conduct the subject of the Complaint constitutes **UNSATISFACTORY CONDUCT**; or
 - (c) uphold the Complaint and find that the conduct the subject of the Complaint constitutes **PROFESSIONAL MISCONDUCT**.
- 4.33 If the PSC/Panel finds that there has been a breach of the COC resulting in a finding of either Unsatisfactory Conduct or Professional Misconduct, the Complainant and Subject Member will be given an opportunity to make submissions as to the appropriate, outcome, action and penalty that should be considered appropriate by the PSC/Panel within a reasonable time before that issue is determined by the PSC/Panel.
- 4.34 Where the PSC/Panel makes a finding of Unsatisfactory Conduct or Professional Misconduct against a Subject Member, it may impose on the Subject Member any requirements and/or directions it deems appropriate such as the following:
- (a) require a written undertaking to the PSC/Panel by the Subject Member to attend at the Subject Member's expense an SCA seminar, appropriate counselling or some other undertaking as determined by the PSC/Panel;
 - (b) issue a letter of reprimand to the Subject Member;
 - (c) issue a letter of censure to the Subject Member;
 - (d) prohibit the Subject Member from holding office in SCA;
 - (e) require the parties to mediate;
 - (f) require the parties to submit to binding arbitration;
 - (g) issue a public or private apology in writing which may include media advertising;
 - (h) direct the SCA secretariat to suspend the membership of the Subject Member;
 - (i) direct the SCA secretariat to expel the Subject Member from membership of SCA;
 - (j) make a recommendation to the Subject Member's licensing authority supported by papers and information in the possession of SCA;

- (k) the publication of the decision(s) of the PSC/Panel and the Board in any media; and/or
- (l) subject to any Board approval, any other penalty the PSC/Panel determines is appropriate.

PSC/Panel Responsibilities in relation to complaints management

- 4.35 The PSC/Panel must publish to the Complainant and Subject Member within 28 days:
 - (a) the determination and reasons for the determination pursuant to clause 4.32; and
 - (b) the penalty pursuant to clause 4.34.
- 4.36 Subject to clause 4.37, SCA will make available a copy of the reasons for the determination and the penalty to any Member upon receipt of a written request in writing and at the requesting Member's expense.
- 4.37 A Complainant or Subject Member may request, by notice in writing to the PSC within 5 working days of receiving the determination, that his/her details be suppressed, which may be determined by the PSC in its sole and absolute discretion.
- 4.38 The PSC is not obliged to suppress identification of the Subject Member.
- 4.39 In circumstances where a Subject Member's membership has been suspended or cancelled, SCA may note such suspension and cancellation on the SCA website but will not record details of the Complaint or the reasons for the suspension or expulsion apart from the following:
 - (a) **Suspension** – “[Subject Member] is not currently a member of the SCA). [Subject Member's] SCA Membership was suspended due to a finding of the PSC on [date].”

The above notation in relation to a suspension will remain for the period of suspension.
 - (b) **Cancellation** - “[Subject Member] is no longer a member of the SCA). [Subject Member's] SCA Membership was cancelled due to a finding of the PSC on [date].”

The above annotation will remain on the SCA website for as long as may be determined by the Board.
- 4.40 An SCA Member whose Membership has been cancelled will not be permitted to renew his/her membership at a later stage until permitted to do so pursuant to a resolution of the Board.
- 4.41 The PSC must report to the EO and Board in relation to the activities and all inquiries of the PSC/Panel and the Complaints Process. This will be a standard agenda item of every regular meeting of the Board and on terms and conditions determined by the Board.
- 4.42 The PSC must monitor compliance by a Subject Member with any requirements or directions imposed against the subject member under clause 4.34.
- 4.43 The PSC must undertake a periodic review of complaints received under this CMP every three (3) years, or earlier if so directed by the Board, to determine if amendments should be made to this CMP.

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- 4.44 The PSC may make recommendations to the Board to amend the COC.
- 4.45 SCA must keep records of all correspondence with a Complainant and Subject Member and must keep that correspondence confidential and secure in accordance with the National Privacy Principles, as set out on the website of the Office of the Privacy Commissioner <http://www.privacy.gov.au> and as otherwise determined by the Board from time to time.
- 4.46 Where a member of the PSC/Panel, the EO, Officer or a delegated representative is, or becomes, aware that in relation to a particular complaint about a Subject Member, s(he) has an interest, whether business, financial or personal, that may or will make it difficult for him/her to discharge his/her duties under this CMP or that may bring the CMP into disrepute, (s)he must declare that interest and stand aside from the CMP relating to that Subject Member.

5 Appeals Process

- 5.1 An appeal against a determination made by the PSC/Panel under clause 4.32 of the Complaints Process must:
- (a) be in writing;
 - (b) be addressed to the Appeals Officer;
 - (c) be lodged with SCA within 28 days of notice of the determination by the PSC/Panel pursuant to clause 4.35; and
 - (d) state the grounds on which the appeal is made.
- 5.2 The grounds for an appeal by a Complainant or Subject Member are limited to one or more of the following:
- (a) failure by the PSC/Panel to follow the Complaint Process, or criteria, policies or procedures published by the Board in the Code of Conduct;
 - (b) a material error or omission of fact by the PSC/Panel; and/or
 - (c) the severity of the penalty imposed by the PSC/Panel.
- 5.3 The Appeals Officer must not be a member of the PSC/Panel that took part in the review and determination of the Complaint which is being appealed.
- 5.4 The Appeals Officer must make a determination within a reasonable time (e.g. 28 days of receipt of the appeal by SCA) to:
- (a) dismiss the appeal; or
 - (b) uphold the appeal.
- 5.5 Where the Appeals Officer determines to dismiss an appeal, no further action is required by the Appeals Officer and the PSC/Panel except to inform the parties of the Appeals Officer's decision.
- 5.6 Where the Appeals Officer determines to uphold an appeal, the Appeals Officer may:
- (a) substitute its own determination for that of the PSC/Panel; or
 - (b) remit the Complaint to the PSC/Panel for further determination as required, with directions as to issues which require reconsideration.
- 5.7 The Appeals Officer must inform the parties and the PSC/Panel of the Appeals Officer's determination and the reasons for the determination within 28 days of making the determination.

