



Australasian College
for Emergency Medicine

Procedures for Submission and Resolution of Complaints

COR656

Document Review

Timeframe for review: every two years, or earlier if required.
Document authorisation: ACEM Board
Document implementation: ACEM Chief Executive Officer
Document maintenance: General Manager, Governance and Standards

Revision History

Version	Date	Pages revised / Brief Explanation of Revision
v1	Sep-2014	Approved by the Board; the policy replaced Regulation 5.30 - Complaints
v2	Oct-2020	Minor administrative revisions arising from two-yearly review.
v3	Apr-20202	

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1. Purpose and Scope

The purpose of this document is to provide procedures for the submission and resolution of complaints made by and against any person pursuant to the *Complaints Policy* (COR166; the Policy) of the Australasian College for Emergency Medicine (ACEM; the College). It applies to complaints made against any member of the College by members, colleagues, ACEM staff or volunteers other than members, the general public or other sources.

Pursuant to the Policy, for the purposes of this document, 'member' is defined as:

any person admitted as a member of the College pursuant to the provisions of the ACEM Constitution and associated regulations, and also includes any other person, including trainees and external representatives, serving on any College entity or as a College representative.

Accordingly, the document is wide-ranging in that it applies to members (as designated by the ACEM Constitution or associated regulations); trainees in any ACEM training programs; other persons serving on any College entity or as a representative of the College; College-appointed supervisors of training; specialist international medical graduates (SIMGs) undertaking College requirements for the purpose of obtaining specialist recognition in Australia or Aotearoa New Zealand; and volunteers.

The document does not apply to complaints in relation to ACEM staff members. Such matters are to be directed to the ACEM Manager, Human Resources. Where complaints are received in relation to staff members of facilities involved in College activities, the matter should, in the first instance be directed to the facility in question.

2. Key Aspects of the Procedures

2.1 Confidentiality

The matter or complaint shall be dealt with, as far as possible, on a confidential basis and consistent with the protection offered by the legal principle of qualified privilege. The College does not, however, guarantee anonymity of those making complaints.

Confidentiality needs to be maintained in complaint handling procedures in order to protect the rights and welfare of all those involved in a complaint resolution process. If an allegation of misconduct or other inappropriate behaviours such as discrimination, bullying or harassment is made, information should only be accessible to people who 'need-to-know' or other relevant people such as witnesses, except where the College is compelled by law to produce documents.

2.2 Procedural Fairness

The complaint handling procedures should be conducted in a fair and equitable manner at all times and in accordance with the principles of procedural fairness in accordance with the ACEM *Procedural Fairness Policy* (COR140) and any relevant legal requirements.

2.3 Timeframes

The College undertakes to address all complaints, both informal and formal, in as efficient and timely a manner as possible.

2.4 Victimisation

Victimisation is unlawful and will not be accepted or tolerated against a person who:

- has made, or intends to make, a complaint
- has been, or intends to be, a witness
- is a support person to any of the parties involved in the complaint
- is involved in resolving the complaint

- has acted in good faith in bringing information or making an allegation pursuant to the procedures described in this document and the *ACEM Complaints Policy*.

Should such victimisation occur, disciplinary action will be considered against those involved.

The College has appointed an Independent External Reviewer to assist individuals who are concerned that initiating a complaint through regular College processes may result in a breach of confidentiality or privacy or reprisal or retribution. Details of the functions of the Independent External Reviewer are contained in the College *Independent External Reviewer Policy* (COR642).

2.5 Defamation

Complaints can potentially damage an individual's reputation. To minimise the risk of defamation, it is important to maintain confidentiality and involve as few people as possible in the dispute resolution process.

Individuals appointed to assist in dispute management are protected under the doctrine of 'qualified privilege' provided they act in accordance with the dispute resolution procedures and not maliciously.

2.6 False, Vexatious or Malicious Accusations/Complaints

Complaints that are considered to be vexatious or found to be malicious will be viewed seriously and may expose the complainant to risk of defamation proceedings or disciplinary action. The College may reject such complaints and take no further action.

2.7 Intent

Perceptions and interpretations are likely to differ because of diverse backgrounds, cultures and views. 'Innocent intent' is not a defence or excuse against behaviours that may lead to complaints.

2.8 Support Person

A support person is responsible for providing assistance to the complainant or the respondent of a complaint allegation(s). A support person may be a family member, trusted advisor or a co-worker.

The support person's role is to be conducted in the spirit of conciliation as well as fair and equitable outcomes.

A support person is also bound by the requirement for confidentiality and cannot act as a witness and a support person in the same complaint.

2.9 Counselling and Support

A complainant may wish to seek counselling or assistance from someone independent. There is a range of organisations external to the College who can assist with this, including employer Employee Assistance Programs (EAPs), and organisations such as Beyond Blue (1300 224 636) or Lifeline (13 11 14), or Samaritans New Zealand (0800 726 666).

For College members and staff of ACEM, support is available through Converge International (1300 687 327 in Australia; 0800 666 637 in Aotearoa New Zealand).

2.10 Summary of Parties Rights

In relation to complaints, a complainant who is making a complaint, and a respondent against whom a complaint is made have the rights outlined on the following page.

A complainant has a right:	A respondent has a right:
<ul style="list-style-type: none"> To have their complaint investigated and conciliated if requested and as appropriate 	<ul style="list-style-type: none"> To be informed of what they are accused of and who is making the complaint(s) To respond to the complaint(s)
<ul style="list-style-type: none"> To have support or representation throughout the process 	<ul style="list-style-type: none"> To have support or representation throughout the process
<ul style="list-style-type: none"> To express concerns without fear of retribution or of suffering detriment 	<ul style="list-style-type: none"> To fair treatment and procedures, and not to be prejudged or discriminated against
<ul style="list-style-type: none"> To withdraw a complaint 	<ul style="list-style-type: none"> Not to be dismissed unfairly or otherwise treated unfairly, harshly or unreasonably (taking into account all the circumstances) To be protected from defamation and malicious complaints.
<ul style="list-style-type: none"> To privacy – to have the matter kept confidential on a ‘need to know’ basis 	<ul style="list-style-type: none"> To privacy – to have the matter kept confidential on a ‘need to know’ basis

2.11 Lodging a Complaint

ACEM recognises that complaints may also be dealt with by other bodies, such as employers (Including hospitals) or regulatory authorities. Generally, if a complaint is being investigated by another body, ACEM will not initiate its own investigation until the other body(ies) have completed their investigations and the College is able to consider the matter in the context of the outcome of that work.

Other options before lodging a complaint with the College include the following:

(a) Action taken directly by the Complainant

If appropriate, the complainant should speak directly to the person(s) whose actions were the cause of the potential complaint. If the complainant’s concern is not taken seriously, they may choose to take further action under these or other procedures.

(b) Speaking to a Neutral Third Party(ies)

Many employers have a recognised contact officer or program to enable reporting of matters that may be the subject of complaints. Other neutral third parties may also be utilised. Should an ACEM staff member be involved, ACEM Human Resources must be notified immediately.

(c) Speaking to the Employer/the College

If appropriate, the complainant can speak directly to the employer or to the College about ways in which the matter may be addressed without seeking remedy under the *Complaints Policy* and the processes outlined in this document. In such instances individuals may choose to contact the College Complaints General Manager (complaints@acem.org.au) or Trainee Support and Liaison Coordinator (trainee.support@acem.org.au). Both of these individuals are available to speak to by contacting the College (+61 3 9320 0444). The College also has a separate complaints line (+61 3 8679 8861).

Any complaint made by a person against a member of the College must:

- be made in writing;
- include the name and contact details of the complainant or complainants, and
- be lodged with the Chief Executive Officer (CEO) at the College office.

Receipt of the complaint shall be acknowledged by the CEO in writing.

Complaints may be submitted anonymously, however, in such instances the College may be limited in the extent to which it is able to progress the matter.

2.12 Notification by CEO

Where the College becomes aware of a particular matter or conduct by a member that is considered to fall within the purview of the Policy (including investigations by a statutory complaints authority, professional standards committee, medical board or other relevant authority ('an authority'), or notifications from employers), the CEO may refer the matter in accordance with this policy by notifying the President that the matter is to be dealt with in accordance with these processes.

2.13 Initial Review of Complaint

- (1) Investigation and consideration of a matter or complaint shall be dealt with as expeditiously as the circumstances permit.
- (2) Prior to making any decision regarding the disposition of a matter or complaint, the CEO and the President shall consider whether the matter or complaint:
 - (a) falls within the scope of this policy
 - (b) would more appropriately be dealt with internally pursuant to another policy
 - (c) would be more appropriately dealt with by an external authority
 - (d) is currently being dealt with by another authority, or
 - (e) should be adjourned or not dealt with, pending a hearing or determination by another authority.
- (3) Following the initial review, the CEO and the President may determine to:
 - (a) take no action
 - (b) notify the complainant that the matter should be directed to a more appropriate authority
 - (c) notify the complainant that the matter will be managed through an Informal Resolution process
 - (d) refer the complaint to the Complaints Committee for consideration, or
 - (e) if it is considered that the conduct that is the subject of the matter or complaint may be of such a serious nature that it may constitute serious professional misconduct, refer the complaint to the Medical Board of Australia, the Medical Council of New Zealand or other authority (as appropriate, based on the nature of the complaint or matter).
- (4) Should a matter or complaint relate to the College President, the next ranking Office Bearer (President-Elect or Immediate Past President) shall assume the role of the President as outlined above. Where this is not possible, the CEO shall consider the matter in collaboration with the College non-FACEM Board members appointed pursuant to subclause 8.1.8 of the ACEM Constitution on the basis that have legal expertise.
- (5) Should a matter or complaint relate to the College CEO, the Deputy Chief Executive Officer shall assume the role of the CEO as outlined above. Where this is not possible, the President shall consider the matter in collaboration with the College legal advisor.
- (6) Subject to privacy and confidentiality requirements, the CEO shall keep the Board apprised of all such matters and complaints notified, including the decision made based on the initial review.
- (7) At any time during the management of a complaint, the CEO and/or President may delegate their responsibilities and powers as outlined in the Policy and these procedures and subsequently rescind that delegation.

3. Informal Resolution Process

The CEO and President may determine that the complaint is such that informal resolution or alternative dispute resolution should be attempted before formal resolution by referral to a Complaints Committee. The CEO may arrange for informal resolution in such manner as the CEO and President deem appropriate,

including direct mediation by an appointed staff member or senior Fellow, mediation by an independent person selected by the CEO with skills in mediation, or an independent investigation by a person appointed by the CEO to review the complaint and its circumstances and report to the College.

Some disputes emphasise resolution rather than the presentation of factual proof or substantiation of a dispute. Informal disputes are those that can be resolved by the complainant or through discussion between the parties. Informal disputes do not require a formal investigation.

Whilst it would be expected that the complainant and respondent would co-operate in any informal resolution process, the CEO will not progress such without the co-operation concurrence of the complainant and any respondent.

Where a respondent or complainant choose not to cooperate with an informal resolution process, the CEO and President will determine the pathway to be followed in relation to the complaint. This may include notification to the complainant that the complaint is unable to be further progressed, or notification to the respondent that the complaint will be handled in accordance with one of the remaining options described in 2.13 (3) of this policy.

Where the matter is considered such that it is viewed by the CEO and President as requiring action to achieve resolution but is not of a nature that warrants referral to the Complaints Committee, resolution through an informal mechanism may be recommended. Such mechanism may involve, but not be limited to, avenues such as:

(a) Action taken directly by the Complainant

If appropriate, the complainant may be advised to speak directly to the person(s) whose conduct was the subject of the complaint. If the complainant's concern is not taken seriously, they may choose to take further action under this policy and seek to have the matter escalated to informal resolution under this policy.

(b) Advice or counselling through a Third Party(ies)

The complainant will be advised that the matter will seek to be addressed with the respondent through a third party, who may be another College member, a college staff member, an external third party, or a combination thereof.

Where a complainant is of the view that their concern is not taken seriously by the respondent(s) and/or not able to be resolved through an informal process, he/she may request to take further action under this policy and seek to have the matter escalated to a more formal process. It would be exceptional for a complaint made in relation to a specific matter and involving the same respondent by the same, or different, complainant(s) to be referred for informal resolution on more than one occasion.

3.1 Summary of Informal Resolution Process

Self Help	The person may choose to address the matter in question by communicating their concerns to the initiator of the action.
Seek Assistance	The person may seek assistance and support.
Mediation	Mediation is a negotiation between the parties (without three-way face-to-face contact), and discusses the options and considers the alternatives and reaches a consensual agreement. The College may nominate an independent mediator to assist the parties to negotiate a resolution which is acceptable to the parties.
Resolution	Resolution is achieved when the complainant is satisfied that the uninvited or unwelcome behaviour has stopped, an acknowledgment and appropriate apology has been received, agreement to stop any conduct that is the subject of the complaint has been given, workplace adjustment or similar. If the allegations are denied or a satisfactory resolution cannot be achieved through informal action, then the complainant can request further action under the policy and these procedures.

4. Formal Resolution - Referral to Complaints Committee

Complaints against members that are considered such that they should be dealt with formally by the College will, pursuant to 2.13 (3) (d) of this document, be referred to the Complaints Committee for consideration.

- (1) On receipt of a referred complaint, the Complaints Committee shall decide whether or not there is a prima facie case to answer. If it is so decided, the Complaints Committee shall, at least 21 days prior to the meeting of the committee at which the matter or complaint will be considered, give the member(s) written notice of:
 - (a) the intention of the Complaints Committee to consider the matter
 - (b) the time, date and place of the meeting of the Complaints Committee
 - (c) particulars of the nature of the matter or complaint under consideration as specified in clause 3, and
 - (d) advice that the member:
 - (i) may attend and give oral or written submissions at that meeting in respect of the matter,
 - (ii) may be accompanied by a support person, who may not act as an advocate for the member; however, is not entitled to be accompanied by a legal representative (or any other person who shall act as an advocate) unless the Committee Chair has given prior consent where it is felt that the member could not present, or would be disadvantaged if required to present in person. Any request for such representation:
 - must be made by the member
 - specify the reasons on which the request is made, and
 - be received by the CEO at least seven (7) working days prior to the date of the meeting at which the matter or complaint is to be considered.

4.1 Complaints Committee

- (1) The Complaints Committee is an *ad hoc* committee of the Board, convened by the CEO as required to consider matters or complaints made in accordance with the Policy and these procedures.
- (2) A Complaints Committee shall consist of a minimum of three (3) members, comprising:
 - (a) a member of the Board, and
 - (b) at least two (2) Fellows or other persons as determined by the CEO and President,none of whom was involved in the matter or complaint or had previously made a decision in relation to the matter or complaint, or who otherwise has a conflict of interest, whether actual or perceived, with the member and complainant concerned.
- (3) The CEO shall attend meetings of the Complaints Committee as an observer and to act as secretary to the committee.

4.2 Conduct of Meetings

- (1) The Complaints Committee shall conduct its affairs with as little formality as possible but otherwise, subject to this policy, shall have full power to regulate its conduct and operation, including convening and adjourning any meeting as it may require. The Complaints Committee is not bound by the rules of evidence and, subject to the rules of procedural fairness, may inform itself on any matter and in such manner as it thinks fit.
- (2) The Complaints Committee is entitled:
 - (a) to make its own enquiries and seek legal or other professional advice in relation to any matter or complaint under consideration, and

- (b) to consider all relevant information which it thinks fit and may invite any person to appear before it or to provide information.
- (3) The Complaints Committee may meet in person or by telephone or other electronic means, or by correspondence for the purpose of the members of the committee carrying out their functions.
- (4) The member shall be given an opportunity to be heard, and the Complaints Committee shall give due consideration to any written or oral submissions made by the member.
- (5) The member may be accompanied by a support person, but shall not be entitled to have an advocate or to be legally represented without the prior consent of the Committee Chair.
- (6) The Complaints Committee shall keep appropriate minutes of meetings, including details of any decision(s) made in relation to any matter or complaint before it. Minutes of meetings of the Complaints Committee may be confined to a list of all persons present, a report listing the documentation presented and a report of the decision made by the committee, including reasons for the decision.

4.3 Outcome of Hearing

- (1) After consideration of a complaint or matter, the Complaints Committee may:
 - (a) take no action
 - (b) dismiss the matter or complaint and exonerate the member
 - (c) counsel the member and/or require him or her to participate in any relevant College program or activity
 - (d) censure the member
 - (e) refer the matter or complaint to the Board for consideration (if the committee believes the matter or complaint is sufficiently serious as to merit possible suspension or termination of the membership, or removal of any College award or dignity), and/or
 - (f) refer the matter or complaint to an appropriate external authority.
- (2) The Complaints Committee may decide to refer the matter or complaint to an appropriate external authority at any time after the matter or complaint is referred to it.

4.4 Notification of Outcome

- (1) Subject to clause 3, meetings and hearings of the Complaints Committee shall be confidential. Information relating to the matter or complaint will usually not be disclosed except in relation to:
 - the reporting of progress (refer clause 4.4(2) below)
 - appropriate reporting to the parties involved
 - reporting of the findings, decision and reasons to the Board
 - referral of the matter or complaint to an external Authority
 - referral of the matter or complaint to the Board, and
 - any other disclosure which is otherwise allowed or mandated by law.
- (2) The Complaints Committee shall report on its decision(s), including a summary of the reasons for the decision(s), to the Board at the next meeting of the Board following the making of the decision(s) by the committee.
- (3) At the conclusion of the hearing, the complainant (where appropriate) and the member shall be notified in writing of the outcome.

5. Referral to the Board

- (1) Where a matter or complaint is referred to the Board by the Complaints Committee pursuant to clause 4.3(e) and except where otherwise provided, the Board shall consider the matter or complaint afresh.
- (2) Consideration by the Board shall be conducted in accordance with clause 4 of this policy, save that any reference to the 'Complaints Committee' shall be taken to mean the Board.
- (3) Following such consideration, the Board may decide to:
 - (a) take no action
 - (b) dismiss the matter or complaint and exonerate the member
 - (c) counsel the member and/or require the member to participate in any relevant College program or activity
 - (d) censure the member
 - (e) suspend the membership of the member, in accordance with the provisions of the College constitution
 - (f) terminate the membership of the member, in accordance with the provisions of the College constitution
 - (g) remove the trainee from the applicable College training program
 - (h) refer the matter to any appropriate external authority, and/or
 - (i) remove any College award or dignity held by the member.
- (4) The Board may decide to refer the matter or complaint to an appropriate external authority at any time after referral of the matter or complaint by the Complaints Committee.

6. Internal Review

The *complainant* may request an internal review of the investigation process and the findings from the manner in which the complaint was investigated and/or handled, if the complainant is dissatisfied with either the process or the outcome. The *respondent* may request, by written request to the CEO, an internal review if they are dissatisfied with the complaint investigation process (not the outcome).

It will then be determined by the CEO if an internal Review Panel of personnel nominated by the CEO is necessary to assist in either a complainant or respondent's request for an appeal.

7. Appeal of Decision

Any appeal against a decision of the Complaints Committee or the ACEM Board under this policy may be made only in accordance with the provisions of the *Reconsideration, Review and Appeals Policy* and shall proceed directly to formal appeal.

7.1 Acting on Unsubstantiated Complaints

If a complaint is **not** substantiated, both parties are to be informed of the finding and provided with written reasons for the finding.

The complainant will also be advised that, if they are unsatisfied with the outcome, they can lodge a complaint either internally through the College appeals process, or externally through the relevant statutory bodies.

8. Associated Documents

- ACEM Constitution
- ACEM Regulations
- Code of Conduct (COR235)
- Complaints Policy (COR166)
- Independent External Reviewer Policy (COR642)
- Policy on Discrimination, Bullying and Sexual Harassment (COR133)
- Policy on Procedural Fairness (COR140)
- Procedures for Submission and Resolution of Complaints (COR656)
- Reconsideration, Review & Appeals Policy (COR355)



Australasian College for Emergency Medicine
34 Jeffcott Street
West Melbourne VIC 3003
Australia
+61 3 9320 0444
acem@acem.org.au

acem.org.au