

APSCo Australia Rules: Chapter 6

APSCo Australia Code of Conduct and Dispute Resolution Procedures

1 Designation

- 1.1 The APSCo Australia Code of Conduct (separately published) is a guideline.
- 1.2 The APSCo Australia Dispute Resolution Procedures as set out in this chapter are contractually binding rules.

2 APSCo Australia Dispute Resolution Procedures

2.1 Purpose

- a) The APSCo Australia Dispute Resolution Procedure sets out pathways for the application of APSCo Australia relating to conduct complaints and disputes involving APSCo Global members in Australia.
- b) Its purpose is to assist in providing assurance that the rules are applied in a manner that is not oppressive to APSCo Global members in Australia or contrary to the interests of APSCo Australia.
- c) Nothing in the APSCo Australia Dispute Resolution Procedure prevents the APSCo Australia Representative Committee from adopting other pathways, consistent with the rules, which the APSCo Australia Representative Committee considers may be more efficacious in the handling of conduct complaints or disputes in which an APSCo Global member in Australia is involved.

2.2 Intake

- a) Upon the receipt of an expression of any grievance regarding an APSCo Global member in Australia, in such form as APSCo Australia may require from time to time, the Conduct Committee will decide whether APSCo Australia will:
 - (i) process the grievance as:
 - (A) a conduct complaint; and/or
 - (B) a dispute; or
 - (C) decline to process the grievance for any reason which APSCo Australia considers proper.

Members of the Conduct Committee must disclose any material interest in the subject or outcome of the grievance and any material association with any party involved in the grievance, which may or may reasonably be perceived might affect or influence that member's discussion or deliberation of the grievance (a "**material interest**").

- b) A member of the Conduct Committee who has disclosed a material interest with respect to a grievance may not participate further with respect to that grievance without approval of the APSCo Australia Representative Committee.

2.3 Conduct Complaints

- a) Conduct complaints proceedings are between APSCo Australia and an APSCo Global member in Australia. A complainant or informant is not a party to the conduct complaint proceeding.
- b) If the Conduct Committee decides to process the grievance as

a conduct complaint it may proceed (either acting as a committee of some or all of its members or through a single member) to give such reasonable directions and take such action as it thinks necessary for the investigation, hearing and determination of the conduct complaint including:

- (i) directions for the obtaining of evidence;
 - (ii) a direction requiring the member responding to the complaint to participate in a process of conciliation;
 - (iii) the obtaining of legal or other advice or expert opinion;
 - (iv) a direction as to the payment or contribution towards Case Costs.
- c) Directions made by the Conduct Committee take effect as Applicable APSCo Australia Dispute Resolution Procedures and are binding upon members. An APSCo Global member in Australia must comply with any directions made by the Conduct Committee.
- d) A conduct complaint hearing and determination shall be conducted by no fewer than three members of the Conduct Committee.
- e) *Further provisions may be added with respect to:*
- (i) *Diversion and enforceable undertakings;*
 - (ii) *Discontinuance;*
 - (iii) *Form of the determination (e.g. as finding of fact coupled with a recommendation to the APSCo Australia Representative Committee as to sanctions)*

- (iv) *Outsourced fact finding arbitration;*
- (v) *Any other design feature it is thought desirable to include.*
- (vi) *Costs*
- (vii) **NOTE:** *Appeal provisions are contained in the Constitution.*

2.4 Processing of Disputes and Mediation

- a) The grievance procedure set out in this sub-rule applies to disputes:
 - (i) under the rules between—
 - (A) An APSCo Global member in Australia and another APSCo Global member in Australia; or
 - (B) An APSCo Global member in Australia and the Association; or
 - (ii) otherwise involving an APSCo Global member in Australia.
- b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all the parties.
- c) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- d) The mediator must be—

- (i) a person chosen by agreement between the parties; or
- (ii) in the absence of agreement—
 - (A) in the case of a dispute between an APSCo Global member in Australia and another APSCo Global member in Australia, a person appointed by the Board of the Company; or
 - (B) in any other case, a person who is a mediator appointed by the Institute of Arbitrators and Mediators Australia.
- e) A member of the Association can be a mediator.
- f) The mediator cannot be a member who is a party to the dispute.
- g) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- h) The mediator, in conducting the mediation, must—
 - (i) give the parties to the mediation process every opportunity to be heard; and
 - (ii) allow due consideration by all parties of any written statement submitted by any party; and
 - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- i) The mediator must not determine the dispute.

- j) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute by any lawful means at their disposal.