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<b>Policy Type:</b>	<b>CONSTITUTION PRINCIPLE</b>
<b>Policy Number:</b>	<b>CP006</b>
<b>Policy Title</b>	<b>Professional Conduct Complaints POLICY (Including Appeals)</b>

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## 1. INTRODUCTION

Financial Counselling Victoria Inc. (FCVic) is the peak professional body for financial counsellors (FCs) in Victoria. In this role, FCVic has a role in supporting the sector to ensure that the practice of FCs in Victoria is maintained at the highest possible standard. Recognising the FC client cohort is vulnerable, strong professional standards are essential to protect vulnerable Victorians from detriment, as well as advancing the standing of the profession.

## 2. PURPOSE

This policy is adopted as required by clause 10 of the **FCVic Constitution** to deal with professional conduct complaints. The Constitution allows for anyone to make a complaint about the professional conduct of a financial counsellor member of FCVic.<sup>1</sup> It is expected that complaints may come from:

- a) A client of a financial counsellor (FC) or a nominated representative, if concerned that the service they received may have failed to meet appropriate professional standards.
- b) Other stakeholders, such as agency employers, legal representatives, or industry organisations, if they observe conduct or behaviour by an FC that seems inconsistent with appropriate professional standards.
- c) Another financial counsellor.<sup>2</sup>

## 3. SCOPE

This Policy applies to all members of FCVic.

For the purposes of the FCVic Constitution Clause 10, the Professional Standards Committee (PSC) is the default delegated **Decision-Making Body**, although the FCVic Board may appoint any other Committee as the **Decision-Making Body** in relation to any specific complaint as it judges appropriate.<sup>3</sup>

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<sup>1</sup> FCVic does not deal with complaints concerning agency practice.

<sup>2</sup> Peer based complaints may be assessed as more appropriately dealt with under the FCVic Disputes and Grievances Policy, used to help resolve conflicts between members.

<sup>3</sup> For example, if there are significant conflict issues for PSC members, or specific expertise is required.

## 4. DEFINITIONS

**ASIC** refers to Australian Securities and Investments Commission.

**ASIC legislative Instruments** refers to ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792 and ASIC Credit (Financial Counselling Agencies) Instrument 2017/793, replaced in December 2022 by amendments to the Corporations Act Regulations and the National Consumer Credit Protection Act Regulations, providing for financial counsellors to provide services without holding financial services or credit licences.

**Australian Financial Counselling Code of Ethical Practice** - the Code of Ethical Practice expresses the values and responsibilities that are an important aspect of the financial counselling profession. It is intended to assist financial counsellors to act ethically in the performance of their professional practice and to protect the rights and responsibilities of clients, other financial counsellors, colleagues, workplaces, and the community.

**CAC** - Complaints Assessment Committee (CAC) is comprised of the FCVic EO, Chair of the Board and Chair of the Professional Standards Committee. Its role is to assess complaints regarding potential notification under section 6.3 of this policy, or for potential investigation.

**Continuous Professional Development (“CPD”)** is the reinforcement or acquisition of skills or knowledge relevant to the workplace.

**Conflict of Interest** occurs when a person’s personal interests’ conflict with their responsibility to act in the best interests of a client, their employer, or Financial Counselling Victoria. Personal interests include direct interests, as well as those of family, friends, or other organisations a person may be involved with or have an interest in. A conflict of interest may be actual, potential, or perceived and may be financial or non-financial.

**FCVic** is Financial Counselling Victoria Inc., the peak body and professional association for financial counsellors in Victoria.

**FCVic Board** is the co-ordinating committee of FCVic established under Rule 14 of the Constitution. The affairs of FCVic are governed by the Board (s14.1(a)), and the Board controls and manages the business and affairs of FCVic (s14.1(b)).

**FCVic Member** refers to a natural person registered as a Full or Associate member of FCVic.

**Financial Counselling agency** is an agency that employs Financial Counsellors and provides financial counselling services.

**Financial Counselling National Standards for Membership and Accreditation** sets out national standards for membership and accreditation of financial counsellors in Australia. The standards have been agreed by the eight State and Territory financial counselling associations.

### **Independent Appeals Panel**

An independent appeals panel is based on selection of individuals who have subject matter expertise and have had no prior dealings with the issue that is the subject of the appeal.

**Natural Justice** refers to the principle that any person subject to a complaint has the right to be informed of the details of the complaint and be given an opportunity to respond to it in a timely manner before a

decision maker makes any decision in relation to the complaint that is or could be detrimental to that person. This also applies to the person making the complaint.

**Non-profit Organisation** is an organisation that does not operate for the profit, personal gain, or other benefit of particular people (for example, its members, the people who run it or their friends or relatives).

**Professional Standards Committee** is a sub-committee of the FCVic Board established to consider and undertake assessments of professional standards issues, make relevant policy recommendations to the Board on professional issues, and to take any other actions in relation to professional issues delegated to it by the Board.

**Support Person** is someone that the financial counsellor subject to a complaint can nominate to attend a meeting with them to provide emotional support and reassurance. A support person is not entitled to act as an advocate.

## 5. COMPLAINTS TO OTHER BODIES

FCVic will consider where a matter may be subject to other processes or actions, e.g., criminal, regulatory, civil, or employment related, and whether the complaint should be dealt with after these matters are concluded, if at all.

## 6. ROLES AND RESPONSIBILITIES

### 6.1 FCVic

FCVic establishes and maintains professional standards for the financial counselling profession in Victoria. It does this to protect clients from inadequate service delivery and advance the standing and reputation of the profession. With this role comes the obligation to establish appropriate processes to address complaints in relation to professional standards issues raised by a client, or other stakeholder.

The **FCVic Board** as the governing body of FCVic is charged under clause 10 of the FCVic Constitution with the formulation and implementation of this policy and is the ultimate decision-making body on membership matters. The **Professional Standards Committee (PSC)** is the default delegated decision-making body appointed by the Board under this policy, pursuant to the FCVic Constitution.

### 6.2 Agencies

Financial counsellors are required by regulation<sup>4</sup> to be employed by a 'financial counselling Agency' (**Agency**). Agencies as service providers must provide complaint processes to clients, which enable inadequate service delivery to be addressed, which may include addressing professional standards.

However, an agency may not always be able to address professional conduct issues raised by a complainant. For example, an agency may lack managers with the necessary professional expertise in financial counselling or may no longer employ the financial counsellor subject to a complaint. Also, an Agency may have a conflict of interest as it may bear legal and financial liability for any detriment found to have been caused to a client by its staff.

In these types of circumstances, it would be inappropriate to assume a complaint about professional conduct will be covered off by an agency employer's process. FCVic as the professional body in Victoria is responsible for assessing whether a breach in professional conduct has occurred and taking appropriate action to maintain standards in relation to a practising financial counsellor subject to a complaint. FCVic's

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<sup>4</sup> Corporations Act Regulation 7.6.01 and National Consumer Credit Protection Act Regulation 2022

role is necessary, in particular, to manage the risk of an FC with professional deficiencies continuing to practise elsewhere resulting in potential client detriment.

### 6.3 FCVic-Agency liaison over complaints

Where an agency is addressing or has addressed professional conduct issues through its internal processes, FCVic may consider if any further action is required or if the agency has sufficiently addressed the conduct issues raised by the complaint.

Where a complaint is made to FCVic, any current agency employer of the FC subject to the complaint, if not the source of the complaint, may be notified to ensure they are able to manage client risks that may arise. This will be balanced with the principles of privacy and confidentiality as outlined throughout this policy. If a complaint concerns events that occurred while the FC was engaged with a previous agency employer, it may be appropriate to notify that employer as they will have information relevant to assessing the complaint, and it may have implications for them to address in terms of service quality and client impacts.

However, such notifications should only occur at a time deemed appropriate after consultation with the Chair of the Board and PSC Chair in accordance with this policy and related procedures, and a determination that it carries with it some potential risk to clients, and it is not lacking in substance, or is frivolous or vexatious.

## 7. COMPLAINTS PROCESS

### 7.1 Lodgement of a Complaint

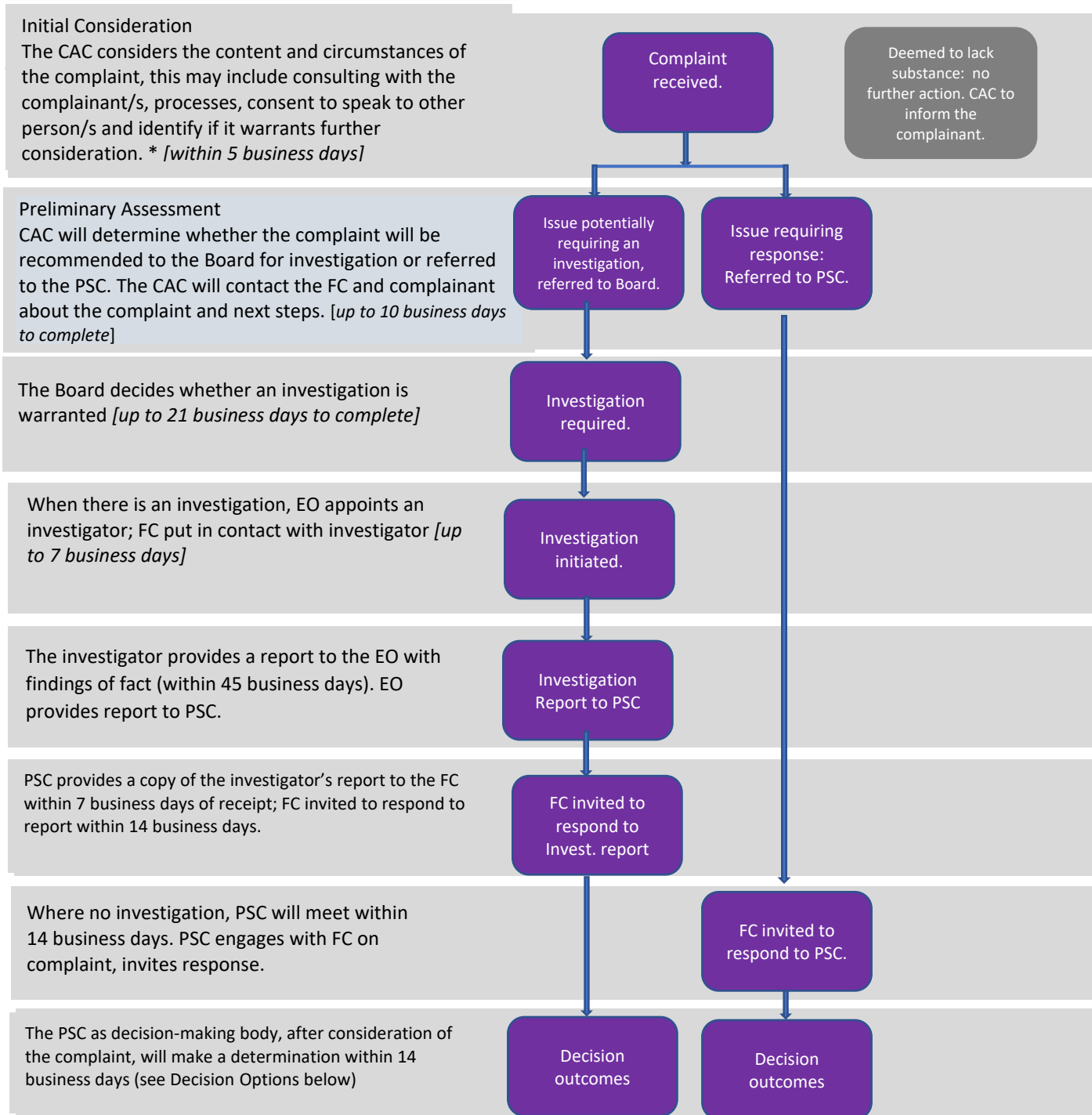
Any person or organisation may lodge a Professional Conduct Complaint in writing with the EO or Complaints Assessment Committee (CAC). Any person or organisation considering lodging a complaint may contact the EO by phone or email for information about FCVic's role and policy and procedure. For persons experiencing vulnerability such that their capacity to lodge a written complaint, FCVic will assist them to document their concerns and confirm their complaint in a written form. In doing so, FCVic will seek to honestly capture the concerns being raised about professional conduct to enable a process to consider the issue and shall not act in any way to appear to endorse or support any allegations being made.

Once a complaint is submitted in writing, the EO will convene the CAC. If the EO has a conflict in the matter, they will advise Chair of the FCVic Board, (or if the Chair is conflicted, a nominated external co-opted FCVic Board member), so the Chair can organise an alternative person to act in the EO role for the purpose of this policy.

### 7.2 Complaint Handling Procedure Summary

Refer to table below.

## COMPLAINT HANDLING SUMMARY TABLE\*\*



No further action is required against the member.

The member shall be counselled or required to undergo additional training or supervision.

The Member's membership rights shall be suspended for a specific period, and/or made subject to specific requirements.

The member shall be expelled from the association.

\*In the event of the CAC not being able to come to a majority decision on the appropriate process to follow, the Board will decide on the process to apply. \*\* Time frames in this process are best practice and may not be met due to unforeseen circumstances and will be addressed on an as needs basis.

#### 7.2.1 Complaints that are deemed to lack substance or otherwise not require further action.

The CAC will make an initial assessment of the complaint to determine whether it lacks substance, or is frivolous or vexatious, or, whether it is apparent that action has been taken by the agency in response to a consumer complaint that is sufficient to address the professional standard issues that the complaint has raised. Such an assessment may result in a decision to take no further action on the complaint. The CAC will document the decision and inform the complainant of a decision to take no further action.

If the CAC ascertains (seeking legal advice if required):

- a criminal offence is alleged to have been committed, FCVic will refer the matter to Victoria Police.
- there may have been a breach of the regulatory provisions governing Australian Financial Service Licences, credit licences or the licence exemptions, such a matter may also be referred to ASIC or any other appropriate authorities.

#### 7.2.2 Reasons for initiating the complaint process.

FCVic will commence a process to deal with a professional standards complaint about a member in accordance with this Professional Conduct Complaints Policy if, on reasonable grounds, CAC considers that the member may have materially (as outlined in the FCVic Constitution under section 10.3):

- (a) failed to comply with the FCVic Professional Standards (see related documents in Section 9)
- (b) failed or refused to support the FCVic Objectives and Purposes as stated in this Constitution; or
- (c) engaged in conduct that is seriously prejudicial to FCVic, to the profession of financial counselling generally, or to the collective interests of FCVic members.

#### 7.2.3 Consideration of immediate action

In some serious circumstances, involving potential immediate risks to clients, the CAC will decide whether to refer the matter to the Board to convene a special Board meeting for the purpose of considering any urgent action on the complaint. The Board may consider an interim or immediate suspension of the member. In that situation, the Board may convene a 'show cause meeting' with the member, and will decide on appropriate immediate action, pending the outcomes of an investigation into the complaint.

#### 7.2.4. Initiation of an investigation

Where the CAC believes the issues raised in the complaint are sufficiently complex and/or serious to warrant investigation, they will make that recommendation to the Board. The FCVic Board may then decide to authorise an investigation into the complaint, and the EO will take necessary steps to implement this decision including sourcing an appropriately skilled and experienced investigator that is free from conflict. The person subject to the complaint will be informed of the complaint and investigation process and be asked to participate in the investigation. The investigation itself will comply with principles of natural justice and seek to make findings of fact about what occurred.

A complaint investigation report will be submitted to the PSC for consideration, and further engagement with the FC subject to the complaint, in accordance with natural justice principles and the processes outlined in section 7.3 below.

#### 7.2.5 Complaint process when no formal investigation takes place.

Where an investigation is not initiated, the CAC will refer the complaint to the PSC, which will initiate a process to inform the FC of the complaint and the process to consider it, consistent with its role outlined in section 7.3 below.

#### 7.2.6 Later initiation of an investigation

Where a complaint is referred to the PSC without an investigation, but the PSC believes an investigation is warranted or will assist in its decision making, it is open to the PSC to request the CAC authorise such an

investigation. In the event an investigation is triggered, the process will be managed to ensure procedural fairness is provided to the member at all stages.

### 7.3. Role of the Professional Standards Committee (PSC) in relation to Complaints.

The Professional Standards Committee (PSC) will act as the default designated decision-making body.

The PSC's consideration of the complaint and, where relevant, an investigator's report will be undertaken consistent with the following principles.

- a. The PSC will ensure that any member who is subject to a complaint is accorded natural justice and procedural fairness.
- b. Any members of the PSC who have, or might reasonably be perceived to have, a conflict of interest, will remove themselves from participation in the complaint process.
- c. The PSC may, as a group or by delegation to one or two of its members, where appropriate, and based on agreement as to what occurred, enter into dialogue and discussion with the member to explore the issues raised by the complaint and options and approaches to address issues identified before deciding on outcomes; and
- d. The complaint process will be treated as strictly private and confidential, subject only to disclosures as required by law and to the reasonable need to:
  - i. Update the member's employing agency so it can manage client risk and previous employing agencies where they may have a legitimate interest in the matter, or relevant information to provide.
  - ii. inform the complainant of the outcomes of the process.
  - iii. inform other state peak bodies of the outcomes of the process. (only in the event that the membership is suspended for a specific period or expelled)

The FC has the right to have a support person with them at any agreed face to face meetings or dial-in discussion with the PSC relating to the complaint.

#### 7.3.1 PSC Complaints Review Decision Options

The PSC after due consideration of the complaint will make one of the following determinations:

- (i) no further action is required against the Member.
- (ii) the Member shall be counselled or required to undergo additional training or supervision.
- (iii) the Member's membership rights shall be suspended for a specified period, and/or made subject to specific requirements; or
- (v) the Member shall be expelled from FCVic.

The PSC will provide brief written reasons for all decisions, with sufficient detail for the parties to understand how and why it arrived at its determination. The PSC will report to the Board on the outcomes of its process.

#### 7.3.2 Scope of the PSC Decisions related to Complaints.

- a) The PSC cannot impose any form of monetary penalty on a Member.
- b) The PSC cannot order the Member to pay any form of compensation to the complainant.
- c) Where a decision is made to expel a member, the decision will take effect no sooner than 10 business days after the notification of the decision to the member. In the event the member appeals the decision, no action will be taken to expel the member until the conclusion of the appeal process, and then only if the appeal process upholds the decision. However, when the PSC decides on expulsion, the member, if not already suspended, will be suspended with immediate effect, pending a decision to appeal and an appeal process outcome.



### 7.3.3 PSC Reports

Decisions made by the PSC under this policy will be reported to the Board at its next meeting. Decision reporting from the PSC under this policy should, where appropriate, be summarised and anonymised with brief written reasons for decisions.

### 7.3.4 Complaints process Communication and Disclosure

As a condition of membership, members are advised that the disclosures provided for in this policy may occur.

- The client/stakeholder who raised the complaint is entitled to be informed about the outcome of the matter on a confidential basis.
- The FC subject to the complaint should be informed of all decisions taken in relation to their membership and professional standing.
- It is possible for a complaint matter to be subject to this process and an internal agency employer process at the same time. Where a complaint has been made to, or is referred to, the agency to respond to under its own complaint and/or management processes, at the same time as FCVic is using this process, FCVic and the agency may agree to share information about how the matter is dealt with under their respective processes. All such information sharing should occur on a confidential basis.
- If the Board determines that a breach of ASIC licensing exemption has occurred, this will be reported to ASIC as appropriate.

## 8. Anonymous complaints and complainant confidentiality

### 8.1 Anonymous or unidentified complaints

Anonymous or unidentified complaints will be investigated at the discretion of the CAC. A decision to investigate such a complaint will be guided by:

- the nature of the complaint,
- the potential seriousness of any alleged breach of Professional Standards
- the fairness of the process for the member subject to the complaint, and
- availability of sufficient information to enable a meaningful investigation or assessment of the complaint.

Anonymous or unidentified complaints may be accepted however it is unlikely that FCVic will be able to deal with such a complaint in a meaningful way under this policy.

### 8.2 Complainant Confidentiality

FCVic will respect the confidentiality of complainants as far as it is able to do so whilst following the processes in this policy.

Where a complainant is unwilling to have their identity disclosed to the person about whom they are complaining, CAC will consider whether this will make it possible to proceed with managing the complaint under this policy and will consult with the complainant about its considerations before proceeding. Such consideration will include:

- Whether in practical terms the complainant's identity could be inferred from the complaint details
- Whether non-disclosure of the complainant's identity would be unfair to the respondent

In the event that a complainant is not satisfied that their identity cannot be kept confidential to a satisfactory degree through the complaint process, it is open to the complainant to withdraw the complaint.

## 9. APPEAL RIGHTS

### 9.1 Scope

#### 9.1.1 Complaints Appeals

At the conclusion of Complaint review process, a member may formally initiate an appeal against the decision by the PSC, to the FCVic Board.

#### 9.1.2 Other Appeals

A member may also appeal a Board decision in relation to the impacts on them of an exercise of the Board's powers under Clause 7 of the Constitution (Membership).

### 9.2 Purpose

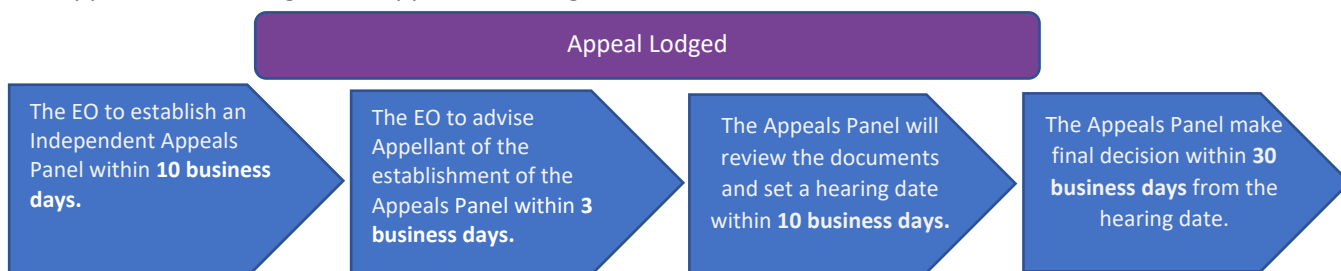
This Appeals policy outlines the FCVic procedures guided by the Constitution in relation to any appeals initiated by FCVic members.

### 9.3 Appeals Process

#### 9.3.1 Initiation of Appeal

Appeals must be lodged **within ten business days** of written notification of the PSC or Board decision that is being appealed.

The appellant must lodge their appeal in writing, addressed to the Executive Officer (EO) of FCVic



The appeal must include:

- Name and contact information of appellant
- Clearly state what decision the appeal relates to
- Define the grounds for appeal.
- Provide all relevant information to substantiate grounds for appeal.
- Articulate the desired outcome.

All appeals applications received by the EO will be treated as strictly confidential.

#### 9.3.2 Independent Appeals Panel

On receipt of an appeal the EO will within **ten business days** establish an Independent Appeals Panel to undertake the appeal review.

The Independent Appeals Panel will comprise individuals who have relevant subject matter and/or procedural expertise and have had no prior dealings with the issue that is the subject of the appeal and no conflicts of interest.

An Independent Appeals Panel will be constituted by:

- A Chair: An FCVic Board Member OR, where the appeal is against a decision of the Board, a suitably qualified independent Chair.
- 2 Independent Members

The Independent Members and/or Chair would normally be people not connected to the complaint or current decision-making bodies, and an appropriate background in the profession and/or financial counselling sector, and with relevant skills to exercise judgement on a fair and impartial basis.

The EO will notify the appellant in writing, within **three business days** of establishing the panel, of the names of the panel members and the contact details of the chair of the independent panel who will be reviewing the appeal. With this advice the EO will request the appellant to promptly respond to any requests for further information that may be requested by the appeals panel.

### 9.3.3 Independent Appeals Panel review process

The independent appeals panel will be provided with:

- All original documentation relating the matter that is the subject of the appeal.
- Documentation provided by the Appellant forming their grounds of appeal.

The independent panel will be granted **10 business days** to review the appeal, from the date they received appeals documentation and to set a hearing date with the Appellant.

### 9.3.4 Decision and Communication of outcome of Appeals Panel Review

The appeal panel will make a final decision (majority ruling) on the matter that is the subject of the appeal within **30 business days** of the Appellant attending a hearing.

The final decision of the Independent Appeals Panel will be formally communicated to the appellant in writing by the EO.

## 10. RELEVANT DOCUMENTS

- Australian Financial Counselling Code of Ethical Practice
- ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792 and ASIC Credit (Financial Counselling Agencies) Instrument 2017/793, replaced in December 2022 by amendments to the Corporations Act Regulations and the National Consumer Credit Protection Act Regulations, providing for financial counsellors to provide services without holding financial services or credit licences.
- FCVic Constitution
- FCVic Membership Policy
- FCVic Professional Standing Policy
- Financial Counselling National Standards for Membership and Accreditation (“National Standards”)

## 11. IMPLEMENTATION

The Executive Officer for FCVic is responsible for the implementation and management of this policy.

### Enquiry Contacts

For questions about this policy, contact the FCVic Executive Officer.

## 12 APPROVED

Approved by FCVic Board: 6 June 2023

**RATIFIED: 6 June 2023**

**REVIEW: 6 June 2024**

**MONITORING FREQUENCY:** Annually

**MONITORING TYPE:** Board.

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Version Number	Issue Date	Nature of Amendment	Developed by	Approved By
1	18 June 2020	New Document	Sandy Ross	FCVic Board
2	6 June 2023	Revised	PSC	FCVic Board