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Policy Title DISPUTES AND GRIEVANCES POLICY

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1. INTRODUCTION - DISPUTES AND GRIEVANCES POLICY

This policy is designed to manage the application of Clause 11 in the FCVic Constitution. This clause is a standard requirement for an incorporated association intended to apply to disputes or grievances resulting from an internal dispute between members, or between a member and the Board or a Board member.

Beyond being a statutory requirement, an effective disputes and grievances policy should assist in managing risk arising from internal disputes and grievances. Such issues can create discord, tension and conflict with the potential to affect the functioning and reputation of the organisation when they are unresolved.

- *Annexure 1 provides some examples of situations where this policy may apply, taken from other organisations.*

2. PURPOSE

This policy establishes the principles and procedures for assisting in the resolution, where appropriate, of disputes and grievances between members, or between a member and the Board or a Board member.

3. SCOPE

This Policy applies to all FCVic Board Members, and to all members of FCVic.

4. DEFINITIONS

Assisted negotiations: Where a third party, usually the EO, independent of the persons in dispute or involved in the grievance, joins discussions between the parties to the dispute to help broker a resolution.

Association refers to Financial Counselling Victoria Inc.

Conflict of Interest is as defined in the FCVic Board *Conflict of Interest policy*. It 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 Member refers to a natural person or organisation that is on the FCVic member register, in one of the categories of Student, Trainee/Intern, Associate, Full, Affiliate or Agency member.

FCVIC Board Member refers to a member currently on the Board, elected or appointed either as Chair or ordinary member, or to a person who is not an FCVic member, appointed to the Board as a co-opted member.

5. POLICY (incorporating constitutional rules)

5.1 Potential Parties to Disputes and Grievances Process

The Disputes and Grievances Resolution Process applies to disputes and differences between:

- (a) a Member and another Member; or
 - (b) a Member and the Board, or a member of the Board.
- [Constitution clause 11.1]

5.2. When the Disputes or Grievances Process does not apply

- A member may not initiate a dispute or grievance procedure in relation to a matter that is subject to, or is in any way connected with, a Professional Conduct Complaint Process that is under way at that time. [Constitution clause 11.3].
- When criminal allegations are made or matters are subject to police investigation or court proceedings.
- When the dispute is between an employee and employer more appropriately dealt with through industrial procedures.

5.3 Board Authority and Actions regarding Disputes and Grievances

The Board and EO actions regarding disputes and grievances are guided and informed by the following principles and procedures as set out in Constitution clause 11.5:

- (a) Parties to a dispute or grievance must first attempt to resolve their issues in good faith, by direct or assisted negotiations, within 10 working days of a dispute being formally notified in writing by one party to another.
- (b) If any party considers the matter to be unresolved after 10 working days, they can:
 - (i) Agree with the other party to appoint a Mediator; or
 - (ii) Ask the Chairperson of the Board, in writing, to appoint a Mediator.
- (c) Subject to agreed instructions to the contrary, the Mediator may conduct their own investigations to aid the process, but has no power to determine anything between the parties, other than the conduct of the process.
- (d) The dispute or grievance should be resolved within 15 working days of its referral to a Mediator, or such longer period as is agreed to by the parties and the Mediator.
- (e) If the mediation process fails to resolve the dispute or grievance within 15 working days, the Board may take other action to resolve the matter at its discretion.

5.4 Board Authority to Terminate a Dispute or Grievance

Notwithstanding any other provisions in Clause 11 of the FCVic Constitution, the Board may decide to terminate a dispute or grievance process at a duly convened meeting of the Board provided that the Board members present and entitled to vote determine unanimously, or with at most one dissent, that it is in the best interests of the Association to do so. [Constitution clause 11.4]

5.5 Role of the EO

Under this policy, the Board delegates to the Executive Officer (EO) responsibility for implementing the policy and managing disputes and grievances, apart from matters which the Constitution requires the Board to decide. The EO will advise and assist the Chair in deciding on the appointment of a mediator as provided for in clause 11.3 b) (ii) of the Constitution (section 5.3 b)(ii) of this policy).

In the event the EO has a conflict of interest, the Board will nominate an appropriate person who is free of conflict to act in that role for the purpose of this policy.

In the event the dispute or grievance is between a member and the Board, the EO will initiate contact with the Dispute Settlement Centre of Victoria to establish a mediation process to run independently of FCVic in the matter.

Where a dispute or grievance is between a member and a Board member, the EO and the Chair (or Deputy Chair where the Chair is a party in the dispute or grievance) will discuss whether the matter can be handled through an internal process, or whether potential conflicts of interest require a referral of the matter to the Dispute Settlement Centre of Victoria.

5.5 Initiation of a Disputes and/or Grievance Process.

5.5.1 How to Initiate a Disputes or Grievance Process

The process can be initiated by any Member of the Association, by applying in writing to the EO.

The person initiating the dispute or grievance process must include in their written application:

- a) Name and contact information of applicant.
- b) Clearly state the parties to the dispute or grievance.
- c) Clearly state the details of the dispute or grievance.
- d) Provide relevant information to substantiate the dispute or grievance.
- e) State the desired outcome.

The application should be copied to the other party/parties in the dispute or grievance. In the event the applicant is not comfortable with doing this, the EO will engage in discussion with the applicant about appropriate steps to notify the other party/parties of the issue and process.

The EO will assess an application made under this policy to determine whether the matter is appropriate for FCVic to deal with under this policy. In the event their assessment is that the matter should not be dealt with by FCVic under this policy, they will provide that assessment and their reasoning to the Board for the Board to consider and determine whether the matter should continue to be dealt with under section 5.4 of this policy.

The EO will ensure that procedural fairness applies to the people in dispute throughout the process:

- No member will be victimised or unfairly treated in any respect if they utilise this Policy to resolve an issue.
- Throughout the resolution process, members may be accompanied by a nominated third party as a support person who is not otherwise involved in the issue. The support person may assist by providing emotional support however, a support person is not entitled to act as an advocate.
- All formal avenues for handling of the dispute or grievances will be fully documented.

In some circumstances, where a complaint or concern is raised by a member, the EO may suggest to the member that the matter be dealt with under this policy, and invite an application to that effect.

The EO will report to the Board on any dispute or grievance applications received, and their outcomes. If either party to a dispute or grievance requests confidentiality, this reporting will be on a de-identified basis where possible.

5.6. Resolution Process - Communication between Parties to a Dispute or Grievance.

5.6.1. Initial Process – Direct or assisted discussion to resolve the Dispute or Grievance

It is preferable that any dispute or grievance can be resolved through direct or assisted discussion between the parties to the matter.

To assist this process the EO will ensure both parties to the dispute/grievance are aware of the matter and the processes under this policy, and offer to liaise with them through direct or assisted negotiation, to resolve the issue in good faith.

The EO should identify for both parties the date on which formal notification of the dispute has been taken as having occurred for the purposes of the requirement that it be resolved 'within 10 working days of a dispute being formally notified in writing by one party to another'.

If the parties to the dispute or grievance successfully resolve the matter in question during this nominated 10 working days they must communicate this resolution to the EO in writing.

If the parties to the dispute or grievance have not been successful in resolving the dispute or grievance via direct or assisted negotiation the parties have the option to request FCVic appoint a mediator to assist in the resolution process.

5.6.2 Agreement to Appoint a Mediator

If any party considers the matter to be unresolved after 10 working days, they can:

- a) Agree with the other party to appoint a Mediator; or
- b) Ask the Chairperson of the Board, in writing, to appoint a Mediator.

The Chairperson of the Board may delegate selection and appointment of a Mediator to the EO to action. FCVic will pay the cost of a mediator if, in the view of the EO and Chair, such a cost is reasonable and necessary. Normally FCVic will seek to use the free service provided by the Dispute Settlement Centre of Victoria.

5.7. Appointment of a Mediator

5.7.1 What is the role of the Mediator

The appointed mediator guides negotiation of the dispute between two or more participants. The people in dispute (participants) will meet in the presence of an unbiased, independent mediator to try to resolve their problems in a confidential, safe atmosphere. The mediator controls the process, but the participants decide on any outcomes that are agreed.

The mediator doesn't try to force the participants to agree and cannot impose an outcome on them.

Instead the mediator:

- (a) facilitates communication (which should be respectful and constructive)
- (b) promotes understanding
- (c) assists the participants to identify their needs, interests and the issues in dispute
- (d) helps the participants explore the important issues and their present and future needs without dwelling on who was right or wrong in the past
- (e) helps the participants with options, alternatives and decisions about the future.
- (f) uses creative problem-solving techniques to help the participants reach their own agreement.

Everything said in mediation is confidential unless it is specifically agreed otherwise before the mediation begins. The mediator will relay to the participants the start of the mediation process, their responsibilities in relation to information they cannot keep confidential from a legal perspective (eg. the abuse of a child must be reported).

The mediator controls the process (although this can be flexible, and the participants can provide input into this), while the participants control any outcomes of the process, including the resolution of their own dispute. The mediator, or any of the parties to a mediation, can end the mediation at any time if they think it is no longer a useful process.

5.7.2 Mediation Process

The appointed Mediator will liaise directly with the parties to the dispute or grievance in line with the principles outlined in **5.7.1 Role of the Mediator**.

The dispute or grievance should be resolved within 15 working days of its referral to a mediator or, or such longer period as is agreed to by the parties and the mediator.

5.8 Outcome of Mediation Process

At the conclusion of the mediation process, the mediator, with the approval of the parties to the dispute or grievance will write to the EO to advise:

- a) The dispute or grievance has been resolved to the satisfaction of both parties to the grievance.
OR
- b) The mediation process has failed to resolve the dispute or grievance in question.

5.9 Final Resolution of the Dispute or Grievance

The EO will report to the Board, including tabling any correspondence from a mediator on the outcomes of a mediation process.

5.9.1 Resolved Disputes or Grievances

When the EO's report confirms the resolution of a Dispute or Grievance, the report will be minuted.

5.9.2 Unresolved Disputes or Grievances

In the event the Board is advised that the mediation process has failed to resolve the dispute or grievance, the Board may take other action to resolve the matter at its discretion, or resolve to cease FCVic involvement in the matter.

6. DISPUTE RESOLUTION RESOURCES.

When the Board or EO seeks external assistance in the resolution of a dispute or grievance, available options include:

- (a) Referral to the Dispute Settlement Centre of Victoria which provides a free mediation services for many Victorian not-for-profit community organisations. The service is funded by the Victorian Government and its role specifically includes helping to resolve disputes within committees, clubs or incorporated associations.
- (b) Referral to mediation services through the Victorian Bar association.
- (c) Accessing the mediation resources offered by the Law Institute of Victoria.

7. RELEVANT DOCUMENTS

- Australian Financial Counselling Code of Ethical Practice
- FCVic Constitution
- FCVic Conflict of Interest Policy

- FCVic Professional Conduct Complaints Policy (including Appeals)

8. IMPLEMENTATION

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

9. APPROVED

Approved by FCVic Board:

Enquiry Contacts

For questions about this policy, contact the FCVic EO.

RATIFIED: 15 March 2022

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MONITORING FREQUENCY: Biennial

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Version History				
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1	15/3/2022	New Document	EO	Board

ANNEXURE 1 – Examples of Disputes and Grievances

Examples of disputes and grievances that may fall under this policy:

Some examples of a dispute or grievance (from ACNC and Justice Connect):

- a member might complain that the annual general meeting was not properly held.
- tensions may arise about the use of funds.
- a committee member may dispute whether another member of the Board or board committee was validly elected.
- directors disagree about the direction of the charity.
- where the members of a not-for-profit don't like a decision the board made about a service or activity.
- members disagreeing with the appointment of an EO.