
Australian Digital Currency Commerce Association Standards Disputes, Complaints Handling and Reviews

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1 Introduction and Background

1.1 Introduction

ADCCA believes that a proper disputes and complaints handling process is integral to the external credibility of any self-regulatory standard of practice like the ADCCA Standards.

ADCCA has therefore implemented a mechanism for addressing concerns relating to:

- disputes about compliance with the ADCCA Standards including appeal rights from a decision of the Board to revoke a members certification; and
- the behaviour and conduct of ADCCA Certified members.

The complaints process is governed by a set of overarching principles and is administered by an independent body named The ADCCA Standards Review Committee.

This document forms part of the ADCCA Standards and is binding on all ADCCA Certified members.

1.2 Terms used in this part

The following terms within this complaints handling part of the ADCCA Standards have the following meanings:

ADCCA means the Australian Digital Currency Commerce Association Ltd.

Board means the ADCCA board of directors.

ADCCA Standards means the Australian Digital Currency Commerce Association Digital Commerce Industry Standards and Practices as developed, adopted and amended by the directors from time to time in accordance with section 3 of Schedule 3 of the ADCCA constitution.

Committee is described at part 2 of this document.

Complainant means a person or organisation making a Complaint.

Complaint means:

- (a) a complaint by any person or organisation that an ADCCA Certified member has breached the ADCCA Standards;

- (b) a challenge by a member that has had its application for certification declined by the Board;
- (c) a challenge by an ADCCA Certified Member that has had its certification revoked by the Board; and
- (d) any other type of complaint, dispute or challenge in relation to the ADCCA Standards that the Board determine should be investigated by the Committee.

Investigating Officer means the member of the Committee appointed to conduct an investigation into a complaint.

Member means a member of ADCCA.

Respondent means the Member that is the subject of a complaint.

2 The Committee

- (a) The ADCCA Standards Review Committee (**Committee**) is to be determined by the Board.
- (b) The Committee must consist of at least three people, each of whom:
 - must be independent from the Board;
 - must have the necessary skills and expertise;
 - will be reimbursed for any Board approved out-of-pocket expenses incurred in connection with the performance of their duties as a Committee member;
 - may be paid a sitting fee or other remuneration as determined by the Board from time to time; and
 - must agree to be bound by and follow the terms of reference for the Committee.
- (c) The members of the Committee must appoint a chair from their number and may also appoint a deputy chair.
- (d) Except in circumstances where the Board is the Respondent, the Board has the right to appoint an observer to the Committee. The appointed observer will have the right to attend meetings of the Committee but will not be permitted to vote on Committee decisions or contribute to its deliberations. For the avoidance of doubt the appointed observer may be, but does not need to be, an ADCCA director.

3 Principles

3.1 Introduction

The following principles give guidance on how the Committee will approach and deal with Complaints. They are, in brief:

- Awareness and accessibility
- Appropriate scope

- Independence of process and decision-makers
- Fairness
- Transparency and openness
- Confidentiality
- Appropriate corrective action
- Efficiency

3.2 Awareness and accessibility for Members and stakeholders

Members and stakeholders should be aware of and able to access the complaints process. To this end ADCCA will:

- make the complaints process available on its website and, where appropriate, publicise it in publicly available materials; and
- ensure that the complaints process is conducted with a minimum of formality and technicality.

3.3 Scope of complaints process

The Committee will only consider Complaints where the ADCCA Standards' complaints process is the most appropriate way to handle the matter. To this end:

- Anonymous Complaints will not be accepted by the Committee unless the Complainant provides exceptional reasons why its identity and other information should be kept confidential (eg, where the Complainant can satisfy the Committee that there is a real risk associated with revealing the Complainant's identity).
- The Committee will not investigate a Complaint where there are more appropriate avenues or bodies for dealing with the complaint (eg, complaints relating to employment, third party providers or taxation).
- If the Committee chooses not to investigate a matter, the Complainant will be promptly notified and, where appropriate, provided with some advice about alternatives for dealing with the Complaint.
- The Committee may initiate its own Inquiry into an issue which may have sector wide significance or that may lead to a Complaint against a Member. A request for an inquiry can also be forwarded to the Committee by the Board or the CEO or Chairperson of any Member.
- The Committee may continue to investigate a Complaint against a Member that ceases to be a Member during the complaints handling process.

3.4 Independence of process and decision-makers

The complaints process will be conducted independently of the Board. To this end:

- The Committee will be constituted independently of the Board and ADCCA employees, though the Board will, except where it is the Respondent, retain the right to appoint one person as an observer on the Committee.
- The Committee's investigations, deliberations and decisions will be conducted confidentially and separately from the Board.

- Each member of the Committee will identify any conflict of interest arising during the consideration of any Complaint and will inform the chair of the Committee at the earliest practical opportunity. If the potential conflict involves the chair of the Committee, she or he will advise the deputy chair of the Committee. If there is no deputy chair then the chair of the Committee must advise the chair of the Board. Once a conflict is identified and notified, the chair or deputy chair of the Committee or the chair of the Board (as the case may be) will manage the conflict in accordance with the ADCCA conflict of interest policy.

3.5 Fairness

The complaints process will be fair and have regard to the principles of natural justice. To this end:

- The Committee will be responsible for the management of the Complaint in a fair way including ensuring that proper consideration is taken when choosing who to involve in the investigation and assessing what information to gather and how far to take the investigation.
- At any time during the complaint process, the chair of the Committee may consult with people with particular skill or expertise to provide advice as needed on the Complaint but must not incur any cost in doing so without the prior approval of the Board.
- The complaints process will permit all parties reasonable opportunity to provide any information they believe will assist the investigation and parties will be given an opportunity to respond to information provided by the other party.
- The Committee will keep the parties informed about the progress of the investigation and any consideration of the matter.
- Once the investigation report has been presented to the Committee, the discussion of the merits of the matter will be confined to Committee members (excluding any person directly involved in the investigation). The decision of the Committee will be by majority vote.
- The decision of the Committee is final.

3.6 Transparency and openness

ADCCA believes that transparent and open complaints processes help to promote confidence in the ADCCA Standards and ADCCA. To this end:

- This complaints handling process will be published on the ADCCA website.
- Once the complaint process has been completed, complainants and Respondents will be entitled to an explanation of the reasons for the decision.

3.7 Confidentiality

ADCCA and the Committee will respect the privacy and confidentiality to which the parties are entitled under the Privacy Act 1988 (Cth). To this end:

- At all stages of the complaints process, the Complaint will be treated as strictly confidential. However, at any stage of the complaints process, the Committee may advise the Board or make public any issues arising from a Complaint that it believes may have sector wide significance.
- The investigation of Complaints will take into account the key principles of the *Privacy Act 1988* (Cth).

- Where the Committee advises the Board about issues arising from a Complaint, Members will not be identified, unless the Committee has already made a decision to name the Member.

3.8 Corrective Action

Once a breach of the ADCCA Standards has been established by the Committee, its primary focus is to work with affected Members to improve standards and reduce the risk of recurrence. Where the breach is serious, or the Member has not responded appropriately, the Committee may consider disciplinary action. To these ends, the Committee's available responses to a breach of the ADCCA Standards include:

- Attempt to settle a course of corrective and remedial action with the Member (including through mediation or conciliation).
- Work with the Member to help ensure that it has put in place measures to minimise the risk of the breach recurring. If necessary, the Committee may require the Member to implement such measures and may require that Member to provide monitoring reports about its progress.
- If the complainant has suffered a loss as a result of a breach, the Committee will need to be satisfied that the Member has provided appropriate redress. In the first instance, this will be by negotiation, however if necessary, the Committee may require the Member to provide appropriate redress.
- In the interests of transparency, accountability and long-term public confidence in the sector, and as appropriate to the breach that has occurred, the Committee may require the Member to provide information to some or all of its members, on its website or in its Annual Report.
- The Committee may also suspend or revoke certification or make certification contingent on compliance with certain additional requirements for a period of time as it determines.
- Where considered necessary or prudent, the Committee may also choose to notify the facts of the breach to the Board or make those facts public through, for instance, a media release and/or the ADCCA website or annual report.
- Where the breach is sufficiently serious and/or if the Member's response has been inadequate, the Committee may suspend the Member's ADCCA membership for up to one year or expel that Member from ADCCA membership. Where a decision to suspend or expel is taken, the Member will be provided with written advice of the decision and the terms of the disciplinary action.

A Member that has been expelled from ADCCA membership is not permitted to reapply for membership **[until a period of [insert time frame] has elapsed]**.

With respect to Complaints that relate to the rejection or revocation of certification by the Board, the Committee may:

- uphold the Board's decision; or
- overturn the Board's decision and grant or confirm ADCCA certification (as the case may be).

3.9 Efficiency

It is in the interests of all Members and other stakeholders that the ADCCA Standards complaints process is handled as efficiently as practicable - both in relation to time and cost. To this end:

- The Committee will provide the parties with reasonable expectation of milestones for completion of each stage – noting that the time required may differ for each investigation.

- The Committee will be responsible for monitoring adherence to timelines and putting in place remedial action when necessary.

4 ADCCA Complaints Handling Process

4.1 Introduction

This part sets out the process that will be followed when handling a Complaint. It covers:

- making a Complaint
- responding to a Complaint
- investigating a Complaint
- provision of a report about the investigation
- making a determination
- notifying the parties about the Committee's decision

Important note: The ADCCA complaints handling process is not a court process. Therefore:

- the parties are not entitled to a hearing, to make oral submissions or to be legally represented; and
- The Committee and the Investigation Officer do not need to follow any of the rules relating to evidence that would ordinarily be followed by a court.

4.2 Step 1: making a Complaint

Complaints made to the Committee should:

- Be in writing in such form as required by the Committee from time to time.
- Include the name and contact details of the Complainant including the email address for correspondence in relation to the complaint.
- Identify the Respondent, if any.
- Set out the basis of the Complaint.
- Include all available evidence supporting the Complaint.

Complainants will be contacted and asked to provide any information not submitted. Any Complaints received that cannot meet the above criteria may be dismissed.

Complaints should be marked 'confidential' and sent to complaints@ADCCA.org.au with attention to the Chair of the ADCCA Standards Review Committee.

Steps will then be taken to ensure that all Complaints are provided to the person filling the role of chair of the Committee at the time.

4.3 Step 2: responding to a Complaint

A written acknowledgement will be sent to the Complainant within seven days of the receipt of the Complaint which may be sent by email.

4.4 Step 3: initial review

The chair of the Committee (in consultation with at least one other member of the Committee) will conduct an initial review of the Complaint within 21 days of the receipt of the Complaint and may:

- request additional information;
- take steps to conciliate or mediate the matter;
- dismiss the Complaint and send the decision to the Committee for ratification;
- refer the Complainant to a more appropriate body and send the decision to the Committee for ratification; or
- appoint an Investigating Officer to review the Complaint further.

4.5 Step 4: further investigation

If the chair of the committee decides that the Complaint should be investigated further then he or she will appoint a member of the Committee as an Investigating Officer. If necessary, an Investigation Team may be appointed who will normally have specialist expertise related to the nature of the Complaint.

The Respondent will be informed in writing of the Complaint, provided with a copy of the complaint material and invited to respond in writing (normally within 21 days).

The Complainant will be informed in writing of the decision to investigate further, the expected timeframes and any changes to those timeframes.

The Investigating Officer (or team) will review the Complaint and any response submitted by the Respondent if it is provided within the required timeframes. The Investigating Officer (or team) may, at their discretion:

- seek additional information as required from the Respondent, the Complainant or such external experts as considered necessary but must not incur any cost in doing so without the prior approval of the Board; and
- attempt to conciliate between the parties, or suggest independent conciliation or mediation.

Important note: The Investigating Officer (or team) is not limited to only investigating those issues nominated by the Complainant and may form a view about any breach that may arise or become known to the Investigating Officer or team during the course of the investigation of the Complaint.

4.6 Step 5: preparing the report

The Investigating Officer (or team) will prepare a draft report of the facts and issues of the Complaint. Prior to finalisation of the report, a copy of the draft report (without the recommendations) will be provided to both the Respondent and the Complainant with seven days to correct any matters of fact.

The Investigating Officer (or team) will consider any response to the draft report made by the Respondent and/or the Complainant provided that it is submitted within the required timeframe. At

their own discretion, the Investigating Officer (or team) will finalise the report and make one or more recommendations.

The final report of the Investigating Officer (or team) and the initial response of the Respondent and/or the Complainant to the draft will be submitted to the Committee for a final determination.

4.7 Step 6: making a determination

The Committee will consider the Complaint received, the report of the Investigating Officer (or team), any response by the Respondent or Complainant and any other Complaint related information considered relevant.

A determination of the Committee is made (by simple majority of those present and eligible to vote) as to whether:

- (a) the Board's decision to decline or revoke certification is justified; or
- (b) there has been a breach of the ADCCA Standards.

Where the Board's decision to decline or revoke certification is confirmed by the Committee, the Board's decision is effective from the date it was made.

Where the Board's decision to decline or revoke certification is overturned by the Committee, the applicant or certified ADCCA member will be granted certification or have its certification reinstated (as the case may be effective from the date the decision of the Board was made).

Where no breach is found, the Complaint will be closed and the Complainant and the Respondent will be informed of the Committee's determination in writing. [***Receipt of the notice of determination will be confirmed by phone.***]

Where a breach is confirmed, the Committee will consider the appropriate corrective and remedial action that will be taken. The Committee will take all reasonable efforts to work with the Respondent (including mediation or conciliation if required) to settle the appropriate corrective and remedial action.

4.8 Step 7: notifying the parties

Once a determination has been made, written notice will be sent to the Respondent and the Complainant outlining the Committee's decision and any action required.

The committee's decision is final.