



## **Appeals & Complaints Procedure**

### **4.1 Scope**

This procedure sets out the procedural and substantive requirements for the handling of:

- 4.1.1 Complaints laid against Applicants and Candidates;
- 4.1.2 Complaints laid against persons or organizations Certified or Qualified by SAIW Certification;
- 4.1.3 Complaints laid against SAIW Certification; and
- 4.1.4 Applications for Appeal to and Review of decisions taken by a Complaints Panel, in terms of the relevant Certification Scheme rules and applicable standards.

### **4.2 Definitions**

#### **4.2.1 Aggrieved Person**

Any person or organization who/which is not satisfied with a decision taken by the Complaints Panel or Inquiry Panel.

#### **4.2.2 Appeal**

A written request made by any interested party for reconsideration of any substantive decision made by either the Inquiry Panel.

#### **4.2.3 Appeals Panel**

A group of at least three suitably qualified/competent persons, nominated by the relevant Scheme Committee or Subsidiary Board, from the members of such Scheme Committee or Subsidiary Board, whose duty it is to adjudicate Appeals.

#### **4.2.4 Complaint**

A written submission sent to SAIW Certification Secretariat, either via email or registered post, whereby a Complainant lodges a complaint in respect of the competence, integrity or quality of work of any Certified or Qualified Person or Organisation.

#### **4.2.5 Complainant**

An Applicant, Candidate, Certified Person or Organization who/which has submitted a formal written Complaint, as per 4.2.4 above.

#### **4.2.6 Complaints Panel**

A group of at least two suitably competent/qualified persons, appointed by the relevant Scheme Committee secretariat. Members of the secretariat may be members of the Complaints Panel.

#### **4.2.7 Days**

All reference to days in this document refers to working days, excluding weekends and public holidays.

#### **4.2.8 Inquiry Panel**

A group of at least three suitably qualified persons nominated by the relevant Scheme Committee or Subsidiary Board, from the members of such Scheme Committee or Subsidiary Board, whose duty it is to adjudicate Complaints referred to it by the Complaints Panel.

#### **4.2.9 Respondent**

Any Applicant, Certified Person, Qualified Person or Organisation that has had a formal Complaint lodged against him/her/it as per 4.2.4 above.

#### **4.2.10 Review**

A written request made by any interested party for reconsideration of any decision made by the Inquiry Panel, in respect of procedural irregularities in an Inquiry.

#### **4.2.11 Review Panel**

Define.

### **4.3 Reference Documents**

**4.3.1** SANS ISO 17021 Conformity assessment – Requirements for bodies providing audit and certification of management systems.

**4.3.2** SANS ISO 17024 Conformity assessment – General requirements for bodies operating certification of persons.

**4.3.3** IIW Doc IAB-001 Rules for the implementation of IIW Guidelines for the education, examination and qualification of welding personnel.

**4.3.4** IIW Doc IAB-339 Rules for ANBCCs Operating the IIW Manufacturer Certification Scheme.

**4.3.5** IIW Doc IAB-341 Rules for Implementation of IIW Scheme for Certification of Personnel with Welding Coordination Responsibilities.

### **4.4 Notification of Rights On Complaint, Appeal or Review to Applicants**

Every applicant for certification shall be given a copy of Form GF 01 or GF 02 which sets out the rights and obligations of all applicants, candidates, complainants, appellants and respondents in the event of receipt by SAIW Certification Secretariat of a complaint, application for appeal or application for review.

### **4.5 Complaints**

#### **4.5.1 Receipt of complaints**

**4.5.1.1** A description of the complaints procedure shall be made publically accessible as required by ISO 17021 on the SAIW website. Any person ('the Complainant') may submit a Complaint in writing to SAIW Certification Secretariat regarding the competence, integrity or quality of work of any Applicant, Candidate or Certified Person or Organisation ('the Complainant').

- 4.5.1.2** SAIW Certification Secretariat shall be obliged to acknowledge receipt of the Complaint in writing within 15 (fifteen) days of receipt of same and shall within the same period of time be obliged to send a copy of the Complaint (and any supporting documentation supplied to SAIW Certification Secretariat by the Complainant in support of the Complaint) to the person against whom the Complaint was laid ('the Respondent').
- 4.5.1.3** The Respondent shall be required, within 20 (twenty) days after receipt of the notice referred to in clause 4.4.1.2 of this Operating Procedure, to furnish a written response to the SAIW Certification Secretariat, setting out his/her version of events and providing supporting documentation in respect of same (if any).
- 4.5.1.4** SAIW Certification Secretariat, shall within 15 (fifteen) days of receipt of the Complaint, appoint a panel to consider the Complaint ('the Complaints Panel') consisting of not less than 2 (two) persons selected by the Secretariat, which Complaints Panel shall be appointed within 20 (twenty) days of the referral of the Complaint to the Secretariat.

#### **4.5.2 The Complaints Panel**

- 4.5.2.1** No person who has a conflict of interests may sit as a member of the Complaints Panel.
- 4.5.2.2** The Complaints Panel shall within 20 (twenty) days of appointment, convene at a time and place it deems convenient, to consider the Complaint.
- 4.5.2.3** The Complaints Panel shall consider the Complaint based on the information contained in the Complaint itself and the Respondent's written response, if any, (and any supporting documentation in support of same).
- 4.5.2.4** The Complaints Panel shall be obliged to furnish SAIW Certification Secretariat, the Complainant and Respondent with written confirmation of its decision and reasons therefore within 15 (fifteen) days of the date of the meeting at which the Complaint was considered.
- 4.5.2.5** The Complaints Panel may make a finding either:
  - 4.5.2.5.1** That the Complaint has no merit, in which case it shall be obliged to dismiss the Complaint, or that the Complaint has merit, or that is of too serious or complex a nature to be decided by the Complaints Panel, in which case, it shall be obliged to recommend to the relevant Scheme Committee that it appoint a panel of no less than 3 (three) persons to conduct an investigation into the Complaint ('The Inquiry Panel' which shall hold a 'Complaint Inquiry').
- 4.5.2.6** Any person aggrieved by a decision of the Complaints Panel shall be entitled to, within 20 (twenty) days of receipt of the findings and reasons of the Complaints Panel, send a written request to the SAIW Certification Secretariat that a Complaint Inquiry be held to consider the Complaint, in which event SAIW Certification Secretariat shall forthwith inform the relevant Scheme Committee of such request.
- 4.5.2.7** The relevant Scheme Committee shall be obliged to appoint the Inquiry Panel within 20 (twenty) days of receipt of a recommendation from the Complaints Panel or a request from a person aggrieved by a decision of the Complaints Panel.

**4.5.2.8** In the instance that a period of more than 1(one) year or any other period of time, that is unreasonably long in the circumstances, has elapsed since the discovery of the act or omission that gave rise to the Complaint, the Complaints Panel shall be entitled to find that the Complaint has no merit on the grounds that insufficient evidence is available to substantiate such Complaint due to the effluxion of time.

#### **4.5.3 Inquiry Panel**

**4.5.3.1** The Inquiry Panel shall be obliged to notify the Complainant, Respondent and relevant scheme committee within 10 (ten) days of its appointment, of the date, time and venue of the Complaint Inquiry, which shall be held within 20 (twenty) days of appointment of the Inquiry Panel.

**4.5.3.2** The Inquiry Panel shall record the conduct of its meeting in the form of minutes or a transcription, which minutes/transcription are to be signed and ratified as a true and correct record of the proceedings by all of the members of the Inquiry Panel within 10 (ten) days from the date of the meeting of the Inquiry Panel.

**4.5.3.3** A copy of such minutes/transcription shall be made available within 10 (ten) days of receipt by SAIW Certification Secretariat of a written request for same. If the minutes/transcription are not yet available at the time of request, such records shall be made available within 10 (ten) days of such record being received by SAIW Certification Secretariat.

**4.5.3.4** The Inquiry Panel shall be obliged to consider the Complaint in a manner that is fair and reasonable in the circumstances, taking into account the values of openness, transparency and accountability.

**4.5.3.5** The Complaint shall be read to the Inquiry Panel. In the event that the Respondent is present in person, the Chairperson of the Complaint Inquiry shall ensure that the Respondent understands the nature of the Complaint(s) made against him, and his rights in respect of same.

**4.5.3.6** Neither the Respondent nor the Complainant shall be obliged to appear at the Complaint Inquiry in person, unless the Respondent is required by the Inquiry Panel, on reasonable notice, to appear and give evidence in person. In the event that the Respondent or Complainant does appear in person, such person shall be required to answer questions put to him truthfully and accurately, to the best of his knowledge and belief.

**4.5.3.7** The Respondent shall not be entitled to legal representation in front of the Inquiry Panel.

**4.5.3.8** The Secretariat shall appoint a person to represent the Complainant in the Complaint Inquiry, provided that no member of the Secretariat who sat as a member of the Complaint Panel shall be eligible to take part in the Complaint Inquiry in any manner.

**4.5.3.9** The Complainant and the Respondent (and or their Representatives) shall both be given the opportunity to present their evidence to the Inquiry Panel and call witnesses, and shall be entitled to ask questions and cross-examination the representative for other side or its witnesses.

**4.5.3.10** In the event that the Respondent is not a first language English speaker, he will be entitled to request the services of an interpreter or fellow staff member to aid him with translation during the Complaint Inquiry at his own cost.

#### **4.5.4 Findings of the Inquiry Panel**

- 4.5.4.1** The Inquiry Panel shall make a finding that either the Complaint is valid or that the Complaint is not valid.
- 4.5.4.2** In the event that the Inquiry Panel finds that the Complaint is not valid, it shall dismiss same.
- 4.5.4.3** In the event that the Inquiry Panel finds that the Complaint is valid, it shall recommend appropriate sanction to the SAIW Certification Governing Board or in the event that the Governing Board has delegated authority to the relevant Scheme Committee to deal with the Complaint, it shall recommend appropriate sanction to the relevant Scheme Committee.
- 4.5.4.4** The Inquiry Panel shall furnish the SAIW Certification Secretariat with its decision and written reasons therefore within 15 (fifteen) days of the finalisation of the Complaint Inquiry. Thereafter the SAIW Certification Secretariat shall have 10 (ten) days in which to communicate the findings of the Inquiry Panel to the Complainant, The Respondent and the Scheme Committee.
- 4.5.4.5** The Inquiry Panel shall be entitled to withhold its decision for any period of time that is reasonable in the circumstances where it is not in a position to make an informed decision for lack of evidence, information or otherwise.

#### **4.5.5 Right of Appeal**

- 4.5.5.1** In the event that the Respondent or Complainant is aggrieved by a substantive decision of the Inquiry Panel he may, within 20 (twenty) days of receipt of the written findings of the Inquiry Panel, lodge an application for Appeal with the SAIW Certification Secretariat, in which event such an Appeal shall be dealt with in accordance with the provisions of clause 4.7 below.
- 4.5.5.2** Application may be made to the Appeals Panel for condonation for the late lodgement of an Appeal application in the event that the time period referred to in clause 4.4.6.1 of this operating procedure has expired, in which case the Appeals Panel shall consider whether special circumstances exist that render the condonation of the late lodgement of the Appeal, equitable in the circumstances, before considering the merits of the case.

#### **4.5.6 Right of Review**

In the event that the Respondent or Complainant is aggrieved by a procedural decision of the Inquiry Panel, he/she may within 20 (twenty) days of receipt of the written findings of the Inquiry Panel, lodge an application for Review with the SAIW Certification Secretariat, in which event such Review shall be dealt with in accordance with the provisions of clause 4.6 of this operating procedure.

### **4.6 Appeals Against Decisions of The Inquiry Panel**

Any aggrieved Complainant or Respondent of a decision of an Inquiry Panel, may lodge an application for Appeal with SAIW Certification in accordance with the provisions contained in clause 4.5 of this operating procedure.

For the sake of clarity, we refer to the parties as they are referred to in respect of the Complaints and Inquiry Procedure.

#### **4.6.1 Receipt of Application for Appeal**

- 4.6.1.1** Upon receipt of an application for Appeal, SAIW Certification Secretariat shall forthwith notify the relevant Scheme Committee, which shall acknowledge receipt of the application in writing within 10 (ten) days and notify the Complainant and Secretariat that an Appeal has been lodged within the same period.
- 4.6.1.2** The Governing Board shall be obliged, within a period of not more than 10 (ten) days from the date of lodgement of the Appeal application, refer the application for Appeal to the relevant Scheme Committee, which Scheme Committee shall be obliged within 20 (twenty) days of receipt of the application for Appeal, to appoint an Appeals Panel consisting of not less than 3 (three) persons.
- 4.6.1.3** An explanation of the Appeals procedure shall be made available to the public as required by ISO 17021.

#### **4.6.2 The Appeals Panel**

- 4.6.2.1** No person who has a conflict of interests may serve as a member of an Appeals Panel.
- 4.6.2.2** The Appeals Panel shall be obliged to, within 10 (ten) days of appointment, advise the Complainant, the Respondent and the SAIW Certification Secretariat, in writing, of the date on which the Appeals Panel will convene to hear the Appeal and who the members of the Appeal Panel will be, which hearing shall take place not less than 40 (forty) days from the date that notice of the hearing is given.

#### **4.6.3 Rights in an Appeal**

- 4.6.3.1** Both parties may not be legally represented at the Appeal hearing. The Appeals Panel, however, will have the discretion to allow the either party legal representation in cases that are of a very serious or complex nature. The decision of the Appeals Panel as to whether the either party shall be allowed legal representation is final and shall be binding.
- 4.6.3.2** The Appeals Panel may take into account any one or more of the following factors when determining whether or not a matter is of a serious or complex nature:
  - 4.6.3.2.1** If the decision appealed is one against the findings of an Inquiry Panel; the nature of the Complaint and the potential impact of an Appeals Panel confirming the findings of an Inquiry Panel;
  - 4.6.3.2.2** The degree of factual or legal complexity or technicality of the matter and the evidence to be led;
  - 4.6.3.2.3** Whether the Appeal will be heard by trained judicial officers;
  - 4.6.3.2.4** Whether the Respondents' actions/ omissions jeopardised public safety or caused or could potentially have caused damage or injury to any person or property; and/ or
  - 4.6.3.2.5** Whether the Respondent is at a disadvantage because of his/her race, culture, language or background.

**4.6.3.3** The Respondent shall not be obliged to appear at the hearing in person, unless the Respondent is required by the Appeals Panel, on reasonable notice, to appear in person, or in the case of an Organization to send a representative to appear on its behalf, to give evidence. In the event that the Respondent appears in person, he/she shall be required to answer any questions put to him/her truthfully and to the best of his knowledge and belief, failing which appearance or answering of questions, the Appeals Panel may confirm the findings of the Inquiry Panel appealed against.

**4.6.3.4** In the event that either party is not a first language English speaker, or in the event of an Organisation is not represented by a first language speaker, he/she will be entitled to request the services of an interpreter or fellow staff member to aid him during the Appeal hearing with translation.

#### **4.6.4 The Hearing of the Appeals Panel**

**4.6.4.1** The Appeals Panel shall treat the Appeal as an Appeal in the wide sense and shall (unless otherwise agreed in writing by both parties) re-hear the matter *de novo*.

**4.6.4.2** The Secretariat shall appoint a person to represent the Complainant at the Appeal hearing.

**4.6.4.3** In the event that the Respondent appears in person, the Chairperson of the Appeals Panel will be obliged to ensure that the Appellant understands the nature of the Complaint against him/her and his/her rights in respect of same.

**4.6.4.4** Either Party (or their representatives) shall be entitled to lead evidence at the Appeal, which evidence shall be restricted to that led before the Inquiry Panel.

**4.6.4.5** The Appeals Panel shall record the hearing in the form of minutes or a transcription, which minutes are to be signed and ratified as a true and correct record of the proceedings by all of the members of the Appeals Panel within 15 (fifteen) days from the date of the Appeal.

**4.6.4.6** A copy of such minutes/transcription shall be made available within 10 (ten) days, upon receipt by SAIW Certification Secretariat of a written request for same. In the event that such minutes/transcription are not yet available to SAIW Certification Secretariat, such records shall be made available to the Appellant within 10 (ten) days of being made available to SAIW Certification Secretariat.

**4.6.4.7** The Appeals Panel shall be obliged to consider the subject matter and conduct the Appeals procedure, in a manner that is fair and reasonable in the circumstances, taking into account the values of openness, transparency and accountability.

**4.6.4.8** If agreed by either party, the Respondent may, on application, allow the Respondent to make written submissions to the Appeals Panel instead of appearing in person to give evidence.

#### **4.6.5 Findings of the Appeals Panel**

**4.6.5.1** The Appeals Panel shall not be obliged to make a finding at the Appeal hearing and may adjourn for a period of no longer than 15 (fifteen) days to review the Appeal record and evidence before making a finding.

- 4.6.5.2 The Appeals Panel shall be entitled, however, to withhold its decision for any period of time that is reasonable in the circumstances, where it is not in a position to make an informed decision for lack of evidence, information or otherwise.
- 4.6.5.3 The Appeals Panel shall be obliged to furnish the Complainant, the Secretariat and the Respondent with written confirmation of the finding and reasons therefore, within 15 (fifteen) days of the date of the hearing at which the decision was taken.
- 4.6.5.4 In the event that the Appeals Panel confirms the findings of the Inquiry Panel, it shall recommend an appropriate sanction to the Governing Board, or in the event that the Governing Board has delegated the authority to the relevant Scheme Committee to deal with the Complaint Inquiry, then the Complaint Inquiry shall recommend appropriate sanction to the relevant Scheme Committee.
- 4.6.5.5 The findings the Appeals Panel shall be final and binding.

#### **4.6.6 Sanctions Imposed by Appeals Panel**

- 4.6.6.1 The Appeals Panel may recommend any one or more of the following sanctions:
  - 4.6.6.1.1 That a written warning be issued to the Respondent, to refrain from future conduct of the same or similar nature;
  - 4.6.6.1.2 That the Respondent's certification be suspended for a period determined to be recommended by the Appeals Panel;
  - 4.6.6.1.3 That the Respondent's certification be revoked with immediate effect from the date of the finding of the Appeals Panel;
  - 4.6.6.1.4 That the suspension or revocation of the Respondent's certification be published with immediate effect on the SAIW website and if applicable, in any other industry specific newsletter or periodical; and/or
  - 4.6.6.1.5 Any other sanction that the Appeals Panel in its sole discretion deems suitable.

#### **4.7 Reviews Against Decisions of the Inquiry Panel**

Any person aggrieved by a decision of an Inquiry Panel may lodge an application for Review with SAIW Certification Secretariat, in which case such a Review shall be conducted in accordance with the provisions of clause 4.6 of this operating procedure.

For the sake of clarity, we refer to the parties as they are referred to in respect of the Complaints and Inquiry Procedure.

- 4.7.1 Upon receipt of an application for Review, SAIW Certification Secretariat shall forthwith notify the SAIW Certification Governing Board, who shall within 10 (ten) weeks of receipt of the application, appoint a Review Panel and advise the Respondent, the Complainant and the Secretariat in writing, of the constitution of the Review Panel and the date of the Review Meeting, which meeting shall be held within 20 (twenty) days of appointment of the Review Panel.
- 4.7.2 The Review Panel shall consist of minimum of 3 (three) suitably qualified persons.



- 4.7.3 The Review Panel shall convene on the date of the Review Meeting to reconsider the procedure utilised by the Inquiry Panel in its consideration of the Complaint.
- 4.7.4 The Review Panel shall have reference to only the record of the Inquiry Panel hearing that was presented to the Inquiry Panel. No new evidence may be introduced to the Review Panel.
- 4.7.5 The Review Panel shall review the decision of the Inquiry Panel and determine whether the decision taken by the Inquiry Panel was procedurally fair.
- 4.7.6 The Review Panel shall either confirm or overturn the finding of the Inquiry Panel or confirm the finding of the Inquiry Panel but recommend that a different sanction be imposed by the Governing Board of SAIW Certification.
- 4.7.7 The Review Panel shall within 10 (ten) days of the date of the Review Meeting notify the Respondent, the Secretariat and the Complainant in writing of the outcome of the Review and the reasons therefore.
- 4.7.8 The Review Panel shall keep records of its meeting, in the form of minutes or transcription, which record shall be made available to interested parties upon receipt by SAIW Certification Secretariat in writing *mutatis mutandis* within the provisions of clauses 4.4.3.3 of this operating procedure.
- 4.7.9 The decision of the Review Panel shall be final and binding.

#### **4.8 Complaints and Appeals against SAIW Certification**

- 4.8.1 Any Applicant, Candidate, or Qualified or Certified Person or Organisation may submit a complaint in writing to SAIW Certification Secretariat regarding any decision of any Scheme Committee in connection with any part or the whole of the certification process (including the decision to recommend or not to recommend any person or organization for certification to the Governing Board, or the decision to certify any person taken by a Scheme Committee in terms of any authority delegated to it by the Governing Board).
- 4.8.2 SAIW Certification Secretariat shall notify the Governing Board and the Complainant within 15 (fifteen) days of receipt such Complaint, and in the event that the necessary supporting documentation has not been furnished to SAIW Certification Secretariat with the Complaint, SAIW Certification shall request that the Complainant provide it with the requisite supporting documentation. SAIW Certification shall simultaneously request that the person or organization against whom the Complaint was laid submit to it his version of events in writing.
- 4.8.3 The Governing Board shall as soon as is reasonably practicable (after the receipt of the documentation referred to in paragraph 4.7.2 of this operating procedure) convene a panel of members of the Governing Board or nominees thereof, of at least 3 (three) persons to consider, based on the papers before it, whether the Complaint has any merit.
- 4.8.4 If the Governing Board finds that there is no merit to the Complaint, it shall dismiss same.
- 4.8.5 If the Governing Board finds that there is merit to the Complaint, it shall deal with the Complaint in any manner it deems appropriate in the circumstances.
- 4.8.6 The Governing Board shall be obliged to notify the Complainant and SAIW Certification of its decision, provide written reasons therefore, and furnish the Complainant with the details of the relevant accreditation body referred to in paragraph 4.7.9 in this operating procedure within 15 (fifteen) days of the meeting at which the Complaint was considered, provided that the Governing Board shall be entitled to withhold its decision and reasons therefore for any period of time that is reasonable in the circumstances

where it is not in a position to make an informed decision for lack of evidence, information or otherwise.

**4.8.7** Further, in the instance that a period of more than 1 (one) year, or any other period of time that is unreasonably long in the circumstances, has elapsed since the discovery of the act or omission that gave rise to the Complaint, the Governing Board shall be entitled to find that the Complaint has no merit if the circumstances surrounding the Complaint are such that insufficient evidence is available either to substantiate or to refute such Complaint.

**4.8.8** The Governing Board shall be entitled at any time to require the Complainant or SAIW Certification against whom the Complaint is laid, to make further written submissions to it regarding the Complaint, or to appear before it and answer fully and truthfully all questions put to it by the Governing Board.

**4.8.9** In the event that the Complainant is not satisfied with the decision of the Governing Body, he shall be entitled to appeal further to the relevant accreditation authority, in which event the appeal to such accreditation authority shall be dealt with in terms of the rules and regulations of the relevant accreditation body.

#### **4.9 Confidentiality**

SAIW Certification, the Governing Board, and all employees and subcontractors of SAIW Certification, as well as any member of any panel/ or committee nominated or appointed by SAIW Certification or its Governing Board or any Scheme Committee to which authority has been delegated in terms hereof, shall be required to keep all information pertaining to all Complaints, Appeals and/or Reviews confidential.

#### **4.10 Time Periods**

**4.10.1** To the extent that any obligation is placed on any person or panel or body of SAIW Certification to do anything in terms of this Operating Procedure GOP 04 within a specified time frame, the failure of such person/panel/body to comply with the time periods set out herein (provided such failure is not *mala fide* and/or does not unreasonably prejudice a Complainant/Respondent) shall not entitle such Complainant/Respondent to bring appeal or review proceedings in terms of this Operating Procedure, or to claim otherwise (in any court or dispute resolution procedure) that the failure to comply with such time periods prejudiced such person and that the proceedings are accordingly subject to review/appeal by any other body.

**4.10.2** Furthermore, to the extent that any Complainant/Respondent fails to do anything required in terms of this Operating Procedure within the time periods specified herein, SAIW Certification shall not be obliged to take any further action in terms of this Operating Procedure until such time as the relevant Complainant/Respondent has complied with their obligations as set out herein.

**4.10.3** In the instance that the actions of the Complainant/Respondent cause an inordinate delay in the finalization of any of the procedures set out above, SAIW Certification shall have the right to notify such Complainant/Respondent that if they have not complied with their obligations herein within 7 (seven) days of receipt of such notice, that the relevant Complaint/Inquiry/Appeal/Review procedure shall be terminated.