

DIETITIANS ASSOCIATION OF AUSTRALIA

BY-LAW

COMPLAINTS AND DISCIPLINARY PROCEDURES

(By-law Made Pursuant to Clauses 21 and 36 of the *Constitution*)

Revised Nov 2009

Purpose

By-law made pursuant to Clauses 21 and 36 of the *Constitution* provides a basis for an internal disciplinary mechanism to deal with complaints about a member as established in *By-law—Code of Professional Conduct*.

The Dietitians Association of Australia has adopted this By-law to ensure that there is a fair process of judging complaints against members and non-member Accredited Practising Dietitians of a breach of professional standards. The aim is to ensure the maintenance of proper professional standards and to uphold and increase public confidence in the profession as one that is committed to those standards.

If a complaint involves a breach of the criminal law, it will not be dealt with under this process but will be referred to the appropriate authorities. If a complaint involves a civil dispute over fees, the terms of a contract of engagement or other business matters then it will not be dealt with under these processes until any civil proceedings between the parties are completed.

1. Structure of Complaints and Disciplinary Process

The process shall have four possible action points.

- a) Initial investigation by Chief Executive Officer in consultation with the Vice-President which will result in either dismissal of the complaint or initiation of:-
- b) Level 1 - Mediation and Conciliation - which involves discussion with and mediation/conciliation between the parties to attempt a resolution or;
- c) Level 2 – Hearing and Assessment - where a formal hearing process is undertaken by an appointed panel lead by the Chairperson of the Complaints Committee either as a result of the failure of Level 1 or because the nature of the complaint precluded mediation.
- d) Appeal by the member against the process once a determination has been reached. This is not against the determination.

2. Roles and Responsibilities

- a) The **Vice-President** takes overall responsibility for the process with the vested authority of the Board.
- b) The **Chief Executive Officer** acts as the secretariat to the process and as the chief investigator. The Chief Executive Officer researches the complaint, gathers all evidence and presents that evidence to the Vice-President and / or the Hearing and Assessment Panel as required.
- c) The **Chairperson of the Complaints Committee** shall chair all Hearing and Assessment Panels during their 3 year appointment and shall be an APD member with significant professional and complaints handling experience.
- d) The **Hearing and Assessment Panels** will review all evidence presented by the Chief Executive Officer and provide an opportunity for the member to present their case. The Panel shall make recommendations to the Board regarding any findings and/or penalties against the member for further action. Hearing and Assessment Panels shall comprise the Chair, one other APD member and one independent non-DAA member from the Complaints Committee.

- e) The **Complaints Committee** shall comprise the Chair and three other experienced APD members as well as two independent non-DAA members with expertise in complaints handling. Panels will be drawn from this pool.
Full functions and requirements of the Complaints Committee shall be defined in the Committee's Terms of Reference.
- f) The **Board** shall appoint the Chairperson and members of the Complaints Committee and shall consider and make final determination on all recommendations for findings and / or disciplinary action regarding the member arising out of Level Two and Appeals processes.

3. Lodgement of Complaint

A complaint against a Member of the Association:

- may be made by any person including another member/s including DAA staff who have evidence obtained in the course of their duties which may establish a breach of the Code of Professional Conduct;
- shall be made to the Chief Executive Officer;
- shall be in writing signed by the person making the complaint or a legal representative acting for them or;
- a verbal complaint may be recorded by the Chief Executive Officer who will send two copies of the transcript to the complainant who will sign both and return one to the Chief Executive Officer;
- shall set out all matters giving rise to the complaint; and
- may be accompanied by statements or other material relating to the matters giving rise to the complaint.

Shall be acknowledged in writing within 7 days advising the complainant that the substance of the complaint will be provided to the member concerned.

The complainant will be advised that this By-law and the Code of Professional Conduct can be found on the DAA website. A hard copy may be sent if requested.

4. Initial Investigation

The Chief Executive Officer shall within 14 days of receiving a signed copy of the complaint:

- seek further information from the person making the complaint if necessary;
- send a copy of the complaint, the Code of Conduct and this By-law to the member by registered mail, requesting the member's response in writing, including any supporting documentation, within 14 days of receipt of this correspondence;
- audit the member's APD logs if appropriate;
- inform the member of peer support available to them during the process, and
- notify the Vice-President.

5. Initial Assessment of Evidence

The Chief Executive Officer shall assess the information provided.

The Chief Executive Officer will discuss the evidence with the Vice-President, with reference to the Code of Professional Conduct, to determine at what level to initiate the complaints process if further action is required.

The Chief Executive Officer may seek legal advice if required.

6. Consideration of Complaint Chief Executive Officer and Vice-President

- a) If there is no issue to consider that would warrant proceeding under this By-law, the Vice-President shall request the Chief Executive Officer to advise the complainant in writing of the reasons for not pursuing the complaint and advise the member in writing of the decision.

- b) If there is an issue to consider that would warrant proceeding under this By-law the Vice-President shall request the Chief Executive Officer to:
- i. advise the Member and complainant that a resolution will be sought through mediation/conciliation; or
 - ii. that the complaint will be referred to a Hearing and Assessment Panel

7. Level 1 – Mediation / Conciliation Process

The Vice-President or their nominee will speak separately to the member and complainant to ascertain what may be an acceptable solution to the situation and arrange a process acceptable to both parties.

- 7.1 The complainant may withdraw the complaint or resolution is negotiated.
- a) the parties will be notified in writing of the resolution; and
 - b) the Vice-President or their nominee may provide counselling to the member so that they can take steps to avoid future problems. This process would not be notified to the complainant.
- 7.2 Copies of all related correspondence will be provided to the Chief Executive Officer for filing.
- 7.3 The Board will receive a de-identified summary of complaints resolved through this process.
- 7.4 If a resolution cannot be reached through this process or the potential breach of the Code is considered sufficiently serious the process will move to a Level 2 Hearing and Assessment. Proposals for mediation, and offers made by either party in the course of an unsuccessful mediation, are not to be referred to or used against a party proposing them in a Level 2 Hearing and Assessment.

8. Level 2 – Hearing and Assessment

- 8.1 The Vice President shall:
- a) ask the Chairperson of the Complaints Committee to invite one DAA member and one non-DAA member of the Complaints Committee to form a Hearing and Assessment Panel;
 - b) ensure that if mediation has occurred unsuccessfully the mediator will not take part in any Level 2 processes; and
 - c) request the Chief Executive Officer to identify people who could provide specific expert advice if required.
- 8.2 The Chief Executive Officer shall;
- a) notify the Board that a complaint has progressed to Level 2;
 - b) notify the member and complainant that the process has progressed to Level 2;
 - c) provide a copy of all written evidence to the members of the Panel; and
 - d) organise a teleconference or meeting of the Panel.

9. Determination by Hearing and Assessment Panel

- 9.1 The panel shall consider all material and may determine:
- a) that the matters giving rise to the complaint, whether or not substantiated, are trivial or for other reasons in the discretion of the Investigation and Hearing Panel do not warrant further action; or
 - b) that matters giving rise to the complaint would not, if substantiated, breach the *Code of Professional Conduct*; or

- c) that the matters giving rise to the complaint may, if substantiated, breach the *Code of Professional Conduct*.
- 9.2 If a determination is made under Clause 9.1 (a) or (b) the Chairperson of the Complaints Committee shall recommend to the Board that:
- a) the complaint be dismissed; or
 - b) that conciliation is attempted between parties to resolve the issue.
- 9.3 If the Board upholds the recommendation in Clause 9.2 the Chief Executive Officer shall advise the Member and complainant that:
- a) the complaint is dismissed; and may
 - b) recommend conciliation between parties to resolve the issue
- 9.4 If a determination is made under 9.1(c) or the Board rejects the recommendation that the complaint be dismissed the matter will proceed to formal consideration at a hearing.
- 9.5 A notice of hearing shall:
- a) be in writing and be sent by express post or given personally to the Member;
 - b) provide a summary of all evidence so far considered;
 - c) specify the provisions of the *Code of Professional Conduct* which the matters giving rise to the complaint may, if substantiated, contravene;
 - d) set out the actions which may be undertaken; and
 - e) set out the rights and date, time and place of the hearing, being not less than 21 days from the date of receipt of the notice by the Member.

10. Hearing of Complaint

- 10.1 In the event of a hearing
- a) The Panel may have legal representation at a hearing.
 - b) The Member may have an advisor present at a hearing.
 - c) The Chief Executive Officer shall verbally present all evidence to the hearing.
 - d) The member shall then be given the opportunity to put their case to the Panel.
 - e) The Panel will retire to make a finding regarding breach of the *Code of Professional Conduct*
 - f) The Chairperson of the Complaints Committee shall inform the member that the complaint is dismissed or upheld and the proposed penalty under Clause 21.3 of the *Constitution*.
 - g) If the complaint is to be dismissed the Chairperson of the Complaints Committee shall make such a recommendation to the Board

11. Appeal Process

- 11.1 If there is an adverse finding, the member may lodge an appeal in writing within 14 days against the process of the hearing and assessment resulting in an adverse finding or penalty and provide a statement outlining any mitigating circumstances.
- 11.2 If no appeal is received within 14 days the Chairperson of the Complaints committee shall recommend to the Board that the complaint be upheld and the proposed sanction.

- 11.2 If an appeal is received, the Vice President shall inform the Chairperson of the Complaints Committee and shall refer the appeal to a Review Panel of three drawn from members of the Complaints Committee pool who did not participate in the original hearing.
- 11.4 The Review panel shall consider the statement of the Hearing and Assessment Panel and the member's statement and consider whether due processes were followed and the member received a fair hearing.
- 11.5 The Member shall receive a written statement of the Panel's decision, and reasons for the decision.

12. Recommendation of Review Panel

- 12.1 The Review Panel may recommend to the Board that it:
 - a) upholds the decision of the Hearing and Assessment Panel;
 - b) dismisses the complaint; or
 - c) orders a rehearing of the complaint

13. Complaint Dismissed or Upheld

- 13.1 The Board will consider the recommendations of the Hearing and Assessment Panel or Review Panel and may;
 - a) Accept that the complaint be dismissed or upheld and if upheld
 - b) Accept or modify the recommended penalty in accordance with Clause 21.3 of the *Constitution*; or
 - c) Order a rehearing of the complaint by another panel.
- 13.2 The Chief Executive Officer shall notify the Member and the complainant of the decision of the Board in writing.
- 13.3 If the member is expelled or an APD credential is withdrawn the Board may direct the Chief Executive Officer to release the decision.

14. Confidentiality

All activities surrounding the processing of a complaint including Proceedings of the Board, Hearing and Assessment Panel and the Review Panel shall be held in confidence.

15. Costs

- 15.1 It will be expected that the Member will pay their own costs if any hearing is requested.
- 15.2 The complainant shall pay all their costs.
- 15.3 The Board will budget for costs to support the Hearing and Assessment Panel and Review Panel in the execution of their duties.

16. Failure to Engage

- 16.1 If a member who is the subject of a complaint fails to comply with requirements to engage with processes related to a complaint made against them considered worthy of further investigation they will be;
 - (a) warned that their failure to comply breaches their undertakings as a member and / or APD and their APD status shall be suspended until they do comply:
and

- (b) if they fail or refuse to comply with in twenty one (21) days of such advice their APD status will be suspended. This will not be listed on the website.

16.2 If a member / APD resigns or allows their membership to lapse whilst the subject of a complaint, which has been deemed to require a Level 2 process, they will be advised:

- (a) that as the alleged breach of the Code of Professional Conduct occurred whilst they were a member / APD that the complaint will remain active and will be pursued should they wish to rejoin the association and or APD program:
- (b) that their name will be added to the list of names on the website not permitted to use postnominals as they have rendered themselves ineligible for reinstatement until the complaint has been resolved.

DAA Complaints and Disciplinary Process

