



## DIETITIANS ASSOCIATION OF AUSTRALIA

### BY-LAW

#### COMPLAINTS AND DISCIPLINARY PROCEDURES

(By-law Made Pursuant to Clauses 21, 29 and 36 of the [Constitution](#))

Revised February 2019

#### A. Purpose

This By-law is made pursuant to Clause 36 of the *Constitution* for the purposes of Clause 21.4 of the *Constitution*. This By-law states the internal disciplinary mechanism of the Dietitians Association of Australia (“DAA”) to deal with complaints about any member as referenced in *By-law—Code of Professional Conduct* (the “**Code of Professional Conduct**”).

The DAA has adopted this By-law to ensure that there is a fair and transparent process based on principles of natural justice, of determining complaints against (1) Accredited Practising Dietitians (“APDs”), and (2) members of the DAA who are not APDs, of a breach of professional standards.

The aim is to ensure the maintenance of proper professional standards, the Code of Professional Conduct and to uphold and increase public confidence in the profession as one that is committed to those standards.

This responsibility to ensure this process is performed in accordance with this By-law has been delegated by the DAA Board to the Dietetic Credentialing Council (“DCC”).

#### B. Scope

This By-law applies to complaints made in accordance with Clause 1 of this By-law.

If a complaint involves a breach of the criminal law, the DCC may refer the Complaint to the appropriate authorities. However, the DCC may consider the nature of any criminal proceedings commenced in any Court of law against any APDs and members of the DAA who are not APDs and the DCC may consider suspending the person’s membership or participation in the APD Program until the resolution of those criminal proceedings.

If a complaint involves both a civil dispute regarding the terms of a contract of engagement or other business matters, such as a dispute over fees, and concerns about the quality or safety of the dietitian’s practice, then the DCC will not deal with the dietetic practice complaint under these processes until any civil proceedings between the parties are completed.

If the complaint is solely regarding the terms of a contract of engagement, such as a dispute of fees, appointment wait times, billing procedures, administrative policies of the dietetic practice, or similar, the DCC will not deal with this complaint. This complaint may be referred to relevant external bodies at the discretion of the DCC.

If a complaint is made regarding advertising requirements, the Chief Investigator will attempt to initially resolve this issue with the respondent by requesting the advertising be removed or corrected. If a resolution does not occur, the complaint may progress as per this By-law.

All correspondence, including the complaint and response, must be respectful and use non-offensive language.

#### C. Roles and Responsibilities

The **Dietetic Credentialing Council (“DCC”)** of the DAA established under Clause 29 of the *Constitution* takes overall responsibility for this process under this By-law with the vested authority of the Board, independently of the Board.

The **DCC Assessment Panel** are three members of the DCC that are appointed by the DCC to manage and coordinate the complaints and disciplinary processes and procedures, two of whom are APD practitioners and one of whom is an external non-Dietitian. The DCC Assessment panel triages (through delegation) all complaints.

The **DCC Secretariat** acts as the secretariat to the process. The DCC Secretariat is the primary point of contact for the Respondent and the Complainant during the processes set out in this By-law.

The **Chief Investigator** shall be a member of the DAA executive team or their delegate. At the time of the introduction of this By-law this responsibility has been delegated to DAA Credentialing staff by the DCC. The Chief Investigator researches the complaint, gathers material (from the Complainant, the Respondent and may make their own inquiry) and presents that material to the DCC Assessment Panel. The DCC Assessment Panel will review material and determine if further action is required in accordance with this By-law.

The **Chair of the DCC Assessment Panel** will present information to the Hearing and Assessment Panel as required.

The **Lead Assessor of the Complaints Assessors' Pool** 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. The Lead Assessor is appointed in accordance with the Terms of Reference for the Complaints Assessors' Pool.

The **Complaints Assessors' Pool** shall comprise at least four experienced APD members (one of whom will be appointed the Lead Assessor) as well as at least two independent non-DAA members with expertise in complaints handling; each member of the pool will be known as a 'Complaints Assessor'. The Complaints Assessors Pool will be established by the DCC in accordance with the Terms of Reference for the Complaints Assessors' Pool.

Full functions and requirements of the **Complaints Assessors** are defined in the Terms of Reference for the Complaints Assessors' Pool.

The **Hearing and Assessment Panel** are selected from the Complaints Assessor Pool by the DCC. The Hearing and Assessment Panel shall comprise of:

- (1) the Lead Assessor;
- (2) one other APD member from the Complaints Assessors' Pool; and
- (3) one independent non-DAA member from the Complaints Assessors' Pool.

The Hearing and Assessment Panel will review all material presented by the Chief Investigator and the Chair of the DCC Assessment Panel and provide an opportunity for the Respondent to present their response to the allegations. The Hearing and Assessment Panel shall advise the DCC regarding any findings and/or penalties recommended against the Respondent for further action.

The **DCC** is responsible for appointing the Hearing and Assessment Panel from the Complaints Assessors' Pool and the DCC will consider and make final determination on all recommendations for findings and / or disciplinary action regarding the Respondent arising out of any Complaint and Appeals processes related to an Accredited Practising Dietitian Credential.

The **Board** of the DAA is responsible for appointing the DCC. The Board will consider and make final determination on all recommendations for findings and / or disciplinary action regarding membership status arising out of any Complaint and Appeals processes in relation to the membership of the DAA.

**Ineligibility to act:** Should a complaint, which falls within the scope of this By-law, be received against any staff member or volunteer who is formally engaged in the coordination, assessment or determination of complaints,

that person shall immediately recuse themselves from any involvement in the process of that complaint. An appropriate delegate will be appointed to replace them where necessary. In addition, where the relevant person declared a conflict of interest, that person shall also immediately recuse themselves.

## **D. Procedure**

### **PRELIMINARY PROCEDURE**

#### **1. MAKING A COMPLAINT**

1.1 A complaint against an Accredited Practising Dietitian (“**APD**”) or a member who is not an APD, may be made by any person including (but not limited to):

1.1.1 a member of the public;

1.1.2 another member of the DAA; or

1.1.3 a DAA employee who has obtained material in the course of their duties which may indicate or support a breach of the Code of Professional Conduct having occurred.

1.2 To be dealt with under this By-law a complaint must:

1.2.1 be made to the DCC and be either;

1.2.1.1 in writing signed by the person making the complaint (the "**Complainant**") or a legal representative acting for the Complainant; or

1.2.1.2 be submitted on the DAA online complaints form with declarations completed; or

1.2.1.3 a verbal complaint recorded by the DCC Secretariat who will send two copies of the transcript of the complaint to the Complainant, who must sign both and return one to the DCC Secretariat;

1.2.2 set out the circumstances giving rise to the complaint; and

1.2.3 be accompanied by any available statements or other material relating to the allegations or circumstances giving rise to the complaint (the "**Complaint**").

1.3 Complaints will only be considered if they fall within the Scope of this By-law as set out in Part B above. The DCC Secretariat (with input of the Chief Investigator if requested) has the power to determine whether a Complaint falls within the Scope of this By-law in their discretion but they must act reasonably when making that decision.

#### **2. ACKNOWLEDGING THE COMPLAINT**

2.1 If the Complaint falls within the scope of this By-law, the DCC Secretariat will acknowledge receipt of the Complaint in writing within seven (7) business days of receiving a signed copy of the Complaint (noting that the Complaint will be deemed to be signed if submitted on the DAA online complaints form or received with an email signature).

2.2 If the Complaint is within the scope of this By-law, the DCC Secretariat:

(a) must advise the Complainant that the Complaint will be provided to the APD, or the member who is not an APD, concerned (the "**Respondent**"); and

- (b) may request additional information from the Complainant to support or clarify the information provided.
- 2.3 If it is unclear if the Complaint falls within the scope of this By-Law, the DCC Secretariat may request additional information from the Complainant to support or clarify this information provided prior to issuing the acknowledgment of receipt in Clause 2.1.
- 2.4 If the Complaint does not fall within the Scope of this By-law or, if after receiving the further information in Clause 2.3 it is still unclear whether the Complaint falls within the scope of this By-law, the Complainant will be advised of this, and that the Complaint will not be considered and the Complainant will be referred to other avenues if appropriate.
- 2.5 As part of the acknowledgment in Clause 2.1 the Complainant will be advised that this By-Law and the Code of Professional Conduct can be found on the DAA Website. The DCC Secretariat will provide a copy of these documents if requested by the Complainant.
- 2.6 If the Complaint grounds cause the Chief Investigator to reasonably append that there may be a breach of criminal law, the Chief Investigator will notify the Complainant in writing and will refer the Complaint to the relevant authorities. The DCC may consider the nature of any criminal investigation or criminal proceedings against the Respondent and the DCC may (in its absolute discretion)
  - (a) instruct the Chief Investigator to:
    - (i) suspend the complaint process until the criminal aspect of the Complaint has been resolved; or
    - (ii) continue with the complaint process even while the criminal aspects of the Complaint are still unresolved; and
  - (b) suspend the person's membership or participation in the APD Program until the resolution of those criminal proceedings.
- 2.7 If a complaint involves both a civil dispute regarding the terms of a contract of engagement or other business matters, and concerns about the quality or safety of the dietitian's practice, then the DCC will not deal with the dietetic practice complaint under these processes until any civil proceedings between the parties are completed. The DCC Secretariat will notify the Complainant in writing that the practice component of the Complaint will not be dealt with until those civil proceedings are resolved.
- 2.8 The Chief Investigator and DCC Assessment Panel will complete a preliminary enquiry to gather information prior to notifying the Respondent. This may include requesting additional information and/or evidence as required or liaising with external bodies or experts.
- 3. INITIAL INVESTIGATION**
- 3.1 Within 15 business days of receiving a signed copy of a Complaint which falls within the scope of this By-law, the DCC Secretariat must notify the DCC of the Complaint and the Chief Investigator must begin the initial investigation into the Complaint.
- 3.2 The initial investigation may include:
  - 3.2.1 seeking further information from the Complainant to clarify matters raised;
  - 3.2.2 obtaining an opinion report on an issue or matter from an independent third party who has the relevant expertise in relation to that particular issue or matter;

- 3.2.3 audit the Respondent's APD logs and recency of dietetic practice; and
- 3.2.4 obtaining any other information that may be, in the Chief Investigator's unfettered opinion, appropriate, prudent, relevant or necessary to the subject or circumstances of the Complaint.

3.3 Any concerns which arise from the audit of the Respondent's APD logs may be joined to the Complaint by the Chief investigator.

#### **4. NOTIFICATION OF THE RESPONDENT – REQUEST FOR INPUT**

4.1 After receiving a Complaint that falls within the Scope of this By-Law, and any additional requested materials pursuant to Clauses 2 and 3, the DCC secretariat will serve the Respondent with:

- 4.1.1 written notice of the Complaint which must contain an express request for the Respondent to provide a written response and explain the Respondent's obligations under Clause 4.2 of this By-law;
- 4.1.2 a copy of the Complaint and any supporting documentation included by the Complainant with the Complaint;
- 4.1.3 the Code of Professional Conduct; and
- 4.1.4 this By-law.

This notification will only occur when the period of time taken by the Chief Investigator to complete the initial information gathering from the Complainant and any other sources has occurred.

4.2 The Respondent must provide their written response to the Complaint and any supporting documentation that they wish to rely on within 15 business days of receipt of the Complaint notice and documents set out in Clause 4.1.

4.3 If the Respondent fails to comply with Clause 4.2 then the DCC Secretariat may provide the Respondent with notice of their "Failure to Engage" pursuant to Clause 23 of this By-law.

#### **5. INITIAL ASSESSMENT OF THE EVIDENCE**

5.1 The Chief Investigator must assess all the information and material provided by the Complainant, the Respondent, itself and any other third party in relation to the Complaint.

5.2 The Chief Investigator must conduct and complete their initial assessment of the evidence within a reasonable time of receiving all the information and evidence.

5.3 The Chief Investigator must not complete their initial assessment before the expiration of the time allowed for the Respondent to provide their Response in Clause 4.2 above.

#### **6. CONSIDERATION OF THE COMPLAINT - DCC CONFERENCE**

6.1 Once the Chief Investigator has completed their initial assessment of the material gathered concerning the Complaint in accordance with Clause 5 of this By-law, the Chief Investigator is to hold a conference with the DCC Assessment Panel.

6.2 At this conference the Chief investigator and the DCC Assessment Panel are to discuss all the evidence and the Complaint.

- 6.3 Having given due consideration to the Complaint, the evidence and the Code of Professional Conduct, the DCC Assessment Panel must then determine whether the Complaint:
- 6.3.1 ought to be dismissed with or without the provision of recommendations; or
  - 6.3.2 whether the Complaint should be referred to a Hearing and Assessment Panel in accordance with Clause 8 of this By-law; or
  - 6.3.3 whether the Complaint should be referred for Mediation in accordance with Clause 7 of this By-law.
- 6.4 If the Complaint is referred to a Hearing and Assessment Panel, then the DCC Assessment Panel may request that a suitably qualified independent person is identified and engaged by the Chief Investigator to provide an expert report in relation to any matter raised in the Complaint.
- 6.5 The DCC Assessment Panel may determine that the Complaint is suitable for referral to the Mediation Process (outlined in Clause 7) in an attempt to resolve the Complaint before referral to a Hearing and Assessment Panel. The DCC Assessment Panel's decision on whether to refer the Complaint to Mediation or a Hearing and Assessment Panel under this Clause 6 is final and is entirely at the discretion of the DCC Assessment Panel holding the vested power of the Board.
- 6.6 If the DCC Assessment Panel determines that the Complaint ought to be dismissed then the DCC Secretariat is to write to the Complainant and Respondent and notify them that the Complaint has been dismissed. The DCC Assessment Panel may provide recommendations to the Complainant as they see fit. The DCC Assessment Panel's decision on whether to dismiss the Complaint under this Clause 6 is final and is entirely at the discretion of the DCC Assessment Panel holding the vested power of the Board.

## **MEDIATION**

### **7. MEDIATION PROCESS**

#### *Steps before Mediation*

- 7.1 If the DCC Assessment Panel determines that a Complaint will be referred to mediation, the DCC Secretariat or a DCC Assessment Panel member will speak separately to the Complainant and the Respondent to arrange a suitable process.
- 7.2 Both the Complainant and the Respondent must be willing to engage in the mediation process for any mediation to continue. If either party refuses then the Complaint will be referred to a Hearing and Assessment Panel.
- 7.3 If a suitable process is agreed upon by the Complainant and the Respondent, then the DCC Assessment Panel will appoint the mediator. The mediator will be one of the APD members from the Complaint Assessors' Pool or another appropriately experienced DAA member nominated by the Chief Investigator (including, but not limited to, a DAA member in the same location as the Complainant and the Respondent and/or a DAA member who holds particular expertise or knowledge relevant to the Complaint). The mediator cannot be the Lead Assessor. A mediator who is independent of the DAA may be engaged if necessary. The mediator is to act as an independent facilitator of the mediation between the Complainant and the Respondent with the aim to resolve the Complaint in a manner agreed to by both the Complainant and the Respondent. This may include an agreed withdrawal of the Complaint or any other outcome agreed.

#### *Resolution at Mediation*

- 7.4 If the Complaint can be resolved at the mediation, then the terms of the agreed resolution are to be written down and signed by the Complainant, the Respondent and the Mediator. A copy of the agreed resolution will be sent to the DCC with a summary of the Complaint. The DCC is to keep this as a record only and is not required to make a determination on the matter as the Complaint is taken to have been resolved.

*If resolution cannot be reached*

- 7.5 If the Complaint is not resolved at the mediation then the Mediator will notify the DCC via the DCC Secretariat that the Complaint could not be resolved.

*Confidentiality of mediation process*

- 7.6 All matters discussed during Mediation, including any offers made by either the Complainant or the Respondent at the Mediation are not to be referred to by either party or used by either party in the event of a subsequent Hearing.

## **HEARING**

### **8. REFERRAL OF THE COMPLAINT TO A HEARING AND ASSESSMENT PANEL**

- 8.1 If:

- 8.1.1 the DCC Assessment Panel determines that a Complaint will be referred to a Hearing and Assessment Panel under Clause 6.3.2; or
- 8.1.2 if the parties do not agree on mediation under Clause 7.2; or
- 8.1.3 if mediation fails under Clause 7.5,

then the DCC must appoint the Hearing and Assessment Panel to consider the Complaint.

- 8.2 In respect of the Hearing and Assessment Panel:

- 8.2.1 The Lead Assessor must sit on the Hearing and Assessment Panel unless they are excluded under Clause 8.2.4 or Clause 8.2.5;
- 8.2.2 If the Lead Assessor is unable to sit on the Hearing and Assessment Panel under Clause 8.2.1, then the DCC must appoint one of the APD members of the Complaints Assessors' Pool to be an Acting Lead of that Hearing and Assessment Panel;
- 8.2.3 If a member of the Complaints Assessors' Pool has been involved as the Mediator in an unsuccessful mediation of the Complaint under Clause 7 of this By-Law then that person must not be part of the Hearing and Assessment Panel;
- 8.2.4 No member of the Complaints Assessors' Pool may sit on the Hearing and Assessment Panel if they have a conflict or perceived conflict in relation to the Complainant, the Respondent or the subject of the Complaint itself. A declaration of such a conflict must be made in writing by the member of the Complaints Assessors' Pool and must be kept on file; and
- 8.2.5 (If the Hearing and Assessment Panel is being appointed for a rehearing pursuant to Clause 16.12) if a member of the Complaints Assessors' Pool has been involved in the previous Hearing and Assessment Panel then that person must not be a part of the new Hearing and Assessment Panel.

- 8.3 Once a Hearing and Assessment Panel has been appointed, the DCC Secretariat must:

- 8.3.1 notify the DCC that the Complaint has progressed to the Hearing and Assessment Panel for initial determination;
- 8.3.2 notify the Complainant and the Respondent in writing that the Complaint has been referred to the Hearing and Assessment Panel;
- 8.3.3 provide a copy of all material submitted by the Complainant and the Respondent and all additional material relied on by the Chief Investigator and the DCC Assessment Panel to make the assessment under clause 5.1 and any expert report prepared under clause 6.4 to each member of the Hearing and Assessment Panel; and
- 8.3.4 arrange an initial teleconference or meeting with the Hearing and Assessment Panel.

## 9. INITIAL DETERMINATION

- 9.1 At the Hearing and Assessment Panel's initial teleconference or meeting in relation to the Complaint the Hearing and Assessment Panel is directed to consider all material before them and determine whether:
  - 9.1.1 the matters giving rise to the Complaint (whether or not substantiated) are trivial or do not warrant further action by the Hearing and Assessment Panel;
  - 9.1.2 the matters giving rise to the Complaint would not, if substantiated, equate to a breach of the Code of Professional Conduct; and
  - 9.1.3 the matters giving rise to the Complaint would or may, if substantiated, equate to a breach of the Code of Professional Conduct.
- 9.2 If the Hearing and Assessment Panel makes a determination under 9.1.1 or 9.1.2 then the Hearing and Assessment Panel are to recommend to the DCC, with reasons, that the Complaint be:
  - 9.2.1 dismissed with or without the provision of recommendations; or
  - 9.2.2 referred back to Mediation under Clause 7.
- 9.3 The DCC must consider the Hearing and Assessment Panel's recommendation and either accept or reject it. The DCC's decision on whether to dismiss the Complaint or to refer the Complaint to mediation under this Clause 9.3 is final and is entirely at the discretion of the DCC.

## 10. PROCEEDING TO HEARING AND FORMAL NOTICE OF HEARING

### *Proceeding to a formal Hearing*

- 10.1 If the Hearing and Assessment Panel makes a determination under 9.1.3 or the DCC rejects a recommendation made under 9.2 then the matter will proceed to a formal hearing (the **Hearing**).
- 10.2 The DCC Secretariat will arrange a suitable Hearing date with the Hearing and Assessment Panel. The Hearing date must be listed on a business day and must be listed to occur between normal business hours.

### *Formal notice of Hearing (the **Notice of Hearing**)*

- 10.3 The DCC Secretariat must serve a Notice of Hearing on the Respondent no less than 21 days before the date set for the Hearing. The Notice of Hearing must be in writing and must include the following:

- 10.3.1 The time, date and location of the Hearing and must advise the Respondent that the Hearing will be conducted by telephone conference unless they opt to attend in person at the Hearing location;
- 10.3.2 State the actions or allegations that are the subject of the Complaint, including any actions or allegations which have arisen during the investigation of the Complaint (including the result of the APD Audit) which are alleged to be a breach of the provisions of the Code of Professional Conduct which are to be considered at the Hearing;
- 10.3.3 A copy of the material provided to the Hearing and Assessment Panel under Clause 8.3.3;
- 10.3.4 Set out the actions under the Constitution which may be taken by the DAA; and
- 10.3.5 Advise the Respondent that they may send in any additional material, information or a further response to the Complaint which is to be considered by the Hearing and Assessment Panel; provided that this information must be received by the DCC Secretariat **no less than 5 business days before the Hearing date**. The Hearing and Assessment Panel are not required to consider any information or further response received from the Respondent outside 5 business days before the Hearing date other than what may be allowed by Clause 13.3.

## 11. ADJOURNMENT OF THE HEARING

### *Adjournment request*

- 11.1 If the Hearing date is not suitable to the Respondent then they must, within 5 business days of service of the Notice of Hearing, request an adjournment in writing to the DCC Secretariat. The Respondent must provide their reasons for requesting an adjournment and propose alternative available dates as near as possible to the existing Hearing date. An adjournment will not to be granted if the Respondent fails to provide reasons.
- 11.2 The Lead Assessor with the support of the Chief Investigator, is to consider the reasons for adjournment put by the Respondent within 2 business days and either accept or reject that request. Within those 2 business days the DCC Secretariat may request that the Respondent provide material in support of their request and may do so subject to conditions.
- 11.3 If at any other time the Respondent discovers that they will be unable to attend the Hearing date due to illness or for compassionate reasons then the Respondent must request an adjournment in writing prior to the date of the Hearing as soon as they are able and must provide supporting evidence if any (such as a doctor's certificate in the case of illness). This request is to be considered and determined as soon as possible by the Lead Assessor with the support of the Chief Investigator.
- 11.4 The decision in relation to an adjournment request is final and is entirely at the discretion of the Lead Assessor.

### *Notice of a determination in relation to the adjournment*

- 11.5 The Respondent and the Complainant must be notified of any determination in relation to an adjournment by the DCC Secretariat as soon as possible. This may be done by telephone in addition to written notice, but a file note of the telephone discussion must be kept.

## 12. HEARING

### *General Matters*

- 12.1 The Hearing may take place by telephone, video conference or in person. The Respondent may attend the Hearing in person at the hearing location set out in the Notice of Hearing or may attend the Hearing by electronic means.
- 12.2 The Hearing and Assessment Panel may have a legal advisor at the Hearing.
- 12.3 The Respondent may have one advisor present at the Hearing. An advisor may include a solicitor or barrister however this does not grant the Respondent with the right to legal representation and the Hearing will not be adjourned on the basis of the unavailability of the Respondent's advisor.
- 12.4 The Complainant and any witnesses or expert advisors will not attend the Hearing. The DCC Secretariat may invite them to attend if the Hearing and Assessment Panel are of the view that their attendance may assist in clarifying the Complaint or issues raised in response to it. However, the DAA has no power to compel them to attend and the invitation may be refused. The Respondent may not request or demand the attendance of the Complainant, nor any witnesses or expert advisors.
- 12.5 The Hearing will continue if the Respondent fails to attend, or if the Respondent attends but refuses to co-operate during the Hearing.

#### *Hearing Procedure*

- 12.6 At the commencement of the Hearing the Chief Investigator shall verbally present a summary overview of the Complaint and material before the Hearing, for the purposes only of ensuring the general nature of the matter is identified.
- 12.7 The members of the Hearing and Assessment Panel will then be given the opportunity to ask the Respondent questions in relation to the substance of the Complaint and the Respondent's reply (if any).
- 12.8 The Respondent must respond to all questions personally. The Respondent's answers must not be conveyed through their advisor.
- 12.9 Once the Hearing and Assessment Panel has concluded their questioning of the Respondent, the Respondent will then be given the opportunity to put their case orally to the Hearing and Assessment Panel.

### **13. FINDINGS AND RECOMMENDATIONS**

- 13.1 At the conclusion of the Hearing, the Hearing and Assessment Panel will retire to consider the Complaint, the material before it and the Respondent's answers (if any) given at the Hearing and will determine their findings and recommendations in relation to the Complaint. The Chief Investigator may clarify any process or factual questions but may not participate in the decision.
- 13.2 In evaluating the material before it and making a determination of their findings and recommendations, the Hearing and Assessment Panel may:
  - 13.2.1 rely upon their own expertise and specialist knowledge; and
  - 13.2.2 make its own enquiries of the Complainant, the Respondent and the materials compiled by the Chief Investigator.
- 13.3 The Hearing and Assessment Panel is not required to consider any written material, submissions, documentation or information not given to the DCC Secretariat more than 5 business days before the commencement of the Hearing unless it is of the view that there are reasonable and mitigating circumstances surrounding its late provision or if the Hearing and Assessment Panel is of the view

that the document, information or evidence is of such significance that it ought to be taken into account.

13.4 The Hearing and Assessment Panel will prepare a written report for the DCC outlining their findings in relation to the Complaint, brief reasons for those findings and their recommendations (**the Findings and Recommendations**).

13.5 A copy of the Findings and Recommendations will be served on the Respondent by the DCC Secretariat as soon as practicable.

#### **14. APPEAL PROCESS**

14.1 If there is an adverse finding in the Findings and Recommendations, the Respondent may serve on the DCC Secretariat an appeal against the process of the Hearing (**the Appeal**).

14.2 The Appeal:

14.2.1 must be made within 14 business days from the date the Findings and Recommendations were served on the Respondent;

14.2.2 must be in writing;

14.2.3 must contain a statement of all the grounds on which the Respondent relies to allege that the procedures under this By-law were not followed or that the Findings and Recommendations are so unreasonable that they cannot rationally be supported by the material before the Hearing and Assessment Panel; and

14.2.4 may contain a statement outlining any mitigating circumstances.

14.3 If an Appeal has not been received in accordance with 14.2 above, the Lead Assessor will cause the DCC Secretariat to send the Findings and Recommendations to the DCC for determination.

#### **15. REVIEW PANEL**

15.1 If an Appeal is received in accordance with Clause 14.2 then the DCC Secretariat shall inform the DCC Assessment Panel who must refer the Appeal to the Review Panel, which is comprised of three members of the Complaints Assessors' Pool who did not participate in the original Hearing, or any mediation.

15.2 The Hearing and Assessment Panel may prepare a short statement regarding the Hearing process and responding to any issues raised by the Appeal.

15.3 The Review Panel must consider:

15.3.1 the grounds stated in the Appeal under Clause 14.2.3;

15.3.2 any statement outlining mitigating circumstances;

15.3.3 any statement provided by the Hearing and Assessment Panel in accordance with Clause 15.2 above; and

15.3.4 If the appeal grounds contain allegations that the Findings and Recommendations are so unreasonable that they cannot rationally be supported by the material before the Hearing and Assessment Panel, then the Review Panel must also consider:

15.3.4.1 the material which was before the Hearing and Assessment Panel; and

15.3.4.2 the Findings and Recommendations.

15.4 In evaluating the material before it and making a determination of their findings and recommendations, the Review Panel may:

15.4.1 rely upon their own expertise and specialist knowledge; and

15.4.2 make its own enquiries of the Complainant, the Respondent, the Hearing and Assessment Panel and the materials compiled by the Chief Investigator.

15.5 The Review Panel will prepare a brief written statement (the **Appeal Findings and Recommendations**) for the DCC on its findings in relation to the grounds of the Appeal and this must include a recommendation to the DCC that it either:

15.5.1 upholds the decision of the Hearing and Assessment Panel; or

15.5.2 orders a rehearing of the Complaint.

15.6 The DCC Secretariat will send a copy of the Appeal Findings and Recommendations to the Respondent as soon as practicable.

## 16. COMPLAINT DISMISSED OR UPHeld

16.1 The DCC must consider the Hearing Findings and Recommendations and (if applicable) any Appeal Findings and Recommendations.

16.2 If the Complaint relates to:

16.2.1 a member of the DAA who is not an APD, or

16.2.2 a member of the DAA who is an APD where the recommendation includes membership sanctions;

then this must be referred to the Board for final determination.

16.3 If the Complaint relates to:

16.3.1 a non-member of the DAA who is an APD, or

16.3.2 a member of the DAA who is an APD where the recommendation does not include membership sanctions (i.e. suspension or expulsion from membership of the DAA);

then the DCC may make the final determination.

16.4 If Clause 16.3 applies, upon receipt and consideration of the Hearing Findings and Recommendations and any Appeal Findings and Recommendations the DCC will then determine whether:

16.4.1 to accept that the Complaint against the Respondent be dismissed or upheld; or

16.4.2 order a rehearing of the Complaint by another Hearing and Assessment Panel.

16.5 If Clause 16.2 applies, upon receipt and consideration of the Hearing Findings and Recommendations and any Appeal Findings and Recommendations, the Board will determine:

16.5.1 to accept that the Complaint against the Respondent be dismissed or upheld; or

- 16.5.2 instruct the DCC to order a rehearing of the Complaint by another Hearing and Assessment Panel.
- 16.6 If the DCC upholds the Complaint then it is to either accept or modify the recommended sanction in accordance with the Constitution.
- 16.7 If the Board upholds the Complaint then it is to either accept or modify the recommended sanction in accordance with the Constitution.
- 16.8 The sanctions that may be imposed by the DCC or the Board include, but are not limited to:
- 16.8.1 suspension from the APD Program for a period not exceeding twelve (12) months;
  - 16.8.2 suspension from membership of the DAA for a period not exceeding twelve (12) months;
  - 16.8.3 expulsion from the APD Program;
  - 16.8.4 expulsion from membership of the DAA;
  - 16.8.5 return to a provisional APD credential;
  - 16.8.6 a formal reprimand;
  - 16.8.7 a requirement to attend counselling;
  - 16.8.8 undertaking formal mentoring,
- or any combination of the above the DCC or the Board sees fit.
- 16.9 Any determination of the DCC or the Board is final and binding on the Respondent.
- 16.10 The Respondent and the Complainant must each be notified of the decision of the DCC and / or Board in writing.
- 16.11 If the DCC determines that the APD Credential is to be withdrawn either by suspension or expulsion then the DCC may direct the DCC Secretariat to release the decision to any person, corporation, organisation or other body as the DCC sees fit. The name of the Respondent shall be added to the public register on the DAA website as required under the standards of the National Alliance of Self Regulating Health Professions (NASRHP). If the Board determines that membership of the DAA is to be withdrawn either by suspension or expulsion then the Board may direct the Chief Executive Officer to release the decision to any person, corporation, organisation or other body as the Board sees fit. The name of the Respondent shall be added to the public register on the DAA website as required under the standards of the National Alliance of Self Regulating Health Professions (NASRHP).
- 16.12 If the DCC or the Board orders a rehearing of the Complaint then a new Hearing and Assessment Panel must be formed in accordance with Clauses 8.1 and 8.2 of this By-law. This new Hearing and Assessment Panel must not include any member of the Complaints Assessor Pool who have previously been involved with the Complaint.
- 17. REQUEST FOR REINSTATEMENT AFTER EXPULSION**
- 17.1 A member of the DAA or an APD who has been expelled from either the APD program and / or membership of the DAA for professional misconduct may, after a period of at least two years, make an application for reinstatement if they believe they can demonstrate genuine change to the circumstances which caused the initial sanction.

- 17.2 A member of the DAA or a member or non-member APD who has been expelled as the result of a serious criminal offense or who has been permanently sanctioned for a jurisdictional code of conduct breach will not be eligible to make this application.
- 17.3 The former member of the DAA, or the former APD (now **the Applicant**) must make their representation pursuant to Clause 17.1 in writing to the DCC Secretariat who will ensure their eligibility to do so. The Chief Investigator will then undertake whatever investigations are deemed necessary to ensure there is genuine change to the circumstances which caused the initial sanction. The DCC Secretariat will then commence the same process as would be the case of a complaint and clauses 3 to 16 of this By-law will apply with:
- 17.3.1 'the Applicant' being substituted for 'the Respondent';
- 17.3.2 'the Complaint' being substituted for 'the Application for Reinstatement'; and
- 17.3.3 any references to the Complainant are treated as not applicable.

## **GENERAL MATTERS**

### **18. CONFIDENTIALITY**

- 18.1 All activities surrounding the processing of a Complaint or an Application for Reinstatement including proceedings of the DCC, the Board, the DCC Assessment Panel, the Hearing and Assessment Panel and the Review Panel are held in confidence.
- 18.2 The Respondent is not permitted to contact the Complainant/s directly regarding the Complaint unless specifically required to do so under this By-law.
- 18.3 The Respondent and the Complainant must not approach any member of the DCC or Director of the Board in relation to the Complaint until the complaint process set out by this By-law is finalised.
- 18.4 Should the Respondent attempt to make any contact as described in Clause 18.2 or 18.3, then that behaviour can be included in the Complaint, or dealt with as a new Complaint under this By-law.
- 18.5 Once a determination of the DCC or the Board has been made under Clause 16, then this determination may be published or released as determined by the Board or the DCC as appropriate.

### **19. ANONYMOUS COMPLAINTS**

- 19.1 The Complainant must provide their name and contact details to the DAA (through the DCC Secretariat) when submitting a Complaint, however can elect to remain anonymous to the Respondent throughout the complaint process.
- 19.2 If the Complaint involves a patient specific issue and the Complainant does not wish for their name to be provided to the Respondent, they will be advised of the impact that this may have on the Complaint and outcome, including that the Respondent may be unable to access relevant information which may sufficiently impede their response to the Complaint or that the investigation cannot identify sufficient evidence of the alleged breach by the Respondent.

### **20. LEGAL REPRESENTATION**

- 20.1 The DCC Secretariat may request the Chief Investigator to seek legal advice in relation to this By-law, any Complaint or any Application for Reinstatement made under this By-law.

20.2 The Respondent may seek legal advice in relation to any Complaint or any Application for Reinstatement made under this By-law.

### 20.3 **COSTS**

20.4 The Complainant shall pay all their own costs of the Complaint.

20.5 The Respondent is responsible for any and all legal costs in relation to the Complaint, any Application for Reinstatement and any procedure under this By-law.

20.6 The Board will budget for the costs to support the Hearing and Assessment Panel, the Review Panel and the DCC in the execution of their duties under this By-law.

## 21. **SERVICE OF DOCUMENTS**

21.1 Any document or notice which must be served on the Respondent or the Complainant is to be:

21.1.1 sent by Australia Post Registered Post to the most recent address provided to the DAA by the Respondent or the Complainant (as appropriate);

21.1.2 delivered personally to the Respondent or the Complainant (as appropriate); or

21.1.3 sent to the Respondent or the Complainant (as appropriate) by any other means which the Respondent or the Complainant (as appropriate) has indicated is suitable, such as an email address or fax number or to another person, such as a legal representative.

21.2 Written correspondence from a legal representative asserting the authority to receive correspondence behalf of the Complainant or the Respondent may be relied on by the DAA as authority to correspond directly with that legal representative unless subsequent correspondence is received from the Complainant or the Respondent to the contrary.

21.3 If a document is served on the Respondent or the Complainant in accordance with 21.1.1 then it is deemed to have been served on the Respondent or the Complainant 4 business days after the day it is sent.

## 22. **CORRESPONDENCE WITH THE DCC SECRETARIAT**

22.1 The Complainant and Respondent may send any documentation or correspondence required to be sent under this By-law by Registered Post or delivered in person to:

The DCC Secretariat  
Dietitians Association of Australia  
1/8 Phipps Close  
DEAKIN ACT 2600

22.2 The DCC Secretariat may from time to time consent to an alternative means of delivery.

## 23. **FAILURE TO ENGAGE**

23.1 If the Respondent fails to comply with any requests made by the DCC Secretariat, Chief Investigator, the Hearing and Assessment Panel, the Review Panel, the DCC or the Board under this By-Law, then the DCC Secretariat may serve the Respondent with a written notice which:

23.1.1 particularises the request which has not been complied with by the Respondent;

- 23.1.2 advises the Respondent that their failure to comply is a breach of their undertakings as a member of the DAA and/or Accredited Practising Dietitian program;
  - 23.1.3 advises the Respondent that they have 14 days from the date the notice was served to rectify the breach; and
  - 23.1.4 advises the Respondent that failure to rectify the breach within the time allowed will result in immediate suspension of their DAA membership and/or APD Credential until they rectify the breach.
- 23.2 If the Respondent does not rectify the Breach within the time provided under Clause 23.1.3 then their DAA membership and/or APD Credential will be immediately suspended. This suspension will not be listed on the DAA Website but may be disclosed to persons who make direct enquiries about the Respondent's APD credentialing and will be communicated to relevant professional bodies.
- 23.3 If DAA membership and/or the APD Credential of the Respondent is suspended pursuant to clause 23.2, the Complaint will become inactive until the breach is rectified. Once the breach is rectified, the Complaint process will continue to be assessed in accordance with this By-law.
- 23.4 If the Respondent resigns or allows their membership of the DAA or their APD Credentials to lapse whilst the subject of a Complaint under this By-law then:
- 23.3.1 The Complaint made while they were a member of the DAA or a non-member APD will become inactive. Should they wish to re-join the DAA or the APD Program the Complaint will be reactivated;
  - 23.3.2 The Respondent's name will be held on file at the DAA and noted on their individual member record on the database. As a non-APD, the respondent may not use the APD post nominal; and
  - 23.3.3 The Respondent will be eligible to re-join membership of the DAA and/or the APD Program provided that once the Complaint has been determined, their membership may be subject to the sanctions in clause 16.8.