

DIETITIANS AUSTRALIA BY-LAW

COMPLAINTS AND DISCIPLINARY PROCEDURES

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

Revised February 2022

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 and external disciplinary mechanism of Dietitians Australia (“DA”) to deal with complaints about:

- a) any member as referenced in By-law—Code of Conduct for Dietitians and Nutritionists (the “**Code of Professional Conduct**”); and
- b) any non-member who is qualified as an Accredited Practising Dietitian.

The DA has adopted this By-law as a fair and transparent process using principles of natural justice for determining complaints against:

1. persons who are Accredited Practising Dietitians (“**APDs**”), and
2. members of the DA who are not APDs,

Including where those complaints, if made out, amount to an allegation of a breach of professional or ethical standards.

The aim is to ensure there is a disciplinary process for APD qualified dietitians to abide by proper professional standards, to encourage adherence to the Code of Professional Conduct and to uphold and increase public confidence in the profession as one that is committed to professional conduct, public safety and quality service standards. The aim is also to provide for an internal disciplinary process for members of the DA who are not APDs.

This responsibility to ensure this process is performed in accordance with this By-law has been delegated by the DA Board to the Dietitian and Nutritionist Regulatory Council (“**DNRC**”).

B. Scope

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

If a complaint involves an allegation of conduct that amounts to breach of the criminal law, the DNRC may refer the Complaint to the appropriate authorities. In such circumstances, the DNRC may consider the nature of the allegations, the materials supporting the allegations and the nature of any criminal proceedings commenced in any Court of law against any member or any non-member holding APD qualification(s), and DA and the DNRC may consider suspending, qualifying the person’s membership or their participation in the APD Program (which term encompasses, amongst other things, a dietitian’s entitlement and condition to use the APD Credentials) until the resolution of those criminal proceedings.

If a complaint involves both a civil dispute regarding the terms of a contract of engagement by a client or patient, matters that are internal to the conduct of a Complainant’s or Respondent’s business) or other business matters, such as a dispute over fees, as well as concerns about the professionalism of the dietitian’s conduct, or the losses suffered from quality or safety of the dietitian’s practice, then the DNRC will not deal with the dietetic practice complaint under these processes until the civil proceedings between the parties are

completed or otherwise ended. It shall be the responsibility of the Complainant to inform DA of the conclusion of the civil proceedings.

If the complaint is solely regarding the terms of a contract of client engagement, such as a dispute of fees, appointment wait times, billing procedures, administrative policies of the dietetic practice, or similar, the DNRC will not deal with that complaint. Such a complaint may be referred to relevant external bodies at the discretion of the DNRC, with the DNRC having no obligation to do so.

If a complaint is made regarding advertising requirements, other than advertising that is contrary to an express DA or APD rule, the Chief Investigator will attempt to resolve this issue with the Respondent by requesting the advertising be removed or corrected, as may be appropriate, if at all. 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 **Dietitian and Nutritionist Regulatory Council (“DNRC”)** of the DA established under Clause 29 of the Constitution takes overall responsibility to ensure the process under this By-law is performed in accordance with this By-law and is vested with the authority of the Board and able to act independently of the Board. The DNRC may, at its discretion, act through the DNRC Secretariat.

The **DNRC Assessment Panel** shall be not less than three members of the DNRC who are appointed by, and at the discretion of, the DNRC to manage and co-ordinate the complaints and disciplinary processes and procedures. The DNRC Assessment panel triages (through its delegated powers) all complaints. The DNRC Assessment Panel may act, at its discretion, through the DNRC Secretariat.

The **DNRC Secretariat** acts as the secretariat to the process under this By-law. The DNRC Secretariat is the primary point for communication for the Respondent and the Complainant with the DNRC during the processes set out in this By-law. In these By-laws, where a role is described as belonging to the DNRC Secretariate, the DNRC Secretariate performs that role as the delegate of the DNRC.

The **Chief Investigator** shall be a member of the DA executive team or their delegate (and is part of the DNRC Secretariat). At the time of the introduction of this By-law this responsibility has been delegated to DA Regulatory staff (which includes the DA Chief Executive Officer, the General Manager Regulatory Services and the Chief Credentialing Officer) by the DNRC. The Chief Investigator researches the complaint, gathers material (from the Complainant, the Respondent and may make their own inquiry) and provides that material to the DNRC Assessment Panel. In this By-law, where a role is described as belonging to the Chief Investigator, the Chief Investigator performs that role as the delegate of the DNRC

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-DA 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 DNRC in accordance with the Terms of Reference for the Complaints Assessors’ Pool.

The 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 DNRC. The Hearing and Assessment Panel shall comprise of:

1. the Lead Assessor (and in the circumstances of the incumbent Lead Assessor being unable to act on a given panel, the DNRC shall appoint an APD member from the Complaints Assessors' Pool to be the Lead Assessor for the panel);
2. one other APD member from the Complaints Assessors' Pool; and
3. one independent non-DA member from the Complaints Assessors' Pool.

The Hearing and Assessment Panel will review the material presented by the DNRC Assessment Panel. The Hearing and Assessment Panel will convene an opportunity for the Respondent to present their written response to the allegations in the manner allowed for under this By-law. Following that opportunity, the Hearing and Assessment Panel shall advise the DNRC in writing of its findings and recommendations, both in respect of the allegations made and, where allegations are assessed as made out, recommended penalties against the Respondent, if any, and recommendations for further action. The Hearing and Assessment Panel may act (other than in the attending a Hearing or in conducting its deliberations), at its discretion, through the DNRC Secretariat.

The **DNRC** is responsible for appointing the Hearing and Assessment Panel from the Complaints Assessors' Pool. The DNRC will consider the findings and recommendations of each Hearing and Assessment Panel and Review Panel and shall make the final determination on all disciplinary action regarding each Respondent arising out of any Complaint and Appeals process in so far as the Findings and Recommendations address the Respondent's entitlement to use or be qualified to use the APD Credentials (including any requirement for further education, review or supervision, including a return to "provisional status").

A person who is admitted as a **Member with APD Status** will automatically lose the privileges of that class of DA membership during such period as the Member's qualification to use or be qualified to use the APD Credentials is suspended or terminated, becoming a "Member without APD Status". The DNRC shall refer to the Board for any further determination of disciplinary action regarding a Respondent who is member, so far as the DNRC recommendations for disciplinary action addresses Respondent's entitlements as a member.

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 against whom the complaint is made 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 a relevant person reasonably apprehends that a material conflict of interest exists in fulfilling their role in the Complaint and Appeals Process described in this By-law, having regard to the facts and circumstances of the Complaint and a Respondent's statements and materials in reply. On becoming alert to such a material conflict of interest, that person shall, as soon as practicable, recuse themselves. It shall not be a "conflict of interest" for reason only that a member of the Board, the DNRC, a Hearing and Assessment Panel or Review Panel is or was a practising Dietitian conducting business in the same market or delivered services to a corporation or institution in which a Respondent or a Complainant was involved.

D. Procedure

PRELIMINARY PROCEDURE

1. MAKING A COMPLAINT

- 1.1. A complaint against an Accredited Practising Dietitian ("**APD**") or a member of DA 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 DA; or
 - 1.1.3. a DA 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:
 - 1.2.1. Must be made against a person who is an APD or otherwise a member of DA; and
 - 1.2.2. Must be made to the DNRC and be either;
 - 1.2.2.1. in writing signed by the person making the complaint (the "**Complainant**") or a legal representative acting for the Complainant; or
 - 1.2.2.2. submitted on the DA online complaints form with declarations completed; or
 - 1.2.2.3. a verbal complaint recorded by the DNRC Secretariat who will send two copies of the transcript of the complaint to the Complainant, who must sign and return one to the DNRC Secretariat;
 - 1.2.3. Should set out the circumstances giving rise to the complaint and identify the person or persons against whom the complaint is made (noting that identification can be made by reference to their Medicare provider number, by providing a copy of an invoice rendered or by their business or trading name); and
 - 1.2.4. Should be accompanied by any available statements or other material relating to the allegations or circumstances relied on by the person bringing 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 paragraphs 1.2 and 1.3 and Part B above. The DNRC 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 The DNRC Secretariat will acknowledge receipt of the Complaint in writing within seven (7) business days of receiving it.
- 2.2 The DNRC Secretariat shall determine as soon as is practicable whether the Complaint falls within the Scope of this By-law and shall advise the Complainant of its conclusion. A Complaint shall be regarded as "accepted" for the purposes of this By-law once a letter is sent to the Complainant advising that the Complaint falls within the Scope of this By-law.
- 2.3 If it is unclear if the Complaint falls within the Scope of this By-Law, the DNRC Secretariat may request additional information from the Complainant to support or clarify the information supplied. For clarification, the DNRC Secretariat may request additional information from the Complainant to support, supplement or clarify the information provided, whether or not the Complaint has been accepted.
- 2.4 If the Complaint is accepted, the DNRC Secretariat must advise the Complainant that the Complaint will be provided to the person identified in the Complaint as the person against whom the Complaint is made (the "Respondent"), which notification is to occur as clause 4.1 provides;
- 2.5 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. The Complainant may be referred to other avenues, if appropriate.
- 2.6 As part of the acknowledgment in Clause 2.1 the Complainant will be advised that this By-Law, the Code of Professional Conduct, can be found on the DA website. The DNRC Secretariat will provide a copy of these documents if requested by the Complainant (including by way of providing a URL or link to an on-line version of this document).

2.7 If the Complaint alleges grounds which cause the Chief Investigator to reasonably conclude that there may be a breach of criminal law, the Chief Investigator will notify the Complainant in writing and may refer the Complainant (and may refer the Complaint) to a relevant authority. The DNRC may consider the allegations and materials provided, the nature of any criminal investigation or criminal proceedings brought against the Respondent and the DNRC may (in its absolute discretion)

- a) instruct the Chief Investigator to:
 - i. suspend the complaint process under this By-law until the criminal aspect of the Complaint has been addressed, but noting that the Complainant is responsible to advise the DNRC Secretariat that the process of criminal proceedings have concluded; or
 - ii. continue with this complaint process even while the criminal aspects of the Complaint are still unresolved; and
- b) suspend or qualify the person's membership or participation in the APD Program until the resolution of those criminal proceedings or such other time as the DNRC may reasonably determine.

2.8 If a Complaint involves both a civil dispute regarding the terms of a contract of engagement (in respect of the professional delivery of dietetic services), other business matters relating in any way to the engagement or delivery of the services of a dietitian, internal business dealings of the practitioner, or concerns about the recovery of loss or damage from quality or safety of the dietitian's professional practice or conduct, then the DNRC will not deal with the dietetic practice complaint under these processes until any civil proceedings between the parties are completed, resolved or lapsed. The DNRC 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. It shall be the responsibility of the Complainant to inform DA of the conclusion of the civil proceedings.

2.9 The DNRC Assessment Panel, including through the Chief Investigator at its discretion, 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 and manner of external bodies or experts, but shall not be required to do so.

3. INITIAL INVESTIGATION

3.1 Within 15 business days of accepting a Complaint, the Chief Investigator must begin the initial investigation into the Complaint (the "Initial Investigation").

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 experience or expertise in relation to that particular issue or matter alleged;
- 3.2.3 initiating an audit the Respondent's APD logs and recency of dietetic practice or reference to the results of any previous inquiry into the audit the Respondent's APD logs or records of practice as may be held by DA; 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 results of any audit of the Respondent's APD logs or records held by DA may be joined to the Complaint by the DNRC Secretariat.

3.4 All material received by the DNRC under this clause 3 which the DNRC reasonably considers relevant to the Complaint, whether favourable to the Respondent or not, shall form part of the Complaint.

4. NOTIFICATION OF THE RESPONDENT – REQUEST FOR INPUT

- 4.1 After accepting a Complaint and the Chief Investigator completing the Initial Investigation, the DNRC secretariat will serve the Respondent with:
- 4.1.1 written notice of the acceptance of the Complaint (“Complaint Notice”), including:
 - 4.1.1.1 an express request for the Respondent to provide a written response to the Complaint;
 - 4.1.1.2 a statement to the effect that the Respondent’s response to the Complaint, including any supporting documentation that they wish to rely on must be supplied to the DNRC within 15 business days of receipt of the Complaint Notice;
 - 4.1.2 a copy of the Complaint (as it exists at the time of acceptance, including any supporting documentation included by the Complainant with the Complaint);
 - 4.1.3 any additional materials forming part of the Complaint pursuant to Clauses 2 and 3;
 - 4.1.4 the Code of Professional Conduct (including by way of providing a URL or link to an on-line version of this document); and
 - 4.1.5 this By-law (including by way of providing a URL or link to an on-line version of this document).

The Complaint Notice may be made up of more than one piece of correspondence. The Complaint Notice shall only be considered complete when the Initial Investigation concludes and the whole of the information to be relied on as “the Complaint” as at the time of the conclusion of the Initial Investigation has been sent to the Respondent.

- 4.2 The DNRC may delay issuing the Complaint Notice until the results of an audit of the Respondent’s APD logs is completed, but it is not obligated to do so. If after the issue of a Complaint Notice the DNRC chooses to issues learned from the results of an audit of the Respondent’s APD logs is completed (or from records of the respondent’s practice otherwise held by DA) the DNRC shall issue an amended Complaints Notice and the time frames under parts 4, 5 and 6 shall recommence as if the amended Notice of Complaint was the only Notice of Complaint, provided that any response provided by the Respondent may be relied on by either the Respondent or the DNRC.
- 4.3 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. The DNRC Secretariat may allow but shall not be obligated to allow further time to a Respondent to comply but noting the default policy is that DNRC serves the public interest by adhering to its published timeframes.
- 4.4 If the Respondent fails to comply with Clause 4.2 then the DNRC 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 undertake an initial assessment of the information and material forming the Complaint Notice and such other information provided in reply in a timely way by the Respondent.
- 5.2 The Chief Investigator must conduct and complete their initial assessment of the evidence within a reasonable time of receiving a reply from the Respondent or if there is no reply within the time permitted, then within a reasonable time of the expiry of the period allowed under Clause 4.2.
- 5.3 The Chief Investigator may, in the course of the initial assessment obtain any other information that may be, in the Chief Investigator’s unfettered opinion, appropriate, prudent, relevant or necessary to the facts, subject or circumstances of the Complaint.

- 5.4 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 and once such a response is received (“the Response”), if at all, the Chief Investigator must take into account the matters raised in the Response in the initial assessment.

6. CONSIDERATION OF THE COMPLAINT - DNRC CONFERENCE

- 6.1 Once the Chief Investigator has completed their initial assessment in accordance with Clause 5 of this By-law, the Chief Investigator is to hold a conference with the DNRC Assessment Panel.
- 6.2 At this conference the Chief investigator and the DNRC Assessment Panel are to discuss all the materials comprising the Complaint, the Response and such other material as the Chief Investigator concludes is relevant to the DNRC Assessment Panel’s deliberations (the “Complaint Materials”).
- 6.3 Having given due consideration to the Complaint Materials and the Code of Professional Conduct, the DNRC Assessment Panel must then determine, at the discretion of the DNRC Assessment Panel, 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, to attempt to resolve the Complaint before referral to a Hearing and Assessment Panel.
- 6.4 As part of the DNRC Assessment Panel deliberations referred to in clause 6.2, it may but shall not be obligated to do so, obtain any other information that may be, in the DNRC Assessment Panel’s unfettered opinion, appropriate, prudent, relevant or necessary to the subject or circumstances of the Complaint, whether from the Complainant, the Respondent or any third person. Any document or record of information which the DNRC Assessment Panel considers relevant to its decision concerning the Complaint shall form part of the Complaint Materials.
- 6.5 The DNRC Assessment Panel’s decision on whether to refer the Complaint to mediation or a Hearing and Assessment Panel or to dismiss the Complaint under this Clause 6 is final.
- 6.6 If the DNRC Assessment Panel determines the Complaint should be referred to a Hearing and Assessment Panel, then the DNRC 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.
- 6.7 If the DNRC Assessment Panel determines that the Complaint ought to be dismissed then the DNRC Secretariat is to write to the Complainant and Respondent and notify them that the Complaint has been dismissed. The DNRC Assessment Panel may provide recommendations to the Complainant as they see fit. The DNRC Assessment Panel’s decision on whether to dismiss the Complaint under this Clause 6 is final and is entirely at the discretion of the DNRC Assessment Panel holding the vested power of the Board.

MEDIATION

7. MEDIATION PROCESS

Steps before Mediation

- 7.1 If the DNRC Assessment Panel determines that a Complaint will be referred to mediation, the DNRC Secretariat will speak separately to the Complainant and the Respondent to arrange a suitable process.
- 7.2 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.
- 7.3 The mediator:
 - 7.3.1 May be one of the APD members from the Complaint Assessors' Pool; or
 - 7.3.2 May be another appropriately experienced DA member nominated by the Chief Investigator (including, but not limited to, a DA member in the same location as the Complainant and the Respondent and/or a DA member who holds particular expertise or knowledge relevant to the Complaint).
 - 7.3.3 Cannot be the Lead Assessor.
 - 7.3.4 Can be a person who is independent of the DA if the Chief Investigator considers it necessary or appropriate.
- 7.4 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.
- 7.5 If a suitable process is agreed upon by the Complainant and the Respondent, then the DNRC Assessment Panel will appoint the mediator and a copy of the Complaint Materials shall be provided to each of the mediator, the Respondent and the Complainant (including, in the case of the Respondent and the Complainant, by way of supplementing materials previously provided).

Resolution at Mediation

- 7.6 If the Complaint is resolved by 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 DNRC with a summary of the Complaint. The DNRC is to keep the agreed resolution 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

- 7.7 If the Complaint is not resolved by the mediation, then the mediator will notify the DNRC via the DNRC Secretariat that the Complaint could not be resolved.

Confidentiality of mediation process

- 7.8 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. This provision does not limit the use by any person of any document, fact or opinion in any hearing of the Complaint, including any appeal of the Findings and Recommendations resulting from a Hearing.

HEARING

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

8.1 If:

- 8.1.1 the DNRC Assessment Panel determines that a Complaint should 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 7.4; or
- 8.1.3 if the mediator advises the DNRC that the mediation failed to resolve the Complaint;

then the DNRC 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 DNRC 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. If a member of the Complaints Assessors' Pool apprehends that a conflict might exist, then they shall make a declaration of such a conflict in writing by the member of the Complaints Assessors' Pool and that declaration must be kept on file;
- 8.2.5 If, once appointed, a member of a Hearing and Assessment Panel apprehends that a conflict referred to under clause 8.2.4 might exist at a time prior to the determination of the Findings and recommendations under clause 13 of this By-law, then that member shall stand down, making the declaration under clause 8.2.4 and, so long as there are two members of the Hearing and Assessment Panel remaining, the process shall continue. If there remains only one or less members of the Hearing and Assessment Panel, then the DNRC must appoint a new panel and (re-)schedule a Hearing with that new panel; and
- 8.2.6 (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 DNRC Secretariat must:

- 8.3.1 notify the DNRC 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 Complaint Materials 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 must consider the Compliant 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 DNRC, 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 DNRC must consider a Hearing and Assessment Panel's recommendation made under clause 9.2 and either accept (noting that the DNRC may impose its own recommendations on the Respondent) or reject it. The DNRC'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 DNRC.

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 DNRC rejects a recommendation made under 9.2 then the matter will proceed to a formal hearing (the **Hearing**).

10.2 The DNRC 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 DNRC 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 the Respondent opts to attend in person at the Hearing location;
- 10.3.2 The names of the members of the Hearing and Assessment Panel, provided that the DNRC shall be at liberty to substitute any one or more of the members of the Hearing and Assessment Panel at any time prior to the hearing.
- 10.3.3 State those 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;

- 10.3.4 A copy of the Complaint Materials provided to the Hearing and Assessment Panel under Clause 8.3.3;
- 10.3.5 State that if the Hearing and Assessment Panel makes Findings that the Respondent has breached the provisions of the Code of Professional Conduct such Findings can result in the DNRC terminating, suspending or qualifying the person's participation in the APD Program including the dietitian's entitlement to use the APD Credentials; and
- 10.3.6 Advise the Respondent that they may send in any additional material, information or a further response to the Complaint to be considered by the Hearing and Assessment Panel; provided that this information must be received by the DNRC 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.
- 10.3.7 Any objection to any member(s) sitting on the Hearing and Assessment Panel must be made in writing stating the grounds of the objection and be submitted to the DNRC not less than **5 business days** from the date Respondent was advised of their names (noting that time may expire after the Hearing). If the Respondent learns of the names of the members sitting on the Hearing and Assessment Panel within **5 business days** prior to the Hearing, then the Respondent must raise the objection to any member(s) sitting on the Hearing and Assessment Panel as soon as practicable prior to the Hearing and no later than at the Hearing.

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 DNRC 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 be granted if the Respondent fails to provide appropriate 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 DNRC 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 DNRC Secretariat as soon as possible. This may be done by telephone in addition to written notice.

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 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 typically attend the Hearing. The DNRC 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 DA 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. Any witness can refuse to take questions from the Respondent.
- 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. Hearing and Assessment Panel will then be given a further opportunity to ask the Respondent and any expert or witness questions, and in conclusion the Respondent may respond to answers given (if at all) by witnesses or experts.

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 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 and the Hearing and Assessment Panel may be assisted by the DNRC Secretariat.
- 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 before or subsequent to the Hearing and for any enquiry other than to the Respondent, the panel is not obligated to put that material to the Respondent before making its Findings and Recommendations.

- 13.3 The Hearing and Assessment Panel is not required to consider any written material, submissions, documentation or information not given to the DNRC 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 DNRC outlining their findings in relation to the Complaint, brief reasons for those findings and their recommendations (**the Findings and Recommendations**) and in doing so may be assisted by the DNRC Secretariat.
- 13.5 A copy of the Findings and Recommendations will be served on the Respondent by the DNRC Secretariat as soon as practicable.

14. APPEAL PROCESS

- 14.1 If there is an adverse finding or recommendation made against the Respondent in the Findings and Recommendations, the Respondent may serve on the DNRC Secretariat an appeal against the findings and recommendations (the **Appeal**) in the manner permitted by clause 14.2.
- 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 and address one or more of the following grounds:
 - 14.2.2.1 the procedures under this By-law were not substantively followed;
 - 14.2.2.2 the Findings and Recommendations are so unreasonable that they cannot rationally be supported by the material before the Hearing and Assessment Panel;
 - 14.2.2.3 one or more members of the Hearing and Assessment Panel had an actual and material conflict of interest arising from facts and circumstances of the Complaint, which was known to that member at or prior to the Hearing.
 - 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, including as to recommended qualifications for participating in the APD Program, use of the APD Credentials or penalties
- 14.3 If an Appeal has not been received in accordance with 14.2 above, the Lead Assessor will cause the DNRC Secretariat to send the Findings and Recommendations to the DNRC for determination.

15. REVIEW PANEL

- 15.1 If an Appeal is received in accordance with Clause 14.2 then the DNRC Secretariat shall inform the DNRC 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 and who are not precluded from considering the matters owing to clause 8.2.4.
- 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 their own enquiries of the Complainant, the Respondent, the Hearing and Assessment Panel and the materials before Hearing and the Review.
- 15.5 The Review Panel will prepare a brief written statement (the **Appeal Findings and Recommendations**) for the DNRC on its findings in relation to the grounds of the Appeal and this must include a recommendation to the DNRC 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 DNRC 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 DNRC must consider the Hearing Findings and Recommendations and (if applicable) any Appeal Findings and Recommendations.
- 16.2 A person who is admitted as a Member with APD Status will automatically lose the privileges of that class of DA membership during such period as the Member's qualification to use or be qualified to use the APD Credentials is suspended or terminated, becoming a "Member without APD Status".
- 16.3 The DNRC shall refer to the Board Hearing and Assessment Panel Recommendations and Findings, or if subject to Review under part 14, then the Review Panel Recommendations and Findings (and the DNRC may make, but is not obligated to make its own recommendations) for further determination of disciplinary action regarding a Respondent who is member, so far as the disciplinary action addresses Respondent's entitlements as a DA member.
 - 16.3.1 Upon receipt and consideration of the Hearing Findings and Recommendations and any Appeal Findings and Recommendations the DNRC or the Board, as the case may be, will then determine whether:
 - 16.3.2 to accept that the Complaint against the Respondent be dismissed or upheld; or
 - 16.3.3 order a rehearing of the Complaint by another Hearing and Assessment Panel.

- 16.4 If the DNRC or the Board, as the case may be, upholds the Complaint then it may either accept or modify the recommended sanction as recommended in the Findings and Recommendations or any Appeal Findings and Recommendations.
- 16.5 In relation to those aspects of the determination, so far as they address the Respondent's entitlements as a member (including where the matter is addressed to a non-APD member), the Board may impose either the recommended sanction or apply its own sanctions, so long as the determination is consistent with the Constitution.
- 16.6 The sanctions that may be imposed respectively by the DNRC or the Board (as the case may be) include, but are not limited to:
- 16.6.1 suspension from the APD Program for a period not exceeding twelve (12) months;
 - 16.6.2 suspension from membership of the DA for a period not exceeding twelve (12) months;
 - 16.6.3 expulsion from the APD Program;
 - 16.6.4 expulsion from membership of the DA;
 - 16.6.5 return to a provisional APD credential;
 - 16.6.6 corrective advertising, including but not limited to the distinctions between multi-disciplinary practices conducting by the Respondent or the Respondent's business;
 - 16.6.7 a formal reprimand;
 - 16.6.8 a requirement to attend counselling;
 - 16.6.9 undertaking formal mentoring,
- or any combination of the above the DNRC or the Board sees fit.
- 16.7 Any determination of the DNRC or the Board is final and binding on the Respondent.
- 16.8 The Respondent and the Complainant must each be notified of the decision of the DNRC and / or Board in writing.
- 16.9 If the DNRC determines that the APD Credential is to be withdrawn by suspension then the DNRC may direct the DNRC Secretariat to release the decision to any person, corporation, organisation or other body as the DNRC sees fit. The name of the Respondent shall be added to the public register on the DA website as required under the standards of the National Alliance of Self Regulating Health Professions (NASRHP).
- 16.10 If the Board determines that membership of the DA 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 DA website as required under the standards of the National Alliance of Self Regulating Health Professions (NASRHP).
- 16.11 If the DNRC 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 or who are not precluded from considering the matters owing to clause 8.2.4.

17. REQUEST FOR REINSTATEMENT AFTER EXPULSION

17.1 Subject to clause 17.2, a member of the DA or an APD who has been expelled from either the APD program and / or membership of the DA under this By-law may, after a period of not less than 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 DA or a member or non-member APD who has been suspended or 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 an application under clause 17.1.

17.3 The former member of the DA, or the former APD (now the **Applicant**) must make their representation pursuant to Clause 17.1 in writing to the DNRC 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 DNRC 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 DNRC, the Board, the DNRC Assessment Panel, the Hearing and Assessment Panel and the Review Panel are held in confidence, except in so far as this By-law permits.

18.2 The Respondent is not permitted to contact the Complainant/s directly regarding the Complaint unless specifically required or permitted to do so under this By-law.

18.3 The Respondent and the Complainant must not approach any member of the DNRC 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 DNRC or the Board has been made under Clause 16, then the determination may be published or released as determined by the Board or the DNRC as appropriate.

19. ANONYMOUS COMPLAINTS

19.1 The Complainant must provide their name and contact details to the DA (through the DNRC Secretariat) when submitting a Complaint, however the Complainant can elect to remain anonymous to the Respondent throughout the complaint process unless, but subject to clause 19.2, it is appropriate for the Respondent to access the Complainant's clinical records.

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 DNRC Secretariat may request the Chief Investigator to seek legal advice in relation to this By-law, the application of it and 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 DNRC 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 DA 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 DA 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 DNRC 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 DNRC Secretariat
Dietitians Australia
1/8 Phipps Close
DEAKIN ACT 2600

22.2 The DNRC 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 DNRC Secretariat, Chief Investigator, the Hearing and Assessment Panel, the Review Panel, the DNRC or the Board under this By-Law, then the DNRC 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 DA 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 DA membership and/or APD Credential, as the cases might be, 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 DA membership and/or entitle to use their APD Credentials may be immediately suspended. This suspension will not be listed on the DA 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. DA reserves rights to pursue damages and seek injunctive relief for breach of Trade Mark.

23.3 If DA membership and/or the rights of use of APD Credentials 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 DA or they cause their APD Credentials to lapse whilst the subject of a Complaint under this By-law then:

- 23.4.1 The Complaint made while they were a member of the DA or a non-member APD will become inactive. Should they wish to re-join the DA or the APD Program the Complaint will be reactivated;
- 23.4.2 The Respondent's name will be held on file at the DA and noted on their individual member record on the database. As a non-APD, the Respondent may not use the APD post nominal; and
- 23.4.3 The Respondent will be eligible to re-join membership of the DA 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.

24. DA Membership Discipline

24.1 If a complaint is made that a member of DA who is not an APD has breached the Code of Professional Conduct, the processes (and limitations to the application of this process) that apply under this By-law to a complaint made against a person who is an APD shall apply (as if they were a person who is an APD), subject to the following variations:

- 24.1.1 Disciplinary sanctions shall address the Respondent's entitlement as a member of DA, not entitlements that exist from participation in the APD program, with the intent that any reference to suspension, qualification, termination or expulsion is hereby deemed to be a reference to be suspension, qualification, termination or expulsion from DA Membership making the appropriate changes when interpreting the text;

- 24.1.2 No reference shall be had to the Respondent's APD logs, except to the extent that the Respondent was previously an APD and such information is held in the records of DA;
- 24.1.3 the recommendations of any Hearing and Assessment Panel or Review Panel shall be referred to the DNRC, but the DRNC may only make recommendations and the DRNC must refer its recommendations to the Board for final determination.
- 24.1.4 Only those parts of clause 16.6 as relate to DA membership entitlements can apply to a non-APD member.