



**AUSTRALIAN DENTAL ASSOCIATION VICTORIAN BRANCH INC.**

**BY-LAW 3**

**MANAGEMENT OF DISPUTES AND ETHICAL COMPLAINTS**

**1. COMPLAINTS**

- (1) Complaints to be dealt with under this By-Law may involve a dispute between a Member and another Member or a Member and the Branch or be of an ethical nature in accordance with Rules 107 and 108.
- (2) Complaints shall be classified as follows:
  - (a) Disputes, which include those between:
    - (i) a Member and another Member
    - (ii) a Member and a person
    - (iii) a Member and the Branch including the Branch Council or a Branch Officer
    - (iv) a person and a member of the Branch's staff
  - (b) Ethical
- (3) All complaints must be made in writing and be signed by the complainant PROVIDED HOWEVER that a public notice from a Court of a relevant infringement shall be sufficient for an investigation to be instigated.
- (4) All complaints shall be passed on to the Chair of the Disputes and Ethics Committee.
- (5) The Vice-Chair may deputise for the Chair as required.
- (6) A copy of any such complaint(s) received shall be sent to the person against whom complaint is made who shall be invited to submit to the Chair within one calendar month a written reply to such complaint(s), and if no reply is by then received, the Chair shall further notify the person in writing that investigative action as specified in Clauses 2(1) and 3 hereof will be initiated forthwith.

**2. CHAIR'S ACTIONS**

- (1) The Chair may at his or her discretion, subject to Clauses 2(2) and 2(3) hereof,
  - (a) conduct further investigation of the complaint(s) personally; or
  - (b) refer such complaint(s) to a panel comprised of three members of the Disputes and Ethics Committee for investigation, provided however, that the Branch Council at its discretion may direct the Chair to avoid, discontinue or postpone investigations of complaints relating to particular clauses of the Rules or By-Laws thereupon specified by the Branch Council, for a period of time also to be specified.

- (2) The first step in any investigation must be to determine under which classification as specified in Clause 1(2) the complaint is to be progressed.
- (3) The Chair shall, without revealing the name of the person involved, report to the Branch Council at its next meeting the fact that a complaint had been received and shall advise the meeting as to the classification of the complaint and the course of action adopted pursuant to Clause 2(1) of this By-Law in relation thereto.
- (4) If any member of the Disputes and Ethics Committee is personally concerned in a complaint, as complainant or otherwise, or is the partner, assistant or principal of any person so concerned, or a relative of such person or otherwise have a conflict of interest, this should be determined by the Chair, who shall not then include that member in any panel of the Disputes and Ethics Committee to which the complaint is to be referred for investigation.
- (5) The Chair shall not personally investigate a complaint if he or she is in the manner of Clause 2(4) similarly concerned or has previously approached the Member involved concerning the matter about which complaint is being made. Under such circumstances the complainant shall be notified.
- (6) The Chair shall take all reasonable steps to have investigation of such complaint completed within his or her term of office, but if this does not occur then the next incumbent shall take over this responsibility in accordance with whatever course of action has been adopted pursuant to Clause 2(1), in furtherance of which the retiring Chair shall transfer in confidence to the next incumbent any relevant documentation or other information concerning the investigation and notify the parties involved of the appointment of the next Chair subject to Clause 2(4) of this By-Law.

### **3. INVESTIGATION OF COMPLAINTS**

The investigating authority pursuant to Clause 2(1)(a) or 2(1)(b) shall:

- (1) investigate the facts of the case as fully as possible, such investigation to commence no later than fourteen days after expiry of the time allotted pursuant to Clause 1(6) for an invited reply from the Member against whom complaint is made;
- (2) take such evidence written or oral as may be deemed necessary ensuring that each party to the dispute has been given an opportunity to be heard on the matter which is the subject of the dispute;
- (3) have discretion to invite all or any parties to a complaint, but no others, to attend a meeting or meetings at which the evidence is to be considered;
- (4) on completion of such investigation, make an oral or written report to the Branch Council depending on the nature and type of complaint.

### **4. CONFIDENTIALITY OF CONSIDERATIONS**

- (1) All communications between any parties involved in an enquiry into a complaint and all reports, conclusions and recommendations of the authority investigating such complaint and all notices of meetings containing advice of any matter concerning the complaint to be considered thereat shall be marked "Private and Confidential" and shall be issued in sealed envelopes so marked.

- (2) At no time during or after the investigation of a complaint will unenforced disclosure of any information relating to the complaint be made to persons or agencies outside the Branch, except as specified in Rule 108(6) and Clause 6 hereof.

## **5. ASSISTANCE OF MEMBERS**

It shall be the duty of every Member to afford all reasonable assistance to any authority investigating complaint(s) as defined in Rules 107 and 108 or this By-Law.

## **6. COMMUNICATION WITH COMPLAINANT(S)**

- (1) Receipt of complaint(s) in accordance with Clause 1(3) hereof shall be acknowledged by letter(s) to the complainant(s) from the Chair.
- (2) The stage reached by an investigation of complaint(s) shall be communicated to the complainant(s) at two month intervals without further detail.
- (3) Arrival at a finding shall be made known in writing to the complainant(s), except that in the event of finding in an ethical case that infringement is proven or established, this shall only be disclosed at the discretion of the Branch Council. Indication of ensuing action shall be confined to a statement that, any further procedures required by the Branch Constitution shall be followed.

## **7. COMMUNICATION WITH PERSON COMPLAINED AGAINST**

- (1) Any person subjected to complaint investigation and possible the Branch Council action arising therefrom must always be sent such communications as are required under Clauses 1(5), 2(5) 9(2) and 9(5) of this By-Law and Rules 107 and 108 of the Branch.
- (2) No other case documentation shall be made available to the said person(s).

## **8. DISPUTES**

- (1) Between a Member and another Member
  - (a) If the dispute is considered by the investigating authority to be of a non-ethical nature whether in part or in whole, the parties involved shall be so informed and be offered and have explained to them the process of mediation.
  - (b) Initiation of the process of mediation can only begin with both parties executing consent forms to the application of optional mediation.
  - (c) Failure by either party to return the executed consent forms to the Branch within 21 days from the date of postage of such forms shall result in the Branch offering no further assistance in the matter.
  - (d) On return of the executed consent forms within 21 days from the date of postage the following optional mediation procedure can be progressed.
    - (i) The Chief Executive Officer of the Law Institute of Victoria will be requested to nominate a mediator.

- (ii) Notice shall be given of the name, address and contact point for the mediator appointed.
- (iii) The mediator shall send to the parties a Mediation Agreement, which sets out the "rules" for the mediation process.
- (iv) Assent shall be obtained for cost coverage for the mediation by equal contribution by the parties based on (say) a "benchmark" 3 hour allocation.
- (v) Affirmation will be given that the appointed mediator will shortly be in contact with the parties to notify and to invite them with reference to:
  - A necessary Preliminary Conference to explain the mediation process, the signing of the Mediation Agreement, and to explain the conduct of the process to the parties and their representatives.
  - The venue, date and time for the Preliminary Conference.
  - The venue, date and time for the actual mediation itself.
- (e) All parties and, if represented, their representatives must attend both the Preliminary Conference and the Mediation. If a party represents a partnership or other organisation like a trust or a company, that person must have authority to enter the mediation and conclude any settlement terms upon any successful mediation outcome.
- (f) The mediator shall provide a report to the Chair indicating only whether the matter has or has not been settled.

(2) Between a Member and a person

- (a) If the dispute is considered by the investigating authority to be of a non-ethical nature whether in part or in whole, and of a commercial nature the parties involved shall be so informed and have explained to them the process of the Health Services Commissioner and alternative dispute resolution measures.

(3) Between a Member and the Branch including the Branch Council or a Branch Officer

In a complaint by a Member against the Branch including the Branch Council or a Branch Officer the Chair shall adhere to the following procedure:

- (a) All documentation of the case file shall be accessed by the investigating authority
- (b) Following review of the file, the investigating authority shall discuss the matter with the Member and if applicable the Branch Officer before determining the appropriate course of action.
- (c) The Member may appeal the decision at a General Meeting in a manner consistent with Rules 10(2) or 108(7) & (8)
- (d) Complaints against the Branch Council from an applicant regarding election to membership, are covered by Rule 10

(4) Between a person and a member of the Branch's staff

- (a) Usually such complaints shall be directed to the Chief Executive Officer for investigation except if the member of staff is the Chief Executive Officer or a Community Relations Manager or Officer/Professional Consultant.

- (b) However any complaint arising from the staff member's duties under the Indemnity Scheme shall be referred to the Indemnity Scheme Insurer who shall report back the finding of the investigation to the Chair.
  - (c) In a complaint against the Chief Executive Officer other than those specified in (3) (b) above the Chair shall adhere to the following procedure:
    - (i) All documentation of the case file shall be accessed by the Chair.
    - (ii) Following review of the file, the Chair shall discuss the matter with the complainant and the CEO before determining the appropriate course of action.
    - (iii) The Chair's decision shall then be forwarded to the complainant in writing, with a copy to the CEO for information.
  - (d) In a complaint against a Community Relations Officer/Professional Consultant other than those specified in (3) (b) above.
    - (i) The letter of acknowledgement forwarded to the complainant by the Chair may be appended by a brief statement affirming the nature of the CRO function and the limits to its powers.
    - (ii) All documentation of the case file shall be provided to the Chair by the CR Assistant, along with the letter seeking review. A copy of all such documentation must be retained at the Branch Office for reference by the CRO/PC.
    - (iii) Following review of the file, the Chair shall discuss the matter with the CRO/PC before determining the appropriate course of action.
    - (iv) The Chair's decision shall then be forwarded to the complainant in writing, with a copy to the CRO/PC for information.
- (5) Reporting to the Branch Council
- (a) In a dispute involving a complaint against a member of the Branch's staff except if the member of staff is the Chief Executive Officer or a Community Relations Officer/Professional Consultant the Chief Executive Officer shall at the conclusion of the management of the dispute report to the Branch Council the outcome of the investigation.
  - (b) In all other disputes involving a complaint Chair shall at the conclusion of the management of the dispute report to the Branch Council the outcome of the investigation.

## 9. ETHICAL COMPLAINTS

- (1) On completion of investigation of an ethical complaint, the Chair shall make a written report to the Branch Council if necessary containing two distinct and separate sections, the first section containing a summary of the facts of the case and conclusions and, in the event of the first section determining that prima facie an infringement has occurred, a second (only to be used pursuant to Clause 9(3)(c) of this By-Law) containing an opinion regarding the severity of the infringement and details of any previous disciplinary action(s) against the Member, PROVIDED ALWAYS that, before any conclusion is reached by the investigating authority, a Member complained against shall be given an opportunity to be heard in person or, if preferred by the Member, to provide a written deposition in his or her defence for

consideration by the investigating authority, subject only to the requirement that either form of response shall be made within one calendar month of being invited unless otherwise agreed by the investigating authority.

(2) Further Action

- (a) If the investigating authority's report to Branch Council concludes prima facie no infringement has occurred then the Chair may advise the Branch Council that no action is required.
- (b) Otherwise, the Branch Council shall upon receiving the first section of the written report of the investigating authority, which shall be made available to the member against whom the complaint has been made, and after consideration of the case determine either:
  - (i) that, no infringement of the Rules or of the By-Laws has been committed or otherwise that the complaint has not been proved or established; or
  - (ii) that, an infringement of the Rules or of the By-Laws has been committed or otherwise that the complaint has been proved or established.
- (c) In the event of finding that a complaint has been proved or established, only then shall the Branch Council receive for its consideration the second section of the investigating authority's written report.
- (d) The Branch Council may then either proceed to take such action as it deems necessary in accordance with the procedures prescribed and powers conferred on it in accordance with Rule 108 or decide not to take further action.

(3) Attendance and right to be heard

- (a) Without limiting the generality of Clauses 9(2)(b), 9(2)(c) and 9(2)(d), the Branch Council, should it be deemed necessary or desirable, may request all or any party to a complaint to attend a meeting of the Branch Council at which the case is to be further considered.
- (b) The Branch Council shall give a Member the opportunity at that meeting to be heard orally or in writing in respect of the substance of the complaint against him or her. Such a Member may appoint any person to act on behalf of the Member PROVIDED HOWEVER that the Member shall also attend the meeting.

(4) Participation by members of the Branch Council in Deliberations

Any member of the Disputes and Ethics Committee who is also a member of the Branch Council and is involved in the investigation of a complaint, shall initially withdraw from the Branch Council deliberations on the matter, and shall not be entitled to vote as a member of the Branch Council on whether an infringement has been committed or the complaint has been proved or established. However, such member of the Branch Council may return and deliberate on the penalty if an infringement has been established.

(5) Procedure at the Branch Council Meetings

The President when the Branch Council is deliberating on an ethical complaint shall adhere to the following procedure.

- (a) Seek a motion to move into Committee.

- (b) Having formally moved into Committee, request distribution of any papers which should include By-Law 2, Rule 108 and Case file(s) which should be marked "Confidential, but not the second section of the investigating authority's report.
- (c) Advise the Branch Council members that these papers will be collected at the end of the deliberation on the complaint for secure disposal or re-use.
- (d) Invite the Branch Council members to declare any actual or potential conflict of interest or wish to stand down from deliberation on the complaint.

In the event that a Branch Council member makes a declaration under Clause (d) above, for the purpose of establishing a quorum under the Rules, that Branch Council member will not be considered eligible to attend the meeting while the complaint is deliberated

- (e) Ask the Chair to speak to the report and subsequently provide the Branch Council members with opportunity to ask questions of the Chair or if applicable of panel members before they leave.
- (f) If the Member against whom the complaint has been made is in attendance, invite that Member and, if applicable, the person acting on behalf of the Member to make presentation to the Branch Council, and not allow questions from the Branch Council.
- (g) If applicable, thank the Member for attending.
- (h) Seek a motion concerning whether or not there has been an infringement of the Rules or By-Laws proven.
- (i) If no, seek return of papers, the return of the Chair and if applicable panel members, and move out of committee. Go to (xiv).
- (j) If yes, request distribution of the second section of the investigating authority's report and advise the Chair and if applicable panel members that they may now participate in deliberation on the question of penalty.
- (k) Ask the Chair to speak to the report and subsequently seek a motion concerning the level of penalty.
- (l) Ask for papers to be returned.
- (m) Seek a further motion to move out of committee.
- (n) Seek a motion for adoption of motion(s) moved in committee for purposes of creating the minutes.

## 10. PROTOCOL FOR PROCEEDINGS CONDUCTED IN ACCORDANCE WITH THIS BY-LAW

- (1) All participants shall behave in a courteous and polite manner and this shall include:
  - (a) not engaging in threatening or intimidating behaviour;
  - (b) not using offensive language;
  - (c) participants shall only discuss matters and/or issues that directly relate to the matter under consideration.

- (2) Meetings will not be electronically recorded by any party.
- (3) The Member may appoint any person to act on behalf of the Member PROVIDED HOWEVER that the Member shall attend the meeting.
- (4) If the protocol above is not adhered to, then the Chair or President may close the meeting and will offer the Member the opportunity to provide written submissions in regard to the complaint.
- (5) A breach of this protocol shall be considered a breach of the required standard of conduct for a Member and may result in disciplinary action.

Adopted by the Branch Council	25/10/04
Amended by the Branch Council	09/05/05 20/06/05 24/07/06 21/06/10 05/12/11 17/06/13 22/07/13 24/03/14 12/10/15