



# SPER CONSULTING

REGULATORY STRATEGIES & SOLUTIONS

Mr Scott Gregson  
General Manager  
Adjudication  
ACCC  
PO Box 1199  
DICKSON ACT 2602

FILE No:	
DOC:	
MARS/PRISM:	

17 November 2006

Dear Mr Gregson,

**APPLICATION FOR A MINOR VARIATION TO AUTHORISATION A90545  
ON BEHALF OF THE AUSTRALIAN PROPERTY INSTITUTE.**

I represent the Australian Property Institute. (API)

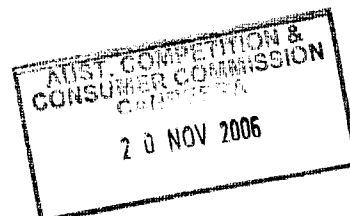
This is an application on behalf of the Australian Property Institute for minor variation to authorisation A90545 under section 91 A of the TPA.

On 31 August 2005 the ACCC granted a minor variation for authorisation A90545. Since then the API has extensively reviewed its Complaints Regime and has agreed on a new regime.

The Review took into account the ACCC observations made in its decision of 31 August 2005.

In establishing the Review the API stated that the guiding principles of the Review were,

*"The aims of a disciplinary regime should be to preserve and maintain the profession's integrity, suppress and redress dishonourable conduct or practices, provide for amicable settlement or adjustment of disputes, and consider and deal with matters affecting the professional interest of its members." Professional Standards Council, 2001.*



Furthermore any such regime should factor in the following criteria,

- Fairness
- Transparency
- Accountable
- Timeliness.
- Appropriate dispute resolution.
- Data collection and publication of data.
- Accessibility
- Continuous review.
- Cost effective.
- Commitment by stakeholders.

That Review has resulted in a new Complaints regime. The new regime does not change the overall conduct previously authorised by the ACCC but improves on the existing system. In the view of the API the new regime improves,

- Timeliness
- Transparency
- External review
- Fairness
- Accountability
- Scope

And is less costly.

In the view of the API the changes constitute a minor variation. Any anti competitive effect of the Complaints regime has not been added to yet public benefit has increased in that members and the general public will have greater confidence in the regime.

The previous regime is that which is attached to the 2005 ACCC decision. The new regime replaces the previous clauses 28 and 29 of the API by laws and makes few consequential amendments to the API Constitution.

Essentially the changes are,

- Complaints can now be lodged against all categories of API members,
- Complaint investigations are to be done by a semi independent person.
- There are different processes for minor and major breaches.
- The legalist process of referral of matters to a National Prosecutor no longer exists.
- There is a totally external review body.
- There is to be reporting of regime outcomes both in aggregate and on most individual decisions.
- It generally removes unwarranted layers in the regime.

- It limits discretion of the review bodies.
- Generally improves transparency.

**Attachment A** sets out the changes to the Constitution and By Laws.

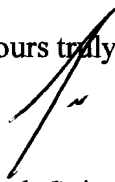
**Attachment B-** is a flow chart of the previous regime.

**Attachment C-** is a flow chart of the new regime. I will email this as well.

I will email you the up to date consolidated Constitution, By Laws, Code of Conduct and Code of Ethics.

I look forward to hearing from you on this Application. Should you wish any further information please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read 'Hank Spier', written over the typed name below.

Hank Spier

## ATTACHMENT A

### API CONSTITUTION & BY-LAWS.

#### COMPLAINTS REGIME (as at 11 July 2006)

##### Preamble

The API By Laws dealing with the Complaints regime adopts the concepts of natural justice.

**Natural justice**, also known as procedural fairness, is a requirement of the disciplinary process.

In the context of the disciplinary process, natural justice has two main principles:

1. The Member complained of is provided with a fair hearing;
  - The complained of is provided with all of the information required to answer the allegations made against them,
  - This information is provided within a reasonable timeframe; and
  - The complained of is provided with an opportunity to respond to all allegations or decisions affecting him/her and their response is genuinely considered.
2. The decision maker is impartial;

## CONSTITUTION.

### Clause 1: Interpretation

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#### **1.1 Definitions**

'**Member**' means any person who is admitted to membership of the Institute under any part of Clause 7 of the Constitution.

### Clause 9: Complaints

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#### **9.1 Complaint Made**

- 9.1.1 If a written complaint against a Member is made to the Institute it will be referred to the Division of which the subject of the complaint is a Member to be dealt with in accordance with the By Laws.

## **9.2 Who May Make a Complaint**

9.2.1 A complaint may be made by:

- (a.) a member of the general public;
- (b) a Member or Affiliate of the Institute; or
- (c) any Council, Board, Standing Committee or Committee or Group of the Institute.

## **9.3 Complaints Procedures**

9.3.1 The National Council has the responsibility of implementing the complaints procedures in accordance with the By Laws.

## **9.4 Appeal**

9.4.1 The Member against whom the complaint is made, or the Institute (either by resolution of National Council or the Divisional Council of the Division of which the subject of the complaint is a Member) may appeal against the decision of the Disciplinary Tribunal in accordance with the By Laws.

## **BY LAWS**

### **Section 27: Disciplinary Complaints.**

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#### **Interpretation and definitions.**

- 27.1 These provisions replace all other disciplinary complaints procedures issued by the Institute.
- 27.2 Subject to 27.3, any complaint that has progressed past the Complaints Committee decision stage should be dealt with under those procedures in place at the time the complaint was initially lodged.
- 27.3 A Member complained of can choose to have a complaint dealt with under any new procedures even though the complaint had progressed past the Complaints Committee stage when the new procedures came into effect.
- 27.4 Where a Member resigns the investigation of any outstanding disciplinary complaint will cease but not be deleted from the records system maintained by the Institute.
- 27.5 Where a former Member of the Institute applies to join the Institute any past incomplete disciplinary complaints will be finalised before membership is considered.

Disciplinary Tribunals and Appeals Procedures the complainant is the Institute.

- 27.7 Where a complaint has been lodged against a National Councillor, Divisional Councillor, Board or Committee member, or any member of a Divisional complaints structure, those persons shall stand down from their position until the matter is resolved. **Have taken out the point about a prima facie case.**

### **Definitions.**

- 27.8 “Serious breach”- For the purposes of these By Laws a “serious breach” will be any matter that;
- relates to issues of dishonesty or criminal conduct,
  - relates to a refusal to comply with a Complaint Committee, Disciplinary Tribunal or External Appeals Committee Order,
  - involves three or more minor breaches, and,
  - are from time to time deemed to be major by the Divisional or National Councils.
- 27.9 “Times frames” – All mentions of a period of days is to be read as business days.
- 27.10 Subject to other provisions of these By Laws, the Institute will keep details of any particular complaint confidential.

### **Complaints process.**

- 27.11 All complaints must be in writing.
- 27.12 If a complaint is made to the Institute in writing that a Member has allegedly:
- (a) violated any part of the Institute’s Constitution or By Laws;
  - (b) committed any criminal offence punishable by imprisonment;
  - (c) committed any civil offence involving dishonesty or fraud.
  - (d) engaged in conduct prejudicial to the good name of the Institute; or
  - (e) obtained admission to the Institute by improper means,
- the complaint will be handled in accordance with the procedures set out in the By Laws.
- 27.13 Upon the receipt of a written Complaint the Divisional Complaints Chair shall appoint a Complaints Advisor to consider the particular complaint.

27.14 On receipt of a written complaint, the Divisional Complaints Chair shall advise the party in writing that the matter has been referred to a Complaints Advisor.

27.15 A complaint shall not be pursued if:

- (a) the complainant does not agree, in writing, that their identity can be revealed to the member complained of.
- (b) the information provided by the complainant does not disclose a breach of the Institute's Constitution, By Laws, Code of Ethics, Rules of Conduct or Practice Standards.
- (c) it is more appropriate that the complaint be dealt with by a Court or an external complaints, disciplinary, conciliation, or arbitration body or procedure;
- (d) the matter is to be put on hold pending the outcome of a Court or other tribunal's decision, as there may still be an Institute disciplinary matter.
- (e) the complainant is seeking compensation or reimbursement only and is not alleging that a Member has been in breach.
- (f) the act or omission giving rise to the complaint occurred before the date of commencement of the relevant By law.
- (g) the subject matter of the particular complaint was comprised in a same complaint by the same person (or any one or more of them) previously considered by the Complaints Committee or the Disciplinary Tribunal and finalized,
- (h) the Divisional Complaints Chair and the Complaints Advisor are of the view, that the complaint is frivolous or vexatious or is being pursued by the complainant in a frivolous or vexatious manner or for an improper purpose
- (i) the complaint is against a non API-Member.
- (j) the complaint is in relation to a breach of a commercial contract only.
- (k) the sole issue of concern to the complainant is one of quantum of a valuation.

27.16 Subject to time frames set out in these By-Laws, the Institute shall set appropriate indicative time frames for the handling of complaints.

27.17 Where the Complaints Advisor, in conjunction with the Divisional Complaints Chair, decides that the matter is not to be pursued the complainant shall be informed in writing.

- 27.19 Where the Complaints Advisor decides that the complaint is to be pursued the Member shall be advised in writing.
- 27.19 The Complaints Advisor will prepare the appropriate report for the Complaints Committee in relation to the matter.
- 27.20 The Complaints Advisor will have carriage of any matter throughout the disciplinary process
- 27.21 The Complaints Advisor may present the matter on behalf of the Institute in the Complaints Committee, the Tribunal and the External Appeals Committee. The Complaints Committee Chair can appoint someone else to present the matter on behalf the Institute in the Tribunal or the External Appeals Committee.
- 27.22 In preparing the report, the Complaints Advisor may obtain additional information, including from the complainant and the Member who is the subject of the complaint.
- 27.23 The Complaints Advisor may use all legal means to conduct the investigation of a complaint and may conduct the investigation in any manner that the Complaints Advisor considers fit.
- 27.24 The Complaints Advisor may require a Member to produce to the Complaints Advisor documents (including records kept in electronic form) within the possession, custody or control of the Member, by way of notice in writing to the Member specifying particular documents or categories of documents, provided that the documents or categories so required to be produced must in the Complaints Advisor's reasonable opinion be potentially relevant to the subject matter of a current investigation being conducted by the Complaints Advisor. A Member who receives such a notice must produce the documents required to the Complaints Advisor in the time specified in the Notice.

## **Section 28; Appointments to Complaints Committee and Disciplinary Tribunal**

- 28.1 Each Divisional Council shall appoint a Member to be responsible for Divisional complaints procedures. This person shall be called the Divisional Complaints Chair. The Chair shall be appointed on an annual basis.
- 28.2 At the time of appointing the Divisional Complaints Chair, the Divisional Council shall appoint an Alternate Chair in the event that for any reason the Divisional Complaints Chair is unable to perform the Chair's duties. In this event, the Alternate Chair will act as the Divisional Complaints Chair for the duration the Chair, as appointed by the Divisional Council, is unable to perform the duties of Chair.
- 28.3 A Panel comprising not less than seven Divisional Members shall be appointed on an annual basis by the Divisional Council.



- 28.4 The Divisional Complaints Chair shall, on an as required basis, select from the Panel a committee, hereinafter called the Complaints Committee, and a Chair of that Committee, hereinafter called the Chair of the Complaint Committee, to consider a specific complaint. The Complaints Committee shall comprise a minimum of 3 members and so far as practicable be drawn from the relevant State Division but can , if deemed necessary by the Divisional Complaints Chairman , be drawn from other Divisions at the request of the President of the National Council.
- 28.5. No Member who is in any way concerned with the matter in question, or who is connected in any business entity, firm, corporation, or department with the Member accused or the party, who originated the complaint, shall be a member of the Complaints Committee.

**Matters referred to Complaints Committee.**

- 28.6 Once the Complaints Advisor completes the appropriate report in relation to any complaint the Complaints Advisor shall forward the documentation to the Chair of the Complaints Committee.
- 28.7 Such report shall include and specify any possible breaches alleged against the Member complained of.
- 28.8 The Complaints Advisor shall advise the Member Complained of the alleged breach and seek information in response to the alleged breach.
- 28.9 When in receipt of the Complaints Advisors report the Divisional Complaints Chair shall convene a Complaints Committee as provided for in Clause 28.4.
- 28.10 A copy of the Complaints Advisor's report must be sent to the Member complained of and the Member shall be given a reasonable opportunity to respond to the information contained in the report.
- 28.11 (a )The Complaints Committee will be bound by the principles of fairness and natural justice.  
( b) The Committee Chair will determine Committee procedures.
- 28.12 The Complaints Committee may hold a hearing into the matter where it feels that it is necessary to properly consider that matter.
- 28.13 The person instigating the complaint nor the member complained of does not have a right to attend any hearing but the Complaints Committee can ask either to attend if it considers it appropriate.
- 28.14 If during the course of its examination of the evidence, the Complaints Committee determines that it requires further information or clarification;

the matter may be referred back to the Divisional Complaints Advisor and the Member complained of informed.

- 28.15 If during the course of its examination of the evidence, the Complaints Committee determines that there are other issues that need to be addressed these matters may be referred back to the Complaints Advisor for further information and the Member complained of informed.
- 28.16 The Complaints Committee can make any one of the following decisions:
- (a) Determine that there may be a serious breach and refer the complaint to the Disciplinary Tribunal;
  - (b) Determine that the complaint can be dealt with by the Complaints Committee; and
  - (c) Find that there is a breach as specified by the Complaints Advisor and impose a sanction, as set out in Clause 28.23
  - (d) Find that there is a different breach and impose a sanction, or sanctions as set out in Clause 28.23.
  - (e) Find there is no breach and dismiss the case.
- 28.17 The Member complained of can request (with the agreement of the Complaints Committee Chairman) that the complaint be considered by the Disciplinary Tribunal and not the Complaints Committee. Such request must be made as soon as the Member complained of has been advised of the matter by the Complaints Advisor.
- 28.18 The decision of the Complaints Committee Chairman as to whether or not to agree to the matter going direct to the Disciplinary Tribunal cannot be appealed.
- 28.19 Where the Complaints Committee dismisses the matter the Member must be advised in writing.
- 28.21 Where the Complaints Committee decides that the matter should be referred to the Disciplinary Tribunal the Chair of the Complaints Committee will formulate the charge and refer the matter to the Disciplinary Tribunal.
- 28.22 Where the matter is referred the Disciplinary Tribunal the Member complained of must be informed in writing.

### **Sanctions.**

- 28.23 Where the Complaints Committee determines a matter and finds a breach the Complaints Committee may impose the following sanctions upon the Member complained of;

- (a) Reprimand the Member
  - (b) Publicly admonish the Member
  - (c) Counsel the Member.
  - (d) Impose a payment to the Institute of up to \$5000.00
  - (e) Require the Member to undertake additional CPD training as specified.
- 28.24 The Complaints Committee can order more than one of the sanctions, where it considers that appropriate.
- 28.25 Where the Complaints Committee has decided a matter, the Member complained of must be informed in writing.
- 28.26 The Complaint Committee's determination shall be implemented by the Divisional Executive Officer.
- 28.27 The Chair of the Complaints Committee shall have a casting vote if required but the normal decision process will be by majority votes.
- 28, 28 There can be no appeal against any decision of the Complaints Committee.

### **Disciplinary Tribunal**

- 28.29 Each Divisional Complaints Chair shall appoint a Disciplinary Tribunal, including the appointment of a Chair of that Tribunal, hereinafter called the Chair of the Disciplinary Tribunal, to hear and determine any disciplinary charge brought against a Member of that Division originating from a complaint.
- 28.30 The Disciplinary Tribunal shall have a minimum of three members at least one of whom shall have legal qualifications and at least one of whom shall not be a Member of the Institute and so far as practicable be drawn from the relevant State Division but can, if deemed necessary by the Divisional Complaints Chairman, be drawn from other Divisions at the request of the President of the National Council.
- 28.31 No Member who is in any way concerned with the matter in question, or who is connected in any business entity, firm, corporation, or department with the Member accused or the party, who originated the complaint, shall be a member of a Complaints Committee or Disciplinary Tribunal.
- 28.32 Disciplinary Tribunal processes must be in private.
- 28.33 The member complained of may be legally represented before the Disciplinary Tribunal provided that:

- (a) the Tribunal is advised not less than 5 days prior to the date set down for the Tribunal hearing of the intention of the particular party to have legal representation, and the name and contact details of each such legal representative, and
  - (b) the Tribunal may, if it is satisfied that legal representation has served or may continue to serve to delay the hearing of the matter, terminate the right of the party to have legal representation in which event the legal representative or representatives must depart the hearing and take no further part in it and the hearing must proceed in the absence of that legal representation.
- 28.34 No party may be compelled to appear at a hearing of the Disciplinary Tribunal, but any party to a hearing may provide written submissions and evidence to the Chair of the Disciplinary Tribunal, at least 3 days before the hearing.
- 28.35 The Disciplinary Tribunal may make such procedural arrangements as it thinks fit, including directions for the provision of written submissions and evidence.
- 28.36 The Disciplinary Tribunal may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it.
- 28.37 The laws and rules of evidence do not apply to proceedings before the Disciplinary Tribunal.
- 28.38 The Disciplinary Tribunal may obtain legal advice and have legal advisers in attendance at a hearing.
- 28.39 The Disciplinary Tribunal may conduct hearings or other meetings of the Tribunal in person or by other means, provided that all members of the Tribunal are able to hear and speak to each other.
- 28.40 All determinations and decisions of the Disciplinary Tribunal are to be made by a majority of the members of the Tribunal.
- 28.41 The Member complained of in any matter shall be informed, at least 14 days prior to any hearing, of:
- (a) the name of the Disciplinary Tribunal Chair and members of the Disciplinary Tribunal;
  - (b) the exact nature of the Complaint and the disciplinary charge that the Member will be required to address;
  - (c) the time, date and place for the hearing;
  - (d) the right of the Member concerned to be heard in regard to the charge;

- (e) whether or not the person instigating the complaint may be called to give evidence and/or provide a written submission in statutory declaration form;
- (f) whether or not other witnesses may be called to give evidence and/or provide a written submission in statutory declaration form.
- (g) what material the Member should bring to the hearing.
- (h) who will present the matter on behalf of the Institute.

28.42 The party who instigated the complaint shall, at least 7 days prior to any hearing, be informed of the time, date and place of the hearing and whether or not they will be required to give evidence at the hearing.

### **Admission of Evidence**

28.43 No documents will be admitted into evidence that have not been made available to the Member complained of within a reasonable time prior to the hearing. This timeframe will be at the discretion of the Chair of the Disciplinary Tribunal. If any party wishes to introduce additional documentary evidence, the Chair may, if necessary, adjourn the hearing to allow the other party sufficient time to consider the evidence.

### **Hearing Procedure**

28.44 The procedures for the hearing shall be at the discretion of the Chair of the Disciplinary Tribunal.

28.45 A transcript of the hearing is to be kept and a copy given to the Member complained of and the person who instigated the complaint, if that person was asked by the Disciplinary Tribunal to be involved in the hearing. A fee may be charged by the Institute for copies of the transcript.

### **Disciplinary Tribunal's Decision**

28.46 After the completion of the hearing, the Chair of the Disciplinary Tribunal shall furnish in writing to the Divisional Executive Officer, the Disciplinary Tribunal's decision, the reasons for the decision and any sanction to be imposed.

## **Sanctions.**

- 28.46 Where the Disciplinary Tribunal determines that a Member has not been involved in a breach, the Tribunal shall make a determination to dismiss the matter.
- 28.47 Where the Disciplinary Tribunal determines that a Member has been involved in a breach, the Tribunal shall make a determination of breach against the Member complained of, and may impose one or more of the following sanctions,
- (a) reprimand the Member
  - (b) admonish the Member publicly
  - (c) counsel the Member
  - (d) suspend the Member from membership of the Institute, for such period and on such terms or conditions as the Tribunal thinks fit;
  - (e) where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Tribunal thinks fit;
  - (f) require the Member to take such steps as the Tribunal may determine to correct the effects of any breach found to have been engaged in;
  - (g) a payment to the Institute to be used as the Tribunal recommends, or in the absence of a recommendation, as the Divisional Council of the Institute determines; such penalty to be no more than \$10,000.00 for the first instance and no more than \$20,000.00 for any subsequent breach,
  - (h) require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future breaches by the Member;
  - (i) expel the Member from membership of the Institute;
  - (j) adjourn the proceeding subject to compliance with such conditions as to sanctions as the Tribunal may otherwise impose in accordance with this By Law.
- 28.48 The Disciplinary Tribunal may determine that the Member complained of has been involved in a breach but can, if the Tribunal considers it appropriate, determine not to find a breach but can still impose any of the sanctions set out in Clause 28.47..
- 28.49 The Disciplinary Tribunal can award reasonable costs at its discretion against an Institute Member involved in the matter before it.
- 28.50 The Disciplinary Tribunal may have a pre-sentence process to relay likely sanctions to the Member complained of, and give that Member an opportunity to state any objections to likely sanctions.
- 28.51 When determining any sanction, the Disciplinary Tribunal may take into consideration any penalty imposed on the Member as a result of external

legal proceedings brought against that Member in relation to the same matter before the Tribunal.

- 28.52 A suspended Member must comply with the Institute's CPD requirements and provide a return for each year as normally required.
- 28.53 If a suspended Member breaches the conditions of suspension, then the penalty shall be expulsion from Membership unless, on application by the Member, the Divisional Council or National Council resolves otherwise.
- 28.54 No sanction shall be imposed on a Member until the completion of the Institute's appeal procedures.

### **Notification of Decision**

- 28.55 The Member complained of and the party who instigated the complainant shall be informed in writing of the Disciplinary Tribunal's decision, the reasons for the decision, and any right of appeal against the decision.
- 28.56 The Disciplinary Tribunal will issue a written determination within 30 days of its decision.
- 28.57 The parties concerned shall be advised that the Disciplinary Tribunal's written determination will be available for collection or delivery from the relevant Division's office at a specified date and time via the form requested by the parties. A fee may be charged.

### **Fees**

- 28.58 The Complaints Advisor, members of the Complaints Committee appointed to consider the matter, and members of the Disciplinary Tribunal shall, at the discretion of the Divisional Council, be entitled to receive such fees, remuneration and disbursements as the Divisional Council in its absolute discretion may determine generally or in any individual case.

### **External Appeals Committee**

- 28.59 The External Appeals Committee, shall be a three-member appeal body, including the Chair, appointed from time to time by National Council. The Chair, who must possess legal qualifications, shall be appointed by National Council. Neither any Complaints Advisor, any member of the Complaints Committee appointed to consider the matter, any person involved in any mediation of the complaint, any member of the Disciplinary Tribunal that originally dealt with the matter, or any member of the External Appeals Committee that made the initial assessment of the appeal shall sit on the External Appeals Committee that reviews the complaint.

- 28.60 A majority of the members of the External Appeals Committee must not be Members of the Institute.

## **29. Appeal Process**

- 29.1 The Member complained of may, within 21 days of being notified of the Disciplinary Tribunal's decision, appeal against that decision by notice in writing to the Chair of the External Appeals Committee.
- 29.2 The Institute (either by resolution of National Council or the Divisional Council of the Division of which the subject of the complaint is a Member) can also appeal a Disciplinary Tribunal decision and must do so within 21 days of the decision.
- 29.3 The Chair of the External Appeals Committee shall notify the appropriate Divisional Executive Officer that an appeal has been lodged and shall request copies of the relevant correspondence and records of proceedings held by that Division. This documentation may include:
- (a) the original complaint,
  - (b) the charge formulated from this complaint,
  - (c) all correspondence and written evidence in relation to the matter,
  - (d) the record of the Disciplinary Tribunal's hearing,
- 29.4 This material will be provided to the appellant.
- 29.5 The appellant is to notify in writing the basis of the appeal including all documentation within 21 days of lodging the appeal. If the Appellant considers more time is necessary to prepare the appeal, the appellant may submit a request in writing to the Chair of the External Appeals Committee for an extension of time.
- 29.6 Parties to the appeal, other than the appellant, shall provide written responses to the appellant's submission within timeframes determined by the Chair of the External Appeals Committee.
- 29.7 If the appellant does not comply with the timeframe determined by the External Appeals Committee Chair and an approval for extension of time has not been granted by the Chair of the External Appeals Committee, the appeal shall be deemed to be abandoned and the parties informed accordingly in writing.
- 29.8 Where the Chair of the External Appeals Committee is of the view, that the material submitted by the appellant does not support a valid appeal the Chair can dismiss the appeal and inform the parties in writing,

## **Withdrawal of Appeal**

- 29.9 A Member may withdraw an appeal by giving notice in writing to the Chair of the External Appeals Committee.



- 29.10 The notice referred to in Section 29.9 must be received no later than seven days before the day scheduled for the hearing. After this time the Member who made the appeal will be responsible for any costs incurred by the External Appeals Committee and the Institute,

#### **Conduct of Appeal Hearing**

- 29.11 The procedure and conduct of the appeal hearing will be at the discretion of the Chair of the External Appeals Committee
- 29.12. The External Appeals Committee will not, except where the Committee requests additional material, accept any additional material once the hearing has commenced.
- 29.13 Any party may be represented by legal counsel or other person on terms and conditions set by the External Appeals Committee.

#### **Consequences of Appeal**

- 29.14 The External Appeals Committee may uphold the appeal, dismiss the appeal or may vary the sanction imposed by the Disciplinary Tribunal.
- 29.15 The External Appeals Committee must give written reasons for its decision.
- 29.16 The National Director must be informed of the External Appeals Committee's decision.

#### **Action by National Council**

- 29.17 The National Council cannot overrule or vary the decision of the External Appeals Committee.

#### **Costs Awarded by External Appeals Committee**

- 29.18 Costs of the hearing and reasonable costs of the parties may be awarded by the External Appeals Committee.

#### **Notification to Parties**

- 29.19 The National Director shall advise the parties of the External Appeals Committee's decision in writing.

### **Quorums**

- 29.20 A decision of the External Appeals Committee shall not be invalidated in consequence of a vacancy in its membership or the absence of any member provided that the decision is made by at least two Members, including the Chair of that Committee.

### **Fees**

- 29.21 Members of the External Appeals Committee shall be entitled to receive such fees, remuneration and disbursements as the National Council in its absolute discretion may determine generally or in any individual case.

### **Publication of decisions.**

- 29.22 The Institute must maintain a Register of all determinations made by the Complaints Committee, the Disciplinary Tribunal and the External Appeals Committee and make the register available for inspection by Members.
- 29.23 The National Director shall have the absolute discretion to decide what is contained on the Register in relation to each concluded matter.
- 29.24 The Institute may, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally the content of, or an extract from or précis of, any determinations by the Complaints Committee, the Disciplinary Tribunal and the External Appeals Committee and the register maintained by the Institute.
- 29.25 The Institute shall publish regular information about the outcome of disciplinary matters including an annual overview of the operation of the Institute's disciplinary regime.
- 29.26 Where a Member has been expelled the National Director shall advise ASIC and relevant State and Territory regulators.
- 29.27 Where a Member has been found to be in breach of conduct relating to the FSR Act the National Director shall inform ASIC.

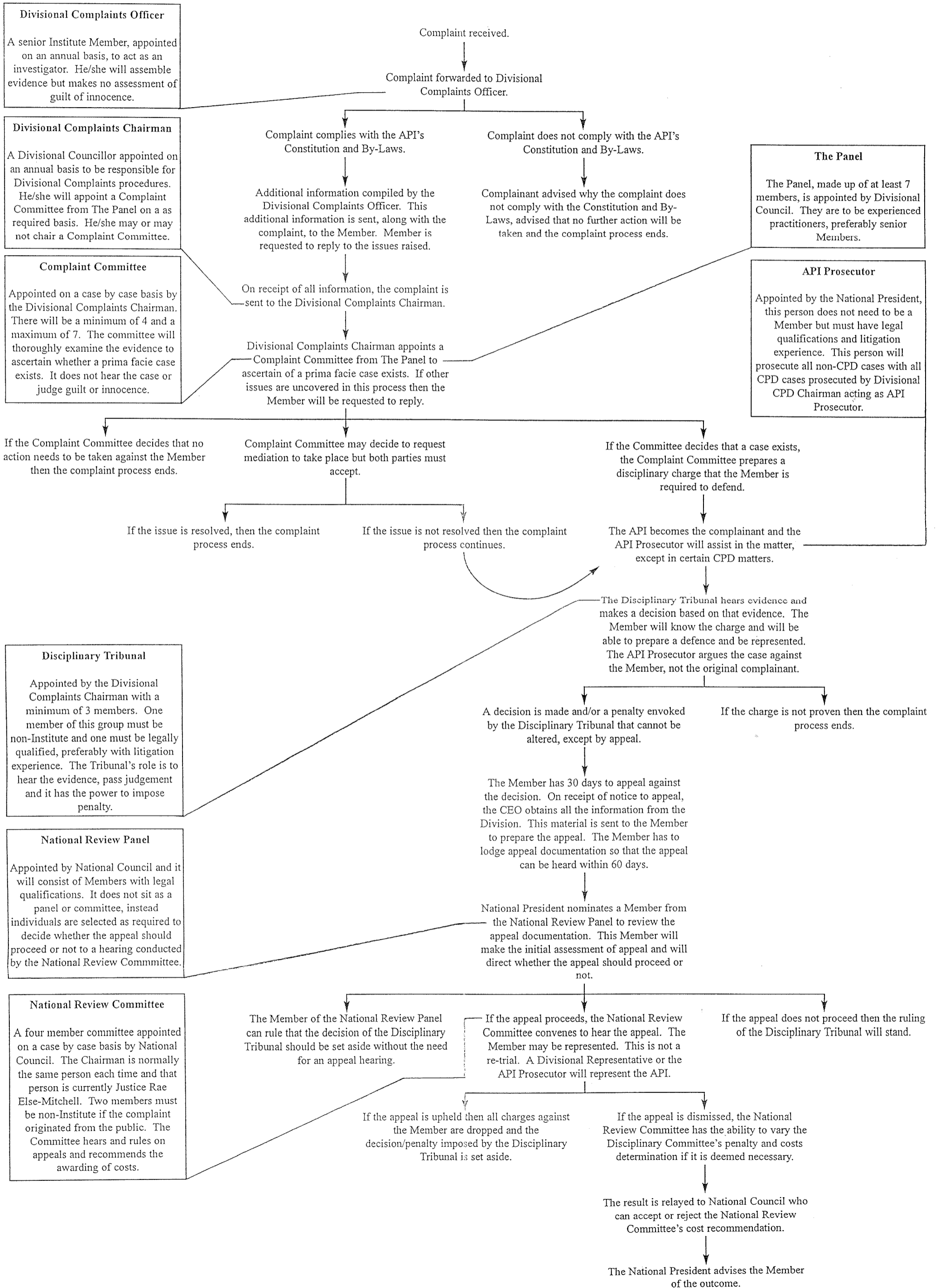
### **Keeping Complainants informed**

- 29.28 The Complaints Advisor may keep a the person instigating the complaint informed of progress in handling the complaint provided always that the Complaints Advisor must not provide any information to a complainant in relation to the progress of the complaint where in the opinion of the Complaints Advisor;

- (a) to do so may expose the Complaints Advisor or any Officer of the Institute to liability for civil damages;
  - (b) to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint, or
  - (c) to do so would deny procedural fairness to the Member, the subject of the complaint.
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# AUSTRALIAN PROPERTY INSTITUTE COMPLAINTS PROCEDURE

AT THE NATIONAL CONFERENCE HELD IN MELBOURNE ON 22 MAY 1999, NATIONAL COUNCIL VOTED TO IMPLEMENT A NEW COMPLAINTS PROCEDURE. BELOW WE HAVE SUMMARISED THE PROCEDURES FROM THE RECEIPT OF A COMPLAINT ALL THE WAY THROUGH TO THE APPEAL PROCESS.



ATTACHMENT C

