



## AIH ETHICS PANEL – APPLICATION OF 65B DISPUTE RESOLUTION PROCEDURE

### DESCRIPTION & TERMS OF REFERENCE - THE AIH ETHICS PANEL

#### Declaration of AIH Ethics Panel

This panel was ratified through delegation by the National council pertaining to section 18.3 of the AIH constitution on August 16<sup>th</sup> 2022.

Any act or thing done or suffered by a committee acting in the exercise of a delegation under this rule has the same force and effect as it would have if it had been done or suffered by the National Council.

#### Membership of Ethics Panel

To ensure a panel that is seen to act in a non-prejudicial manner to the proceedings, the panel to be represented by:

1. The Chair or delegated member of the Fellows group
2. 1 member of the AIH Council who has not had previous dealings with the defendant or claimant
3. An invited independent specialist member or person who is in the industry. May or may not be a member of AIH.

#### Purpose

The role of the Ethics Panel is to consider issues referred to it by the AIH Secretary and to consider the following during their deliberations:

1. AIH Constitution, Section 15 MEMBERSHIP RIGHTS AND RESPONSIBILITIES and Section 17 MEMBERSHIP EXPULSION
2. AIH Code of Ethics – considering the principles of ethics as noted page 3 of this document
3. **Error! Reference source not found. A1991-46**
  - A. Section: 3A Offences against Act—application of Criminal Code etc;
  - B. Section 25.3 - Restriction of actions;
  - C. Division 3.7 - Rights and liabilities of members and officers
  - D. Section 65B – Dispute Resolution procedure
  - E. Section 65C – Disciplinary action
4. *Commonwealth Fair Work Amendment Act 2013*

*Note Any power of an incorporated association to adjudicate a dispute under this section is subject to the rules of natural justice (see s 50).*

#### Procedure

#### The Ethics Panel are to act within the *Error! Reference source not found. A1991-46 (The Act)* Steps

1. National Secretary to receive all complaints in writing
2. If complaint is regarding member to member, National Secretary to refer the complaint to the National Council for notice and comment
  - a. Secretary then forwards complaint and National Council comment to AIH Ethics panel
3. If complaint from member is in regard to the National Council, the National Secretary to refer the complaint directly to the AIH Ethics Panel for consideration
4. AIH Ethics Panel applies Dispute Resolution procedure as noted under 65B of the Act
5. AIH Ethics panel notifies National Council of the outcome
6. AIH Ethics panel advice stands pending any appeal
7. If appeal is lodged as per the 65B Procedure – The Chair of the AIH Ethics panel for that particular case will recommend a new independent panel to hear the appeal.
8. The appeal outcomes will stand.



## AIH ETHICS PANEL – APPLICATION OF 65B DISPUTE RESOLUTION PROCEDURE

### 65B Dispute Resolution procedure

- 1) The rules of an incorporated association must set out a dispute resolution procedure for dealing with any dispute under this Act or the rules between—
  - a. a member and another member; or
  - b. a member and the association.
- 2) A member may appoint any person to act on behalf of the member in the dispute resolution procedure
- 3) In applying the dispute resolution procedure, the association must ensure that—
  - a. each party to the dispute has been given an opportunity to be heard on the matter which is the subject of the dispute; and
  - b. the outcome of the dispute is determined by an unbiased decision-maker; and
  - c. the decision-maker notifies each party to the dispute, in writing, about the decision and gives reasons for the decision; and
  - d. to the extent that doing so is compatible with paragraphs (a) to (c), the dispute resolution procedure is completed as soon as is reasonably practicable; and
  - e. the dispute resolution procedure includes an appeal process.
- 4) If a member has initiated a dispute resolution procedure in relation to a dispute between the member and the association, the association must not take disciplinary action against any of the following people in relation to the matter which is the subject of the dispute resolution procedure until the dispute resolution procedure has been completed:
  - a. the member who initiated the dispute resolution procedure (*complainant member*);
  - b. a member of the association appointed by the complainant member under subsection (2) to act on behalf of the complainant member in the dispute resolution procedure.

### 65C Disciplinary action

1. This section applies if an incorporated association proposes to take disciplinary action against a member in relation to that member's status as a member of the association.
2. Subject to subsections (3) and (4), the procedure (*a disciplinary procedure*) under which disciplinary action is taken must be in accordance with the procedure (if any) provided by the rules of the association.
3. In applying the disciplinary procedure, the association must ensure that—
  - a. the member who is the subject of the disciplinary procedure—
    - i. is told the grounds upon which the disciplinary action against the member is proposed to be taken; and
    - ii. has been given an opportunity to be heard in relation to the matter; and
  - b. the outcome of the disciplinary procedure is decided by an unbiased decision-maker; and
  - c. the decision-maker notifies the member, in writing, about the decision and gives reasons for the decision; and
  - d. the disciplinary procedure includes an appeal process; and
  - e. to the extent that doing so is compatible with paragraphs (a) to (d), the disciplinary procedure is completed as soon as is reasonably practicable.
4. A member of an incorporated association who is the subject of a disciplinary procedure must not initiate a dispute resolution procedure in relation to the matter which is the subject of the disciplinary procedure until the disciplinary procedure has been completed.

### Other Situations that may arise

#### Consideration of bullying, harassment and/or discrimination under the Commonwealth Fair Work Amendment Act 2013

**Bullying** behaviour within a professional association may range from obvious verbal or physical assault to subtle psychological abuse. It can include:

- physical or verbal abuse
- yelling, screaming or offensive language
- psychological harassment
- intimidation
- undermining a member's work by deliberately withholding information regarding their work performance.



## AIH ETHICS PANEL – APPLICATION OF 65B DISPUTE RESOLUTION PROCEDURE

### Guidance on the Principles of Ethics

#### Ethical principles

- Be an ethical leader (as a member of AIH).
- Use moral courage.
- Consider personal and professional reputation (of members, peers and AIH as a whole).
- Set the right tone as a representative (of AIH ).
- Maintain an enquiring mindset.
- Consider the member and public interest.
- Consider 'the right, the good and the virtuous' actions of member"

#### Types of ethics that may be considered

- **Subjectivism.** - **the idea that our moral opinions are based on our feelings and nothing more.** On this view, there is no such thing as "objective" right or wrong. It is a fact that people have varying behaviours; but it is not a fact that one is good and the other bad. It is the view that ethical values are determined by attitudes
- **Consequentialism.** - is an ethical theory that judges whether or not something is right by its consequences. For instance, **most people would agree that lying is wrong.** But if telling a lie would help save a person's life, consequentialism says it's the right thing to do.
- **Duty-based ethics** - ethics teaches that the morality of an action should be based on whether **that action itself is right or wrong under a series of rules**, rather than based on the consequences of the action.
- **Justice** - constitutes an ethical perspective in terms of which ethical decisions are made on the basis of universal principles and rules, and in an impartial and verifiable manner with a view to ensuring the fair and equitable treatment of all people.
- **Virtue ethics** - deals with the **honesty and morality of a person.** It states that practicing good habits such as honesty and generosity makes a moral and virtuous person. It guides a person without specific rules for resolving the ethical complexity.
- **Situation ethics** - a system of ethics by which acts are judged within their contexts instead of by categorical principles

#### Considering the significant differences between:

- **Autonomy** - is the state of being self-governing or having the ability to make one's own decisions independently of external control.
- **Truth-telling** – can be a satisfying ethic to “tell the truth”, To **fully inform the person with whom you are dealing is hard work** often we must learn the truth for ourselves before we can tell it to others. Truth telling may or may not lead to invasion of privacy or break of confidentiality and at worse defamation; therefore, may not deliver justice for all.
- **Confidentiality.** - **Confidentiality is seen as a fundamental ethical principal in business** and a breach of confidentiality can be a reason for disciplinary action. Trust of professionals is to treat information as confidential and they may withhold information that may be important to make an ethical assessment. When professionals disregard the privacy of their peers or clients, they may negatively affect their peers or clients in obvious and/or subtle ways.