



**Counsellors &
Psychotherapists
Association of NSW inc.**

**Professional
Conduct
Procedure**



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Status of the Procedure

The *Professional Conduct Procedure* (hereafter the *Procedure*), was provisionally adopted by the Executive Committee of the *Counsellors And Psychotherapists Association of New South Wales Inc.* (hereafter CAPA) on 14th August 2006. It was ratified by the membership as policy at the Annual General Meeting of the Association on 17th September 2006. It is the Complaints, Discipline and Appeals process referred to in the Constitution of CAPA NSW and replaces those presented and accepted by the membership at the AGM in 2002

The *Procedure* is related to the *Code of Ethics and Good Practice* (hereafter **the Code**). Both documents are available to members and need to be read in concert with each other.

The *Code* and the *Procedure* are overseen by the *Ethics and Professional Standards Committee* of CAPA (hereafter **the Committee**), constituted in provisional form by the executive of CAPA and ratified by the Annual General Meeting of CAPA on 14th of July 2002.

In accepting membership of CAPA, members acknowledge their professional responsibility to abide by the terms of the *Code* and the associated *Procedure*. All members of CAPA will be required to sign a declaration in respect of the *Code* as a prerequisite for membership of CAPA.

The *Code* and the *Procedure* are not static documents and will be reviewed from time to time on the basis of developments in ethical understanding within the general community and the profession.

The membership of CAPA will have ready access to the latest version of the *Code* and the *Procedure* via the web site or on application to the CAPA office. The executive will circulate any changes to the *Code* and the *Procedure* after the relevant approval process has been achieved. Members are responsible for ensuring they have current versions of the *Code* and the *Procedure*.

Advice regarding interpretation of the *Code*, the *Procedure* and ethical issues relating to professional practice may be obtained by contacting the Committee:

Mail: PO BOX 60 Annandale NSW 2038

Phone: 95651811

Website: www.capa.asn.au



Acknowledgments

CAPA gratefully acknowledges the assistance provided by various professional associations in the preparation of this document, namely, the *British Association for Counselling and Psychotherapy*, the *New Zealand Association of Counsellors*, the *Irish Association for Counselling and Therapy* and the *Psychotherapy and Counselling Federation of Australia*.



s.1 Introduction

The *Code* and this *Procedure* form an essential part of CAPA's efforts to inform, support and protect members of the community, the membership of CAPA and the profession of psychotherapy and counselling.

Should a client, potential client or member of CAPA indicate that they have a grievance or a complaint, it is the responsibility of the CAPA member to inform the person of the existence of the *Code* and the *Procedure*. It is also their responsibility to provide information regarding how any complainant may access information regarding these documents.

a. Definitions

The term 'therapy' relates to the various modalities a practitioner may utilise. 'Therapy' is taken to include but is not necessarily limited to individual therapy, group therapy, couple and family therapy, supervisory practice, and workshops and skills groups designated as containing a therapeutic element or process.

The use of the terms 'counsellor' and 'therapist' in the Code refers to a person acting as either a counsellor or psychotherapist.

The term 'therapeutic practice' relates to the various modalities a practitioner may utilise. 'Therapeutic practice' is taken to include but is not necessarily limited to individual therapy, group therapy, couple and family therapy, supervisory practice, and workshops and skills groups designated as containing a therapeutic element or process.

The term 'client' refers to individuals, couples, families, groups, communities involved in any of the above mentioned forms of therapeutic practice.

'Complaint' refers to an action brought against a member of CAPA according to the rules of the Code and the Procedure.

The 'complaint conditions' refers to the set of rules contained in s.2.a. of this Procedure.

The term 'complaints procedure' refers to the period in time between the lodgement of a complaint with the Chair of the Committee and the finalisation of the complaint in question.

The term 'complainant' refers to an individual who lodges a complaint against a member of CAPA in respect of the professional behaviour of that CAPA member.

The term 'member' refers to a counsellor or psychotherapist who is a member of CAPA.



The term 'support person' refers to the person who accompanies and may speak on behalf of either the member or the complainant during a hearing process.

The term 'evidence' refers to any material, oral or written, that forms the basis of the complaint. Other forms of evidence may be admitted at the discretion of the Committee.

The term 'protocol' refers to any procedural rules developed by the Committee and approved by the Executive of CAPA, the aim of which is to give ongoing functionality to this Procedure.

The term 'party to the complaint' refers to the complainant or the member against whom the complaint has been lodged.

b. Purpose of the Procedure

1. The purpose of the *Procedure* is to outline processes by which CAPA may appropriately assess, monitor and account for the standards of practice within the membership.
2. The *Code* will act as a guide and a source of information for clients and the public in general and seeks to establish the rights and responsibilities of a client and counsellor in the therapeutic relationship.
3. The *Procedure* gives specific functionality to the *Code* at the point at which a complaint is made.

c. Application of the Procedure

1. This *Procedure* applies to all members of CAPA and across all aspects of their therapeutic practice.
2. The administration of this *Procedure* will follow protocols laid down from time to time by the Executive of CAPA. These will be administered by the *Ethics and Professional Standards Committee* of CAPA and will be managed by the Chair of that Committee who shall be a member of the Executive of CAPA.

d. Limitations

1. Any complaint against a member of CAPA must be lodged within five years of the alleged breach of professional standards. Failure to do so will result in the complaint being rejected.
2. Where a person alleges a breach of professional standards that involves alleged criminal behaviour, CAPA will advise the complainant that he or she should gain legal advice and may, if he or she wishes, approach the police in respect of their complaint.



3. CAPA reserves the right to refer matters of alleged misconduct to any relevant authority with the consent of the complainant where possible.
4. Any complaint lodged with CAPA that is also being investigated by the police or is before any court will not be assessed or brought to finalisation until the relevant legal matters are resolved.
5. CAPA does not possess any statutory or juridical authority. It therefore cannot impose fines on a member in respect of a particular complaint, or order compensation or costs against or in favour of any party to the complaint in respect of this *Procedure*.

e. Financial issues

1. CAPA is not responsible for any expenses incurred by any party to the complaint.
2. In respect of the suspension of any member pending the finalisation of the complaint procedure, no liability will be accepted by CAPA for any loss or expense incurred resulting from such a suspension even where a complaint is not upheld.

f. Processes

1. CAPA attempts to guide its members in good conduct in respect of the practice of therapy. To that end, it has established the *Code* to guide such an endeavour and the *Procedure* to facilitate the resolution of any complaint in respect of the *Code*.
2. In line with the principles stated within the *Code* (pp.7-8 of the *Code*), the primary aim of the *Procedure* therefore is to resolve matters of complaint with the least amount of intrusion into the lives of clients or practitioners.
3. In respect of any complaint brought to it regarding a member, CAPA will attempt to resolve matters in the simplest possible way.
4. This *Procedure* advocates a number of processes that may be suggested to the parties or applied by the Committee in respect of any complaint brought before it.
5. The range extends from mediation initiated and organised by both parties through to a Formal Hearing carried out by the Committee.
6. In taking such an approach, CAPA does not relinquish its responsibility to clients or the community and reserves the right, at any time, to instigate a Formal Hearing in respect of any complaint brought before it.
7. CAPA also reserves the right to apply sanctions at the conclusion of any complaint procedure and/or refer matters to the relevant civil authorities.



8. Where CAPA accepts a complaint and begins action in respect of this *Procedure*, it is incumbent on each party to comply with the processes outlined in this *Procedure* and any other protocol pertaining to this *Procedure* as enacted and published by CAPA from time to time.
9. Any failure to comply may result in the termination of CAPA's involvement with the complaint in question.
10. If such a termination process occurs, the Committee may consider making a recommendation to the Executive of CAPA to apply sanctions on the member.
11. In this case, the application of sanctions would be independent of the complaint itself and relate solely to the failure of the member to comply with the processes of the *Procedure*.

g. Suspension of membership pending an outcome

1. Having regard to the nature of the complaint, the Committee may make recommendation to the Executive that the complaint, warrants an urgent meeting between two members of the committee and the member, to determine if an immediate suspension of membership of CAPA, pending the finalisation of the complaint procedure, is to be implemented.
2. The member and complainant shall be notified in writing of this decision of the Executive.

h. Lapsed membership and resignation

1. Failure to renew membership during the course of complaints procedure will not cause the Committee to cease its deliberations.
2. The above stated rule also applies to a member who resigns his or her membership of CAPA during the course of the complaints procedure.

i. Dual accountability and distribution of findings

1. Where a member of CAPA is also a member of another professional body, CAPA reserves the right to consider matters of professional misconduct that may also be before another professional body.
2. Where it is considered just and proper to do so, CAPA reserves the right to distribute any findings of the Committee in respect of a proven complaint against a member to any other professional body to whom the member is also a member.
3. As a constituent member of the *Psychotherapy and Counselling Federation of Australia* (PACFA), CAPA shall notify PACFA of the



sanctions imposed on any member arising from action instigated under the terms of this *Procedure*.

j. Complaints against non-members

1. While CAPA cannot deal with complaints against individuals who are not members of CAPA, it nonetheless holds a broader social responsibility to clients and the profession.
2. Where a complaint in respect of a non-member is received, every effort should be made by CAPA and its membership to assist the person to make contact with the appropriate authority, where such exists.

s.2 The Complaint

It is imperative that members of CAPA, the profession and the general community understand the limitations in respect of CAPA's authority, particularly in respect of complaints. On that basis, a procedural model has been developed that considers both mediation as well as a Formal Hearing in respect of complaints.

a. Making a complaint

For a complaint to be accepted and dealt with by CAPA, it must satisfy the following Complaint Conditions:

1. The allegation must be in respect of a breach of the *Code of Ethics and Good Practice* in force at the time that the alleged breach occurred.
2. The member of CAPA against whom the allegation is made must be named in the formal complaint.
3. The person against whom the allegation is made must have been a member of CAPA at the time of the alleged breach and must be a member of CAPA at the time the complaint is made.
4. The allegation must be in writing, signed by the complainant and addressed to the Chair of the Committee.
5. The complaint must include the correct and full details of the complainant, including his or her name, a contact address and phone details. Contact details of the complainant will be maintained as confidential by CAPA.

b. Examination of the complaint

1. The member will be notified that a complaint has been received and that the complaint will now be examined to determine whether the complainant has a case with which to proceed.



2. Once a complaint has been received, the Chair of the Committee will convene an Examination Panel (EP) consisting of the Chair of the Committee and one other member of the Committee.
3. Members of the EP have an obligation to declare any potential or actual conflict of interest that may impinge upon the fair and just enactment of the complaint procedure.
4. The EP will carry out an examination of the complaint.
5. The purpose of this examination is to establish that the complaint complies with the complaint conditions outlined in s.2.a. of this Procedure.
6. The EP has the authority to reject the complaint on the basis that it does not comply with the complaint conditions as outlined in s.2.a. of this document.
7. The decision of the EP in respect of s.2.a of this Procedure shall be final.
8. Should the complaint be rejected, the member and complainant will be notified, in writing, of the outcome by the Chair of the Committee.

c. Initiating the complaint procedure

The following initial process will be enacted by the Chair of the Committee once a complaint is examined and judged by the EP to comply with the Complaint Conditions outlined in s.2.a of this Procedure.

1. The member and the complainant will be notified in writing that the complaint has been received and examined.
2. The member shall be given a copy of the complaint at the time of this notification. The complainant contact details will not be given to the member at any time.
3. The member shall be given 20 working days to respond to the complaint. This response, in the form of a written submission, must be forwarded to the Chair of the Committee.
4. This submission shall be made available to the complainant who will be invited to respond within 10 working days.
5. The complainant's submission in response shall also be given to the member.
6. The member will then be invited to make a final written response before an initial assessment process begins.



7. If no response is received from the member within 20 working days from the time they are notified of the complaint, an initial assessment of the complaint will be expeditiously undertaken.

d. Evidence

1. The original complaint and any subsequent submissions by any party to the complaint shall be considered evidence for the purpose of this procedure.
2. Each party to the complaint shall have access to all evidence.
3. Evidence to be considered by the Committee shall normally consist of the following documents:
 - i. The original complaint
 - ii. The member's written submission in response
 - iii. The complainant's written submission in response
 - iv. The member's final written submission in response
4. The initial assessment and any subsequent process shall not commence until all the evidence is submitted to the Chair of the Committee who shall distribute all evidence to both parties and the members of the Committee.
5. The exception to this rule occurs in the application of s.2.c.7. in this document.
6. CAPA reserves the right to seek independent legal advice on the evidence that is provided by the complainant and the member prior to the distribution of the material to the parties.

e. The initial assessment

1. This initial assessment of the complaint will be carried out by the Initial Assessment Panel (IAP), which shall consist of the Chair of the Committee and two other members of the Committee.
2. Members of the IAP have an obligation to declare any potential or actual conflict of interest that may impinge upon the fair and just enactment of the complaint procedure.
3. There are two aims of the initial assessment process.
4. The first aim is to establish whether there is sufficient detail in the complaint for the complaint mechanism to proceed further.
5. The second aim is to assess and make recommendation to the Committee in respect of the process for handling the complaint.



6. The IAP has the authority to reject the complaint on the basis that it does not comply with the complaint conditions as outlined in s.2.a. of this document.
7. The IAP shall assess each submitted and examined complaint and make recommendations to the Committee regarding whether mediation or Formal Hearing is the preferred course of action in respect of the complaint.
8. Where the IAP rejects the complaint on the basis that it does not comply with the complaint conditions as outlined in s.2.a., the decision of the IAP shall be final.
9. Both the complainant and the member shall be notified in writing by the Chair of the Committee of any final decision made by the Committee via the IAP.
10. Where the IAP rejects the complaint it does **NOT** go on the record of the member.
11. The complaint document is archived and will not be used in any future complaint proceeding.

s.3 Convening the Committee

1. After the IAP has completed the initial assessment process and accepted the complaint for processing, the Chair will convene a meeting of the Committee.
2. Members of the Committee have an obligation to declare any potential or actual conflict of interest that may impinge upon the fair and just enactment of the complaint procedure.
3. Where a conflict of interest is evident, the Chair of the Committee (or the President's nominee where the Chair possesses a conflict) shall nominate other member(s) for approval by the Executive.
4. When convened, the Committee will give consideration to the complaint with the initial aim of confirming a recommendation to the parties as to whether mediation is possible or a Formal Hearing is required.
5. The complainant and the member shall be notified by the Chair, in writing, of the recommendation of the Committee and that a representative of the Committee shall be in contact with both parties.



s.4 Mediation

In line with the principles established by the Code, and where possible, every effort must be made to resolve conflict with the least amount of intrusion by external authority into the lives of both the complainant and the member.

1. If mediation is considered to be a possible approach to the complaint, then the Committee will nominate 2 members of the Committee to meet with the complainant and the member to ascertain the viability of a mediation process.
2. If the outcome of that meeting is an agreement between the parties that mediation be attempted, both the complainant and the member shall be notified in writing of this with the request that the Committee is apprised of the progress and outcome of the mediation.
3. The Committee shall provide a list of possible mediators.
4. The costs of any mediation shall be borne by both the complainant and the member on a negotiated basis.
5. A member of the Committee will be appointed as the nominated liaison person. This person shall receive any progress reports on the mediation process and meet with the parties if that is requested and report back to the Committee.
6. The Committee's liaison person shall not act as a mediator. The conclusions of any meeting between the parties and the liaison person shall be minuted and agreed upon by the parties and the liaison person shall present this to the Committee.
7. If a complaint has not been resolved by the mediation process within 3 mediation sessions within one month, the Committee may proceed to initiate a Formal Hearing of the complaint
8. Whether resolution is achieved or a decision is made by the Committee to proceed to a Formal Hearing, all parties will be notified by the Chair, in writing, of the decision of the Committee.

s.5 The Process for Hearing a Complaint

a. The decision to instigate a Formal Hearing

1. A maximum of 3 mediation sessions are permitted at which point the complaint will proceed to a Formal Hearing.
2. All parties to the complaint shall be notified in writing of this decision.



b. Venue for the Formal Hearing

1. The Formal Hearing of any complaint will occur in the CAPA offices or at such place decided upon by the Chair of the Committee.
2. At least 10 working days written notice shall be given of any Formal Hearing.

c. Support persons

1. The member and the complainant may be accompanied to and at the Formal Hearing by another person who may provide support
2. Where a support person is present, that person is likewise bound by the Procedure and its protocols and any other directive given by the Chair of the Committee during the proceedings of the Formal Hearing.

d. The Formal Hearing

1. The Formal Hearing shall be attended by both parties, the Chair of the Committee and one other person from the committee.
2. The Formal Hearing shall not include the Liaison Person appointed in section 4.
3. The Formal Hearing shall be based on the written evidence as provided by the parties and any oral submissions made by the parties on the occasion of the hearing.
4. Each party shall be given 30 minutes at the hearing for the purpose of an oral submission.
5. The Chair of the Committee may allow for questions by members of the Committee at the end of each oral submission.
6. At the end of oral submissions and questions by the Committee, each party will be given another 10 minutes to make final submissions to the Committee.
7. At the conclusion of the Formal Hearing, the Committee will meet as required and in private to consider a response to the complaint. This response will comprise the specified conditions referred to in s.6.1.i.
8. Both the complainant and the member will be notified by the Chair, in writing, of the Committee's decision regarding the complaint after ratification of the Committee's decision by the Executive.



9. If ratification of the Committee's decision by the Executive includes any new facts or material, a further opportunity must be provided where the person affected is entitled to be heard.
10. Notification of the Committee's decision shall occur no later than 20 working days from the conclusion of the Formal Hearing.
11. If the complaint is upheld, the decision of the Committee and any sanctions posed will be published in Counsellor, the association's journal.
12. The level of detail to be published will be at the discretion of the Committee and based on the Committee's consideration of public interest issues and the severity of the Committee's findings resulting from the Formal Hearing.
13. Publication of the Committee's decision will be made after the expiration of 20 working days or at the conclusion of any appeal process.
14. The parties and/or the Committee may, at any stage during the Formal Hearing, request mediation as a course of action in respect of the complaint under consideration by the Committee.

s.6 Sanctions and Termination of Membership

1. Whether as a result of the complaint or as a result of the members failure to comply with the Procedure, sanctions will take the form of:
 - i. Membership subject to specified conditions for a specified period, OR
 - ii. Suspension of membership with an accompanying Rehabilitation Plan, OR
 - iii. Termination of membership.

Such sanctions will be discussed with the member prior to implementation.

2. Where conditional membership is applied, the member must be provided with details of the conditions of the sanction and a process for rehabilitation of his or her membership.
3. Where suspension of membership is applied as a part of the sanction, the member must be provided with details of the conditions of the sanction and a process for rehabilitation of his or her membership.
4. The document supporting the outcome will be known as the Rehabilitation Plan (the Plan).



5. The Plan must include any recommendations contained in the findings of the Formal Hearing.
6. The Plan shall be a negotiated document between the suspended member and a person nominated by the Committee.
7. If agreement can not be reached on The Plan then The Plan will be renegotiated between the suspended member and another person nominated by the Committee. This will be the final negotiation on The Plan
8. Any Plan shall be approved by the Executive.
9. The Executive will, on the recommendation of the Committee, appoint a Professional Liaison Person (PLP).
10. The PLP will mentor the member for the period of suspension, monitor the rehabilitation process and report back to the Committee on the progress as outlined in The Plan.
11. At the successful conclusion of the rehabilitation process, the Committee will make recommendation to the Executive regarding the lifting of any suspension on membership and the restoration of a member's rights and privileges.
12. Failure to comply with any sanctions as outlined in the findings of the Formal Hearing and the Plan may result in a further hearing resulting in an extension of the suspension or a termination of membership in CAPA.
13. The application of sanctions is the sole prerogative of the Executive of CAPA.
14. The lifting of a suspension of membership is the sole prerogative of the Executive of CAPA.
15. The Committee may make recommendation to the Executive of CAPA that the seriousness of the matter brought before it warrants the exercise of the ultimate sanction on the member, that of his or her termination of membership.
16. The termination of membership in CAPA is the sole prerogative of the Executive of CAPA and this decision is final.
- 17.

s.7 Appeals

Given the seriousness attached to the application of sanctions or the termination of membership of a professional body, it is important that an appeal process be in place for the reconsideration of the Committee's decision.



a. Grounds for an appeal

1. An appeal may be made on the following grounds:
 - i. The evidence forming the basis of the complaint does not support the finding of the Formal Hearing.
 - ii. The sanction is disproportionate to the findings of the Committee in respect of the complaint.
 - iii. There exists evidence to suggest that the proceedings of the Committee contained serious flaws and therefore created an injustice.
 - iv. New and relevant evidence is available that was not previously available to the Committee or the member concerned.

b. Time limitations

1. Any appeal against the findings of the Committee in respect of sanctions or termination of membership, must be lodged with the Chair of the Committee within 20 working days of the Committee's decision resulting from the Formal Hearing.
2. Any appeal lodged outside the 20 working days will normally be rejected.
3. Should either party to the conflict present new and compelling evidence that impacts on the substantive elements of the complaint, then the Chair of the Committee and the President of CAPA will give consideration to allowing an appeal outside of time.

c. Making an appeal

1. An appeal can only be made by the member of CAPA who was a party to the complaint in question.
2. Any appeal must be made in writing.
3. The appeal must be in the form of a letter of request to which is attached a submission in respect of the appeal, with any accompanying documentation that the member believes supports the appeal.
4. The submission and documentation must address the grounds for an appeal as outlined in s 7 a 1 i-iv of this document.

d. Establishing the Appeal Panel

1. On receipt of written request, the Chair of the Committee will contact the President of CAPA.



2. An Appeal Panel of no less than 3 members will be established by the Committee, to hear the appeal.
3. The Appeal Panel should not be constituted with any members of the Committee who originally engaged in the Formal Hearing.
4. The President will appoint the Chair of the Appeal Panel.

e. Format for the Appeal

1. Where an appeal is lodged under s.7 of this document, the appeal will be conducted by way of a re-hearing of the complaint in question.
2. The Appeal Panel will meet with the member against whom the complaint was originally lodged.
3. The member will have an opportunity for oral submissions that speak to the appeal documents.
4. The Appeal Panel will have access to the Formal Hearing documentation as well as the appeal documents.
5. After an oral submission by the appellant, members of the Appeal Panel will have an opportunity to ask questions of the appellant.
6. At the conclusion of the Appeal Hearing, the Appeal Panel will meet as required and in private to consider a response to the appellant.
7. Both the complainant and the member will be notified in writing of the decision of the Appeal Panel.
8. This shall occur no later than 20 working days from the conclusion of the Appeal Hearing.
9. If the appeal is dismissed and the complaint upheld, the original decision of the Committee and any sanctions imposed by the Executive will stand.
10. The Appeal Panel may, at its discretion, confirm the complaint but vary the sanctions imposed on the member, in which case the member will be given the opportunity to be heard on the matter.
11. The variation in sanctions imposed will be submitted to the Executive for confirmation.
12. If the original decision of the Committee was a recommendation for termination of membership, the Appeal Panel may also make a recommendation to the Executive in respect of this matter.



13. At the point of finalisation, the decision of the Executive shall be published in Counsellor, the association's journal.
14. The level of detail in the publication will be at the discretion of the Executive and based on the Committee/Appeal Panel's recommendation, and consideration of public interest issues and the severity of the findings resulting from the Formal Hearing and any appeal process.
15. Should the appeal be upheld, the original decision of the Committee shall be quashed.
16. The Executive's decision in respect of the complaint shall then be the recommendation of the Appeal Panel.
17. The decision of the Executive as recommended by the Appeal Panel shall be final.

s.8 Lifting of a Suspension of Membership

4. Where a suspension of membership has been applied by the Executive of CAPA for the duration of the processing of any complaint against a member, that suspension shall be automatically lifted once the matter is resolved in the member's favour.
5. In this case, the Chair of the Committee shall notify the member and the Executive, in writing, of the lifting of the suspension of membership.
6. The rights and privileges of membership are automatically re-instated at the time the suspension is lifted.
7. Where the Executive of CAPA has, on the advice of the Committee, imposed sanctions on a member, the effect of which is the suspension of membership, that membership may be reinstated on the completion of a Rehabilitation Plan.
8. At the completion of a period of suspension of membership resulting from the application of sanctions applied through the Procedure, the rights and privileges of membership shall be automatically reinstated.

s.9 Commencement and Effective Date

1. The Professional Conduct Procedure shall become effective after ratification of the document by the Executive of CAPA as a working document and at the time of publication of the document.
2. The Professional Conduct Policy and Procedure will apply to all complaints received by the association after the 14th August 2006.



s.10 Schematic View of the Complaints Procedure

