



Psychotherapy & Counselling  
Federation of Australia

# **PACFA**

## **Professional**

### **Conduct Procedures**

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# 1. Introduction

The Psychotherapy and Counselling Federation of Australia (PACFA) is a peak body and professional association for the counselling and psychotherapy profession. It is made up of individual members who are counsellors and psychotherapists and/or educators in the counselling and psychotherapy field, Member Associations which are professional associations for counselling and psychotherapy, and members of Member Associations who choose to be listed on the PACFA Register of qualified practitioners.

This document sets out PACFA's framework for the management of Complaints and Appeals about ethical breaches by PACFA Members or Registrants in relation to the PACFA Code of Ethics 2017.

The PACFA Complaints and Appeals processes set out in this document are not legal procedures and do not address legal matters. Parties to a complaint or appeal do not require legal advice to participate in this non-legal process, however they have the right to obtain legal advice if they wish to.

It is the responsibility of all PACFA Members, Registrants, Member Associations, and the parties to Complaints or Appeals to familiarise themselves with the PACFA Professional Conduct Procedures. These procedures form an essential part of PACFA's commitment to the protection of the public. PACFA Members and Registrants are required to inform clients, who indicate they may have a complaint or grievance about a service they have received, of the existence of these procedures and any other complaints procedure available in relation to the service provided.

## 2. Aim of the PACFA Professional Conduct Procedures

The aim of the PACFA Professional Conduct Procedures is to provide a transparent process for making complaints against PACFA Members or Registrants or for parties to a complaint to appeal decisions. In processing such Complaints and Appeals, PACFA aims to protect members of the public and the name and reputation of PACFA and the profession of Counselling and Psychotherapy.

The Procedures also provide a mechanism for the PACFA Ethics Committee to investigate alleged ethical misconduct in the absence of a formal complaint where a Reportable Breach (as defined in the PACFA Code of Ethics) is reported to PACFA or where a Member or Registrant is subject to criminal investigation in relation to alleged professional misconduct or other conduct impacting on their professional practice.

## 3. Principles relating to Complaints and Appeals

### 3.1 Effective Date

These Professional Conduct Procedures will apply to all complaints received by PACFA after the date of publication of these Procedures.

### 3.2 Compliance with the Professional Conduct Procedures

It is the duty of the parties taking part in Complaint or Appeal to comply with the requirements of the Professional Conduct Procedures as prescribed by PACFA in this document. Failure of a Complainant or person appealing to comply may result in the discontinuation of the Complaint or Appeal. Failure of a Member/Registrant to comply may result in withdrawal of PACFA membership or registration.

### 3.3 When will PACFA hear a complaint?

A complaint may be heard by PACFA if the Member/Registrant complained about is:

- a PACFA individual member in any membership category, (with limitations on complaints against Student Members as detailed in paragraph 3.3.1);
- a member of a PACFA Member Association who is listed on the PACFA Register (only in limited circumstances as detailed below).

### **3.3.1 Complaints against PACFA Members**

PACFA hears complaints against current individual PACFA members in any membership category, except the category of Student Member.

PACFA does not generally hear complaints against Student Members of PACFA as this is the responsibility of the training provider where the person is a student. Complaints against PACFA Student Members would be limited to their client work in the context of their training as PACFA does not endorse students to practice outside of their training.

PACFA will only hear a complaint where there is documented evidence of unethical conduct that may be in breach with the PACFA Code of Ethics 2017. Complaints may be made by:

- a) a complainant who has sought or received a service provided by a current Member or Registrant; or
- b) a legal guardian or other appropriately authorised adult who initiates a complaint on behalf of a minor and/or a vulnerable adult:
  - who has sought or received a service provided by a current Member or Registrant; and
  - lacks the capacity to make a complaint themselves; or
- c) a third party, who speaks on behalf of another vulnerable person, or people directly affected by the actions of a current Member or Registrant.

### **3.3.2 Complaints against Registrants belonging to Member Associations**

Complaints about a PACFA Registrant who belongs to a PACFA Member Association must be submitted to and heard by the PACFA Member Association to which the practitioner belongs, following the Code of Ethics and the complaint procedure put into place by that Member Association

PACFA will only hear a complaint about a Registrant who is a member of a Member Association if:

- a) the Member Association is unable to hear a complaint due to:
  - a conflict of interest within the Member Association's Executive Committee or sub-committees in the relation to one or both of the parties;
  - the complaint being of a serious or complex nature that is deemed to be outside the expertise of the Member Association;
  - the Member Association not having jurisdiction under its Code of Ethics to hear the complaint;

OR

- b) the complainant had a complaint heard by a Member Association against a Member Association member who is a current PACFA Registrant and the complainant is not satisfied that fair and due process was followed.

In circumstances where the Member Association to which the Registrant belongs is unable to hear a complaint, PACFA will consider hearing the complaint from a complainant who has a valid reason to ask PACFA to hear a complaint instead of the Member Association. The reason for making the complaint to PACFA instead of the Member Association must be clearly justified.

## **3.4 When will PACFA refuse to hear a complaint?**

### **3.4.1 Complaints against non-members and non-Registrants**

PACFA will not consider complaints against a person who is not a current Member or Registrant unless the Member or Registrant resigned their PACFA membership or registration, or failed to renew with PACFA, at any time after the complaint was made to PACFA (see paragraph 3.5 below).

### **3.4.2 Complaints before other complaints bodies**

PACFA will not investigate matters that are substantially the same as a complaint before a Health Care Complaints Entity in any State or Territory. This is considered a duplication of the complaints process.

PACFA will generally not investigate a matter that is substantially the same as a complaint before another professional association for counselling, psychotherapy or a related professional field, or a relevant government or non-government agency including State or Federal police, in order to avoid duplication of process. However, where the matter is a Reportable Breach, PACFA may investigate the complaint in accordance with these Professional Conduct Procedures but will not do so until the complaint to the other body has been concluded.

In certain circumstances, if appropriate, PACFA may investigate a matter that is a Reportable Breach which is also subject to criminal investigation. Such an investigation would be conducted in accordance with the process in paragraph 5.9. In this situation, the Ethics Committee may suspend the Member or Registrant pending the outcome of a criminal investigation. Where formal legal proceedings are brought to PACFA's attention, the PACFA investigation will take into consideration any directions or orders of the courts or relevant authority.

### **3.5 Lapsed registration or membership and leave of absence**

Resigning from PACFA membership or registration, or taking leave of absence, does not affect the obligation on a Member or Registrant to participate in a Complaint or Appeal or to implement any sanctions imposed as a result of a Complaint or Appeal.

Once a Complaint or Appeal has been commenced, resigning from PACFA membership or registration, or failing to renew PACFA membership or registration, or taking leave of absence, will not terminate nor invalidate the processing and/or hearing of a complaint by PACFA.

If a Member or Registrant is unable to be pursued due to the Member/Registrant's failure to participate or withdrawal from the process, the Professional Conduct Panel will determine the result and send the findings to the Complainant and the Member/Registrant. The records will note the lack of engagement by the Member/Registrant and the findings will need to be satisfactorily complied with for successful re-application for PACFA membership or PACFA registration in the future.

When a Member or Registrant cannot be contacted despite reasonable efforts by the PACFA Office to locate them using email, internet searches, phone and ordinary mail, the complaint cannot proceed.

### **3.6 Administration of Complaints and Appeals**

The administration of Complaints and Appeals will be in accordance with these Professional Conduct Procedures as approved by the PACFA Board and as amended from time to time. Complaints and Appeals will be administered by the PACFA Office in conjunction with the PACFA Ethics Committee.

Data on complaints will be kept for the purposes of research and statistical analysis with the aim to further the research and governance of PACFA by carrying out audits and/or research into complaints. Any published research and/or analysis will not contain any personally identifiable information.

### **3.7 Costs incurred by parties to Complaints or Appeals**

PACFA is not responsible for travel or any other expenses incurred by a Complainant, person appealing or Member/Registrant, or any support person or representative who may be assisting a party in a Complaint or Appeal heard by PACFA. In addition, PACFA has no capacity to order one party in a Complaint or Appeal to pay another party's costs.

### **3.8 Records of Complaints and Appeals**

Records of Complaints and Appeals will be kept for 50 years or until the practitioner concerned dies, or sooner if PACFA ceases to exist.

When considering a Complaint, PACFA reserves the right to take into account other complaints made or investigated previously when a subsequent Complaint is made about the same Member or Registrant.

Where the outcome of a complaint has resulted in the termination of PACFA membership or registration, this outcome will be considered in any future re-application for PACFA membership or registration by the former Member or Registrant.

### **3.9 Notification of findings to other professional bodies**

PACFA reserves the right to notify other professional bodies and/or agencies about complaints and to distribute any findings upheld against a Member or Registrant, where it considers it right and just to do so in the interests of public safety.

When a Registrant is suspended or deregistered by PACFA as a result of an upheld Complaint, PACFA will display the former Registrant as *suspended* or *deregistered* on the PACFA Register for the duration of the sanction.

### **3.10 Referral of complaints to other bodies**

In some cases, PACFA will refer matters to the relevant Health Care Complaints Entity or other relevant professional body. This may occur under the following circumstances:

- a) the person complained about is no longer a Member or Registrant;
- b) the complaint is of a serious nature and the Member or Registrant has had a previous complaint upheld by a HCC Entity;
- c) the complaint is of a serious nature and is of such significant complexity that PACFA would not have the resources or expertise to hear the complaint; or
- d) criminal proceedings are underway in relation to the complaint.

## **4. Forms of ethical misconduct**

There are three types of ethical misconduct that can be identified in a decision made about a Complaint or Appeal considered by PACFA:

- Professional Misconduct
- Serious Professional Misconduct
- Bringing the Profession into Disrepute

### **4.1 Professional Misconduct**

A finding of Professional Misconduct signifies that the Member or Registrant has contravened the ethical and behavioural standards that should reasonably be expected of members of the counselling and psychotherapy profession. Misconduct is defined as acting in contravention of the written and unwritten guidance of the profession. A finding of misconduct may occur in circumstances where the Professional Conduct Panel findings include a breach of the PACFA Code of Ethics that did not cause serious harm.

### **4.2 Serious Professional Misconduct**

A finding of Serious Professional Misconduct signifies that the service(s) for which the Member or Registrant is responsible has/have fallen below the standards that would reasonably be expected of a Member or Registrant exercising reasonable care and skill.

A finding of Serious Professional Misconduct is appropriate if the misconduct is of sufficient seriousness or caused such serious harm to merit suspension of a Member or Registrant for a period of time and/or the withdrawal of PACFA membership or registration.

### **4.3 Bringing the Profession into Disrepute**

A finding of Bringing the Profession into Disrepute signifies that the Member or Registrant has acted in such an infamous or disgraceful way that the public's trust in the profession might reasonably be undermined.

A finding under this heading must amount to disgraceful professional conduct which had some connection with a professional role in counselling or psychotherapy. It ought not to be concerned with matters that can reasonably be viewed as solely personal and private.

A finding of Bringing the Profession into Disrepute will result in permanent withdrawal of the membership or registration of the person against whom the complaint was upheld, in addition to any other sanctions considered appropriate to the circumstances.

## **5. Principles for the Grievance and Complaint process**

### **5.1 Informal Resolution**

Before submitting a grievance or complaint to PACFA, the person who intends to complain (the aggrieved person) is encouraged to attempt to resolve the issue informally with the Member or Registrant complained against (the Member/Registrant).

### **5.2 Requirements to make a Grievance or Complaint**

To make a grievance or complaint to PACFA, the following requirements must be satisfied:

- a) The person complained about (the Member/Registrant) is a Member of PACFA or a PACFA Registrant at the time the grievance or complaint is lodged or a member of a PACFA Member Association who is listed on the PACFA Register at the time the grievance or complaint is lodged.
- b) The grievance or complaint must be made on one of the official PACFA Forms: either the Grievance Form or the Complaint Form. Both Forms require details of the aggrieved person and the Member/Registrant and conduct being complained about.
- c) The grievance or complaint is dated and signed by the aggrieved person and received by the PACFA Office.

A grievance or complaint not satisfying the above requirements will not be accepted or processed by PACFA.

### **5.3 Receipt of a Grievance or Complaint**

The PACFA Office acknowledges receipt of the Grievance or Complaint of the relevant PACFA Form within five working days and submits it to the PACFA Ethics Chair.

The PACFA Ethics Committee to determine within ten working days of the date of reception if it is appropriate for PACFA to consider the matter. There are three possible outcomes:

- a) It is not appropriate for PACFA to consider the matter because:
  - the grievance or complaint is trivial or vexatious; or
  - there is a concern that the aggrieved person has been unduly influenced by a third party; or
  - there is no alleged breach of the PACFA Code of Ethics that can be identified.
- b) It is appropriate for PACFA to consider the matter for Alternative Dispute Resolution (ADR), in which case:
  - The aggrieved person will be informed in writing that a member of the Professional Conduct Pool who will act as an Intermediary (IM) will contact them within the five coming working days for a further conversation, either by video link or telephone or, if possible, face-to-face, to hear their experience, their concerns and the outcome that they are hoping to achieve.

- Within that conversation, the Intermediary will help the aggrieved person to clarify if they wish to proceed and, if so, how they wish to proceed (attempting Alternative Dispute Resolution, if appropriate or submitting a Formal Complaint).
- c) The matter is particularly serious or not appropriate for resolution by ADR and it is recommended that a Formal Complaint be lodged (see section 6 below for the procedure to be followed).

If the Ethics Committee determines that the grievance or complaint should not be considered by PACFA, the person who intends to complain will be formally notified of this outcome in writing, including the reasons for the Ethics Committee's determination. This decision is final.

#### **5.4 Alternative Dispute Resolution**

Wherever possible, Alternative Dispute Resolution is the preferred process for seeking resolution of a Grievance or a Complaint. It is less stressful and less time consuming for all persons involved in the process and is more likely to promote positive outcomes that are acceptable by all persons involved.

Alternative Dispute Resolution, in the context of a Grievance or a Complaint made to PACFA, is a non-legal process, similar to mediation. It is facilitated by a PACFA Clinical Registrant who acts as an Intermediary in the process and who has mediation skills.

See section 6 below for the procedure to be followed.

If it is determined that Alternative Dispute Resolution is appropriate, the agreement of both parties to participate in the process is required.

#### **5.5 Formal Complaint**

Where Alternative Dispute Resolution is not an appropriate option, or where a party refuses to undertake ADR, or where ADR has been undertaken but the matter was not resolved, the Complaint will proceed to a Formal Complaint using the Professional Conduct Procedures if Complainant wishes to pursue this option.

Formal Complaints are heard by a Professional Conduct Panel (PCP). The PCP is a volunteer Panel appointed solely for the purpose of hearing a specific Complaint. It generally consists of three people: a member of the Ethics Committee, a PACFA Clinical Registrant, and an Independent Person. Where an Independent Person is not available, a second PACFA Clinical Registrant is allocated to the Panel. From the Panel, a Chair is appointed, however the Chair may not be the Independent Member.

The PACFA Ethics Committee member who is participating in the PCP will not participate in PACFA Ethics Committee meetings or electronic communications whenever this complaint is discussed.

PCP members are required to declare any conflicts of interest they may become aware of once they have been issued with the names of the Complainant and Member/Registrant. PCP members are required to consider any factors that may influence their ability, or be seen to influence their ability, to be impartial. All panel members will receive a conflict of interest declaration that they will be asked to sign and return to the PACFA Office before the PCP can convene.

The PCP will convene, via teleconference, web conference or in person, and consider all of the information provided in order to hear the complaint. The PCP may request clarification from the Complainant and the Member/Registrant in order to hear the Complaint. This request may include interviews with the parties involved or additional written documentation.

#### **5.6 The decision**

If Alternative Dispute Resolution is the chosen process and if the matter was resolved (see below 6.3.) the outcome is signed by the aggrieved person, the Member/Registrant and the Intermediary. There will be no further action taken and no Formal Complaint will be heard. If the matter was not resolved a Formal Complaint may be lodged.



If a Formal Complaint is heard, the decision of the PCP is set out in a PCP Report to the Ethics Committee. The PCP Chair is responsible for preparing the PCP Report for the PACFA Ethics Committee within 20 working days of receiving all relevant information about the complaint from the PACFA Office.

The PCP Report consists of a PCP Findings Report and a full PCP report.

The PCP Findings Report is a succinct Report which includes:

- the findings of the PCP in terms of the provisions of the Code of Ethics that the PCP finds have been breached;
- the recommendations in terms of sanctions to be applied.

The PCP Findings Report will be sent to both parties after having been endorsed by the Ethics Committee.

The full PCP Report is intended to inform the PACFA Ethics Committee when examining the PCP findings and recommendations. It is confidential and includes:

- details of supporting documents and the process followed by the Panel;
- the findings of the PCP;
- the recommendations for the Ethics Committee;

The full PCP Report will be kept by the PACFA Office together with all relevant documentation in a confidential file.

## **5.7 Sanctions**

### **5.7.1 Imposition of sanctions**

The Professional Conduct Panel, after determining the findings, may impose or recommend one or more sanctions. These sanctions may include:

- undertaking specified supervision, professional development or additional training
- directed communication by the Member/Registrant to the Complainant;
- temporary suspension from PACFA membership or registration; temporary disqualification from eligibility for PACFA membership or registration;
- permanent de-registration with PACFA; or
- any other action deemed suitable by the Professional Conduct Panel.

### **5.7.2 Lifting of sanctions**

Practitioners against whom sanctions are imposed are required to provide evidence that the sanctions have been fulfilled within the required time line.

The PACFA Office will monitor implementation of sanctions against Members or Registrants and keep the Ethics Committee informed.

The Member or Registrant subject to the sanctions will be notified in writing of when the sanctions have been fulfilled, either, depending on the nature of the sanction, because specific actions required have been completed, or because the specified timeline of the sanctions has expired.

### **5.7.3 Failure or refusal to comply with sanctions**

Failure or refusal to comply with a finding or sanction may result in the Member or Registrant being immediately removed from the PACFA Register and/or in their permanent disqualification from PACFA membership or registration.

The Member or Registrant subject to the sanctions will be notified of any such decision in writing.

## **5.8 Publication of adverse findings**

The withdrawal of PACFA membership or registration following an adverse finding in a Professional Conduct Procedure will be published on the PACFA website, in eNews and elsewhere as the PACFA Ethics Committee and PACFA Board considers appropriate and just, in the interests of public protection.

## **5.9 Investigations initiated by the PACFA Ethics Committee**

An investigation may be initiated by the PACFA Ethics Committee in the absence of a complaint in the following circumstances:

- A report is received by PACFA of a Reportable Breach by a Member or Registrant; and
- The Ethics Committee forms a reasonable belief that the Member or Registrant has behaved in a way that constitutes a Reportable Breach.

In such a case, the Ethics Committee would consider the seriousness of the breach and, accordingly, either:

- undertake a simple investigation conducted by two members of the Ethics Committee gathering and considering all available evidence and making a determination; or
- conduct a full investigation in the same way as if a Complaint had been made about the alleged misconduct with a Professional Conduct Panel being formed to consider the allegations.

Sanctions may be applied in the same way that sanctions can be applied in response to complaints.

# **6. The Procedure step by step**

## **6.1 Initial Contact with the PACFA Ethics Officer**

1. Initial contact by the person who intends to complain (the aggrieved person) with the PACFA Ethics Officer will include the responsible staff member asking the following questions:
  - Is the practitioner who is the subject of the grievance a PACFA Individual Member or a PACFA Registrant?
  - If the complaint is against a Registrant who is not a PACFA individual member, has the complaint been submitted to the practitioner's Member Association?
  - Has there been any attempt by the complainant to resolve the matter informally?
  - Has the complaint been lodged anywhere else?
  - Is there any legal proceeding underway regarding this matter?
  - If either of the last two questions have been answered 'yes', these procedures need to be completed before any investigation by PACFA can take place.
2. The PACFA Ethics Officer informs the aggrieved person that if they intend to pursue, the next step will be for them to lodge a Grievance that will be submitted to the PACFA Ethics Chair to determine if it is appropriate for PACFA to consider the matter.

## **6.2 Lodging of a Grievance**

1. A Grievance must be made using the PACFA Grievance Form which sets out:
  - Details of the person making the grievance (the aggrieved person)
  - details of the person they have a grievance against (the Member/Registrant)
  - the conduct they have a grievance about (this being a summary of the initial conversation the aggrieved person had with the PACFA Officer)
2. The PACFA Office acknowledges receipt of the Grievance within five working days.
3. The Grievance Form will be submitted to the PACFA Ethics Chair to determine within ten working days if it is appropriate for PACFA to consider the matter taking into account the requirements and options in clause 5.3.

### **6.3 Alternative Dispute Resolution**

1. The Intermediary is selected by the Ethics Committee from the Professional Conduct Pool after determining that there is no potential conflict of interest.
2. The Intermediary will have a conversation with the aggrieved person within five working days, either by video-link or telephone or, if possible, face-to-face, to hear their experience, concerns and desired outcomes and determine if and how they wish to take the action further.
3. If ADR seems to be appropriate to both the Intermediary and the aggrieved person, the Intermediary will determine with the aggrieved person what is to be conveyed to the person they have a grievance against (the Member/Registrant).
4. The PACFA Office will then inform the Member/Registrant that a grievance has been lodged against them and that an Intermediary will contact them to have a conversation with them within five working days, either by video-link or telephone or, if possible, face-to-face. The Intermediary conveys the substance of the grievance to the Member/Registrant.
5. In that conversation with the Member/Registrant, the Intermediary will hear the Member/Registrant's experience, concerns and wished outcomes. The Intermediary will determine with the Member/Registrant what is to be conveyed back to the aggrieved person and if the Member/Registrant agrees to Alternative Dispute Resolution.
6. The Intermediary will then inform the aggrieved person of the Member/Registrant's position.
  - Depending on the outcome of these first individual contacts, both the aggrieved person and the Member/Registrant may agree with the Intermediary to continue with ADR.
  - If ADR is not appropriate, or if one or both of the persons involved do not wish to continue ADR, the matter will proceed to a Formal Complaint if the aggrieved person still wishes to pursue a Formal Complaint.
7. The ADR meeting (optional)
  - If a meeting is considered helpful in the ADR process, a meeting between both persons concerned and the Intermediary is set up by simultaneous electronic communication or telephone if video link is not possible.
  - The meeting is conducted by the Intermediary and aims to reach a resolution between both persons concerned.
  - The ADR will only have two possible outcomes either 'the matter was resolved' or 'the matter was not resolved', the discussion being confidentially kept between all the persons present (the aggrieved person, the Member/Registrant, the Intermediary).
  - The outcome of the Alternative Dispute Resolution is documented (as above) and signed by the Intermediary and by both persons present. No further records of what took place during the ADR meeting are kept.
  - If the matter was resolved, there will be no further action taken and no Formal Complaint will be heard.
  - If the matter was not resolved and if the aggrieved person still wishes to pursue a Formal Complaint, the Complaint will proceed to a Formal Complaint using the Formal Complaint process in paragraph 6.5.

### **6.4. Submission of a Complaint**

1. A complaint is submitted to the PACFA office via email using the PACFA Complaint Form. The Complaint Form includes the same information as the Grievance Form and some additional information required to hear the matter as a Formal Complaint.
2. If the PACFA Office receives the Grievance Form, the ADR process is followed.
3. If the PACFA Office receives the Complaint Form, the ADR process will be followed first. If ADR is not appropriate, the matter follows the Formal Complaint Procedure.

4. The PACFA Office acknowledges receipt of the Grievance or Complaint within five working days.

## **6.5 Formal Complaint Procedure**

1. If ADR is not possible or has failed, the matter will be dealt with as a Formal Complaint if the person who complains wishes to pursue this option
2. The Member/Registrant is advised of the Complaint and is sent Section 5 of the PACFA Complaints Form (Details of the complaint) and Section 6 (What outcomes would help to resolve the complaint) and is advised that a response to the complaint is to be provided within twenty working days.
3. Once the Member/Registrant's response has been received, the PACFA Office informs both the Complainant and Member/Registrant that a Professional Conduct Panel (PCP) will be formed by the Ethics Committee within fifteen working days. Where an extension of time is required to form the PCP, the Ethics Committee communicates the reasons for the extension time to the Complainant and the Member/Registrant, via the PACFA Office.
4. The PCP Chair and the two other PCP members will be determined by the PACFA Ethics Committee.
5. Conflict of Interest Forms are sent via email to all PCP members by the PACFA Office for return within 5 working days.
6. Details of the final PCP members are communicated to the Complainant and Member/Registrant with a request for email confirmation within 5 working days.
7. If no reply is forthcoming from one or both parties, the PACFA Office will contact the non-replying party or parties by phone to confirm receipt.
8. The documentation the Complainant and the Member/Registrant supplied to the PACFA Office regarding the complaint will be submitted to the PCP with instructions to hear the complaint and draft their reports within twenty working days. No other documentation can be provided by the parties once the hearing has started, except where there is a specific requirement for additional information by the PCP Chair.
9. The PCP Report, including the PCP Findings Report and the full PCP Report with its recommendations is submitted to the PACFA Ethics Committee for approval via the PACFA Office by email. The PACFA Ethics Committee will review the PCP Report within ten working days.
10. If the PACFA Ethics Committee has any concerns about the Reports and recommendations not being appropriate or complete, it may decide not to approve the Reports and recommendations.
11. If the reports are not approved, the PCP may be required to re-draft the reports with input from the PACFA Ethics Committee, this to be completed within a further ten working days.
12. Once the PCP Report including the Findings Report are approved by the Ethics Committee, the Findings Report is sent by email to the Complainant and Member/Registrant by the PACFA Office with a request for confirmation of receipt. If no receipt is received a hard copy of the Findings Report will be sent by ordinary mail. The Complainant and Member/Registrant have twenty working days, from the date the report is sent, to lodge an Appeal.
13. The PACFA Office will monitor compliance with recommendations within the findings and report all outcomes and processes to the PACFA Ethics Committee and the committee will determine if further sanctions are required.

## **7. Principles for the Appeal process**

### **7.1 The grounds under which an Appeal will be considered**

An Appeal will only be considered by PACFA in relation to the following Appeal Grounds:

- a) There is evidence to suggest that a procedural impropriety may have had a material effect on the findings and recommendations of the Professional Conduct Panel;
- b) There is new evidence that warrants consideration of an appeal that was not available at the time of the Professional Conduct Hearing, subject to the conditions described in Section 7.2.

### **7.2 The requirements an Appeal must satisfy**

An Appeal must satisfy the requirements below. Appeals that do not satisfy these conditions will not be accepted or addressed under these procedures.

- a) The Appeal must be in writing and be made on the official PACFA Appeal Form. The person appealing must identify the grounds under which the appeal is being made. Where relevant, the Appeal Form should provide a detailed account of the events giving rise to the Appeal which must include relevant, new and detailed information, including dates. Reference should be made to the standards of practice in force at the time, as outlined by the PACFA Code of Ethics, relevant to the Appeal.
- b) The Appeal must be received by PACFA within 20 working days of receipt of the report from the original Complaint.
- c) The Appeal must be dated, signed and received by the PACFA Office.
- d) The PACFA Office will acknowledge receipt of the appeal within 5 working days.

### **7.3 The receipt of an Appeal**

The Appeal will be submitted to the Ethics Committee, whereupon the Ethics Committee will determine whether:

- it is appropriate that the Appeal proceeds through the PACFA Appeal Procedure;
- to refer it back to the person appealing for further information/clarification; or
- it is not appropriate for the Appeal to proceed.

If the Ethics Committee determines that it is not appropriate for the Appeal to proceed, the person appealing will be formally notified of this outcome in writing. This decision is final and cannot be further appealed.

If it is determined that the Appeal may proceed, the person appealing and the subject of the Appeal to the Appeal will be formally notified in writing that the Appeal is proceeding. The PACFA Office, in consultation with the Chair of the Ethics Committee, will then commence the Appeal Procedure.

### **7.4 The hearing of the Appeal**

The hearing of an Appeal will follow the Appeals Procedure (see Section 8 of this document).

The first part of this procedure is the formation of the Professional Conduct Appeal Panel (PCAP). The PCAP is a volunteer committee appointed solely for the purpose of hearing a specific Appeal. It consists of two PACFA Clinical Registrants, one of whom will Chair the Appeal Panel.

PCAP members are required to declare any conflicts of interest they may recognise once they have been issued with the names of the person appealing and the subject of the Appeal. Panel members are required to consider any factors that may influence their ability, or be seen to influence their ability, to be impartial. All panel members will receive a conflict of interest declaration and will be asked to sign and return these forms to the PACFA Office.

The PCAP will convene, via teleconference, web conference or in person, and consider all of the information provided in order to hear the Appeal. The PCAP may request clarification from the person appealing and the subject of the Appeal when hearing the Appeal. This request may include interviews with the parties involved or additional written documentation.

## **7.5 Appeal outcomes and actions**

There are two possible outcomes to an appeal:

- a) The Appeal is not upheld because the person appealing failed to establish one or more of the two grounds for appeal set out in clause 7.1.
- b) The Appeal is upheld because the person appealing successfully established one or more of the two grounds for appeal set out in clause 7.1.

Where the Appeal is upheld, the following actions may be taken by the PCAP:

- a) The original decision may be confirmed;
- b) The original decision may be amended to reflect the Appeal findings;
- c) Sanctions may be applied in accordance with clause 5.8 if appropriate;
- d) In exceptional circumstances, a new hearing may be ordered.

## **7.6 The decision**

The decision will be communicated to both parties by the Ethics Committee. This decision is final and cannot be further appealed.

The decision of the PCAP is set out in a PCAP Report to the Ethics Committee. This is a detailed report including all supporting information and background on the PCAP decision making process.

The PCAP Report includes a Findings Report which is a summary of the decisions of the PCAP and findings which is sent to both the person appealing and the subject of the Appeal.

# **8. The Appeal Procedure step by step**

## **8.1 Initial inquiries**

1. Initial queries regarding the submission of an Appeal by a Complainant or subject of the Appeal is via the PACFA Office.
2. The PACFA Office will assist the person to determine if an Appeal is an appropriate option for them in terms of the requirements to appeal and identify the appeal grounds.
3. The PACFA Office will enquire whether a further complaint has been lodged elsewhere as it may not be appropriate for PACFA to consider an Appeal if it has already been taken to another body such as a Health Care Complaints Entity or another professional association or if the complaint is the subject of legal proceedings.
4. The PACFA Office will provide the person appealing with the latest date by which this Appeal must be submitted and, if required, supply the PACFA Appeal Form and any relevant documentation (e.g. PACFA Code of Ethics).

## **8.2 Submission of an Appeal**

1. The PACFA Office receives the completed Appeal Form. Any Appeal must be submitted within twenty working days of receipt of the report from the original complaint.
2. The PACFA Office will acknowledge receipt of an Appeal within five working days and will inform the person appealing that the Appeal and any accompanying documentation will be forwarded to the PACFA Ethics Committee for initial consideration.

### 8.3 Appeal Procedure

1. The PACFA Ethics Committee will determine, within ten working days of having received the Appeal, whether it is appropriate for the Appeal to proceed, and inform the PACFA Office of its decision.
2. If the PACFA Ethics Committee determines that it is not appropriate for PACFA to hear the Appeal, this decision and accompanying rationale will be communicated to the person appealing via the PACFA Office.
3. If the PACFA Ethics Committee determines that the Appeal should be heard by PACFA, then:
  - The PACFA Office will inform the person appealing that the Appeal is proceeding.
  - The subject of the Appeal is sent Section 5 of the PACFA Appeal Form (concerning the details of the Appeal) by the PACFA Office and has 20 working days to provide a response.
4. Conflict of interest forms will be sent to all PCAP members by the PACFA Office and must be returned within five working days.
5. Details of the final PCAP members are communicated to the parties by the PACFA Office with a request for email confirmation within five working days that they have no objection to the designated Panel members. If no reply is forthcoming from either party, the PACFA Office will contact the non-replying party or parties by phone to establish confirmation of receipt of communications.
6. All Appeal documentation is supplied to the PCAP via email with instructions to produce a Report within 20 working days.
7. The PCAP Chair will keep the PACFA Office informed of progress with the Appeal process as it proceeds. The PACFA Office will ensure that the PACFA Ethics Committee Chair is informed of any communications received relating to the Appeal.
8. The completed PCAP Report with recommendations and the Findings Report are submitted via email to the PACFA Ethics Committee Chair via the PACFA Office.
9. Within ten working days, the Ethics Committee will either:
  - approve the reports and recommendations; or
  - not approve the reports and recommendations and provide reasons. The Committee may request the PCAP to re-draft the reports with input from the Ethics Committee Chair, within ten working days.
10. Once the Reports are approved by the PACFA Ethics Committee, the Appeal is finalised.
11. The findings as detailed in the Findings Report are sent via email to the person appealing and the subject of the Appeal with a receipt confirmation request by the PACFA Office. If no confirmation of receipt is received a hard copy of the report will be sent by postal mail posted.
12. If the appeal is upheld, the PACFA Office will monitor the compliance of recommendations within the report and report all outcomes and processes to the Ethics Committee Chair.

## 9. Review of Professional Conduct Procedures

These procedures will be reviewed regularly and at least every two years by the PACFA Ethics Committee to ensure they reflect current complaints handling processes within PACFA and that they accord with current best practice.

Where changes to the procedures are required, these are to be approved by the PACFA Board.

## 10. Definitions

'Alternative Dispute Resolution' is a step in the PACFA complaint process which aims to resolve a grievance amicably with the support of an Intermediary. ADR is optional and only takes place in appropriate matters where both parties agree to participate in the process.

'Appeal Form' is the document to be completed and formally submitted to the PACFA office by a previous Complainant or subject of the Appeal in order to appeal the outcome of a complaint.

'Person appealing' refers to the individual who initiates 'PACFA Appeal Procedure' using the 'PACFA Appeal Form' as outlined above.

'Complainant' means any person who makes a complaint under these procedures.

'Complaint Form' is the form to be completed and formally submitted to the PACFA Office by a Complainant in order to make a complaint against a Member or Registrant.

'Ethics Committee' is the Committee established in accordance with the PACFA Constitution made up of suitable volunteer counsellors or psychotherapists. The Committee has delegated responsibility for ethical matters in PACFA. The Committee provides ethical perspectives on complaints, advice and documentation as required by the PACFA Board or PACFA Office.

'Grievance' is a sort of complaint that is preliminary to a Formal Complaint. The parties to a grievance may seek to resolve a grievance informally through Alternative Dispute Resolution.

"Grievance Form" is the form to be submitted to the PACFA Office when bringing a grievance against a Member or Registrant.

'Independent Person' on a Professional Conduct Panel is someone who is not a member of the Counselling and Psychotherapy profession.

'Health Care Complaints Entity' (HCC Entity) is the government appointed body in each State or Territory responsible for hearing complaints against counsellors or psychotherapists.

'Member' means an Individual Member of PACFA.

'Member Association' refers to any counselling and psychotherapy association that is a member of PACFA.

'PACFA Office' refers to the staff employed by PACFA with responsibility for administering ethical complaints and monitoring compliance with decisions where a complaint is upheld against a Member of Registrant.

'Professional Conduct Panel' (PCP) means the volunteer panel appointed by PACFA solely for the purpose of addressing a specific Complaint. It generally consists of a member of the PACFA Ethics Committee, one or two PACFA Clinical Registrants, and an Independent person. One member of the Panel is appointed to Chair the Panel.

'Professional Conduct Appeals Panel' (PCAP) is a panel appointed solely for the purpose of addressing a specific appeal.

'Registrant' means a member of a PACFA Member Association who is currently listed on the PACFA Register of counsellors and psychotherapists.