



**ARCAP response to Consultation on
Options for Regulation of
Unregistered Health Practitioners**

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For further information contact:

Professor Ione Lewis
President PACFA natpres@pacfa.org.au

Or

Mr Philip Armstrong
CEO ACA

Philip@theaca.net.au

Introduction

Australian Register of Counsellors and Psychotherapists (ARCAP)

PACFA and the Australian Counsellors' Association (ACA) are collaborating to establish a national Register of counsellors and psychotherapists who meet agreed professional training standards and standards for experience, clinical supervision and ongoing professional development. ARCAP Pty Ltd is jointly owned and operated by PACFA and ACA. From 1 July 2011, practitioners listed on the PACFA and ACA Registers who already meet training requirements and have demonstrated the required hours of practice experience and clinical supervision will be eligible to apply for registration and listing on the ARCAP Register as 'ARCAP Counsellor' and 'ARCAP Psychotherapist'.

ARCAP aims to provide greater protection for the public through professional consensus about required standards of training and practice. The self-regulation process must encompass the whole field in order to achieve unification. This will enable consumers to make informed choices about seeking help from appropriately qualified, professional counsellors and psychotherapists (Schofield, 2008).

ARCAP is an important means to unify the counselling and psychotherapy professions by establishing national standards for Registration requirements and ethical practice. The joint operation of ARCAP by PACFA and ACA represents a strong mandate from the profession for these standards.

ARCAP Ethics Policies and Guidelines

ARCAP has developed its Code of Conduct and complaint procedures (Appendix One) in consultation with ACA and PACFA to ensure the ethical conduct of counsellors and psychotherapists and a strong mechanism for investigating complaints made by members of the public or other professionals.

These policies and procedures protect members of the public who access counselling and psychotherapy services and ensure consumers have access to complaint mechanisms.

Legislative protection for consumers

In NSW, the practice of counsellors and psychotherapists is regulated by the NSW Code of Conduct for Unregistered Health Practitioners. ARCAP will display the link to the NSW Code of Conduct on its website and will require Registrants practising in NSW to operate in accordance with the Code.

As well as the option of civil proceedings for aggrieved consumers, in other states and territories, Health Complaint Entities (HCEs) are an adequate alternative to the NSW model:

- Complainants have the option of using ARCAP's complaints processes, complaining to the relevant HCE or utilising both of these.
- HCEs may seek to resolve the complaint, investigate the complaint or attempt formal conciliation. HCEs may refer the complaint to another entity (e.g. the Police).

The National Law provides a legislative framework which applies principally to Registered Health Practitioners but also to Unregistered Health Practitioners, for example the use of professional titles.

Australian Consumer Law applies in all jurisdictions to deal with:

- Unconscionable conduct;
- Misleading or deceptive conduct; and
- False or misleading representations by practitioners.

Under this law it is possible to grant injunctions, and issue notices and orders.

Estimates of the number of Unregistered Health Practitioners practising Counselling and Psychotherapy

The Job Outlook website (DEEWR, 2011) estimates the number of Counsellors as 29,700 in 2010. Because Counselling is a multi-disciplinary profession, this number includes both Registered (Psychologists, Psychiatrists, Registered Mental Health Nurses) and Unregistered Practitioners from various professions (Counsellors, Psychotherapists, Social Workers, Occupational Therapists).

The Commonwealth government does not currently track statistics for Psychotherapy on Job Outlook, although the Honourable Mark Butler, Minister for Mental Health and Ageing, has recently liaised with DEEWR re placing psychotherapy on the Job Outlook and myfutures websites.

Risks associated with the provision of Counselling and Psychotherapy by Unregistered Counsellors and Psychotherapists

The PACFA and ACA submissions detail the number of ethical complaints against counsellors and psychotherapists over the last 5 years. It is notable that the majority of ethical breaches reported by consumers of Counselling and Psychotherapy are relatively minor and are able to be resolved through conciliatory mechanisms rather than formal complaint procedures. Over the last 5 years, PACFA reports that the number of ethical complaints received by PACFA and its Member Associations is 61 and ACA 10. The PACFA and ACA submissions provide further details of categories of complaints and outcomes.

PACFA and ACA report there were serious consequences for major offences or repeat offenders. PACFA suspended a Member Association for non cooperation with the enquiry into complaints by students in relation to multiple roles in training provided by the association. Member Associations revoked membership for 5 members and their registration with PACFA was withdrawn. ACA lists 9 former members who were de-registered as a result of complaints procedures on its website. This demonstrates the successful operation of ethics complaints procedures in both organisations. Once ARCAP commences operation of the national Register, it will liaise with PACFA and ACA regarding complaints made against their Registrants and members to ensure the welfare of the public is protected.

Counselling and psychotherapy are multidisciplinary professions. Forms of risks to the public arising from the practice of counselling and psychotherapy will be similar for Registered and Unregistered Health Practitioners. A large scale US study ($n = 4,800$) of psychologists, social workers and psychiatrists found no difference in frequency of ethical breaches between these professional groups (Borys & Pope, 1989). The prevalence of risk of serious ethical breaches in psychotherapy is between 0.9 to 12%, with a mean of about 6% (Procci, 2007). An Australian survey of psychiatrists found that 7.6%, mostly male, reported erotic contact with patients during or after treatment ended (Leggatt, 1994).

To what extent have the risks associated with these activities been realised in practice?

The ARCAP Register will not be available to the public until 1 July 2011, so ARCAP is not able to report on the incidence of ethical risks for Registrants at this point in time. Please refer to the ACA and PACFA submissions for further information on the incidence of ethical complaints in these professional bodies.

However, it is notable that the incidence of complaints against counsellors and psychotherapists is low compared to Registered Health Professions such as medicine and psychology, and comparable to Unregistered Health Professions accepted as self regulating appropriately such as social work. 96.7% of complaints ($n = 2,022$) made to the NSW Health Care Complaints Commission for the period 2008-2009 related to Registered Health Practitioners. 0.04% ($n = 8$) complaints were made in relation to counsellors and psychotherapists, which is similar to the rate for social workers of 0.03% ($n = 6$). NSW HCCC HCE reports complaints separately for the categories of Registered and Unregistered Health Practitioners.

What evidence is available on the nature, frequency and severity of risks?

The research and reporting on risks of serious ethical breaches in counselling and psychotherapy across all professional groupings demonstrate the complexity of preventing risk to the public. It is not new or poorly trained counsellors and psychotherapists who pose the greatest risk to the public. Rather, it is senior practitioners, usually male, who commit the most serious boundary violations with the highest level of risk for consumers (Borys & Pope, 1989; Jackson & Nuttall, 2001; Procci, 2007).

Practitioners working in rural and remote areas, or small communities such as gays and lesbians, also face risks of dual and multiple relationships which may cause harm to clients and their partners and families (Lamb et al., 2004).

What factors exacerbate or ameliorate the risk that individuals will suffer harm as a result of the activities of unregistered health practitioners?

When prohibition orders are made to deregister health professionals, such as psychiatrists, psychologists and mental health nurses, for serious ethical breaches, they are currently still able to practice in related fields such as counselling and psychotherapy.

It is important that prohibition orders made by Health Complaint Entities in States and Territories include the provision not to practise as counsellors and psychotherapists.

Professional Codes of Ethics are effective in deterring unethical behaviour among practitioners. Lamb et al. (2004) in a study of psychologists found that one of the four most commonly cited rationales for not pursuing sexual relationships with clients they felt attracted to was that such behaviour was unethical. Therefore, professional bodies such as ARCAP are effective in ameliorating the risk to the public through the process of professional socialisation into ethical behaviour and by requiring continuing professional development.

THE OBJECTIVES OF GOVERNMENT ACTION

What do you think should be the objectives of government action in this area?

Government action should aim to support ARCAP, PACFA and ACA as the professional mechanisms already in place and operating effectively to self regulate the counselling and psychotherapy profession in Australia. If statutory regulation is considered necessary, regulation should aim to provide a mechanism for dealing with the most serious cases of professional misconduct through strengthening Prohibition Orders, for example by not allowing deregistered health practitioners to practice as counsellors and psychotherapists .

OPTIONS

Do you think there is a case for further regulatory action by governments in this area?

Given the low risk relating to counsellors and psychotherapists, the potential costs of regulation and the effectiveness of the existing regulatory and self regulatory mechanisms in place, it is difficult to argue there is a need for further regulation by government.

ARCAP is in favour of both Option 1 and Option 2 as positive outcomes of this consultation for the following reasons:

Option 1: No change

It is ARCAP's preferred option that the government rely on existing regulatory and non regulatory mechanisms for counselling and psychotherapy. An analysis of benefits and costs of this option indicates existing regulatory and non regulatory mechanisms manage risks appropriately.

Benefits

Self-regulation:

- Probity checking of Registrants is to be undertaken by ARCAP in collaboration with PACFA and ACA.
- The cost of regulating counselling and psychotherapy is undertaken by the profession at no cost to government or to the public.
- The achievement of the Australian Register of Counselling and Psychotherapy (includes PACFA and ACA Registers) provides a national registration and complaints mechanism to protect the public.

Self-regulation provides effective and appropriate complaints processes to deal with complaints against counsellors and psychotherapists:

- The ARCAP Code of Conduct includes Complaints Procedures.
- PACFA and ACA complaint procedures are in place and operating effectively with effective consequences for repeat offenders.
- Repeat and serious offenders will be delisted from the ARCAP Register.

Self-regulation emphasises clinical supervision and ongoing professional development as the most effective mechanisms for regulating the quality of counselling and psychotherapy services. Research shows these methods are more effective in ensuring practitioners can identify and repair potential and actual ethical breaches than top down regulation (McGovern et al., 2009).

Costs

There is the possibility that the National law could be amended to include counselling and psychotherapy as new professions in the national registration and accreditation scheme. This would not be supported by ARCAP at the current time because of the considerable groundwork done by the profession to establish regulatory mechanisms. This has included:

- Establishment of the ARCAP company;
- Meeting ASIC requirements;
- Legal advice;
- Time given voluntarily by Directors;
- Time and expertise given by ACA and PACFA as shareholders of the company to develop the Code of Conduct, Complaint policies and procedures and Register requirements; and
- Ongoing financial support provided by ACA and PACFA for the establishment of ARCAP.

There are current international examples of government plans to restrictively regulate counselling and psychotherapy in ways which would have removed consumer choice. There was extensive public debate over the statutory regulation proposals for counselling and psychotherapy in the UK. The government withdrew the proposed legislation.

Reasons why this is the preferred option

- Risks to the public associated with ethical breaches by counsellors and psychotherapists are minimal compared to Registered Health Professionals and dealt with appropriately by the current mechanisms in place in PACFA and ACA. ARCAP will provide an additional means of self regulation from 1 July 2011 by unifying the PACFA and ACA Registers.
- The cost burden of a statutory code for government. While the costs of the NSW legislation have not been high to date, there is a potential for regulation to become costly. Given the limited number of serious complaints about counsellors and psychotherapists, this is not an appropriate response. The time given to the development of complaint policy and procedures and the investigation of complaints by ethics committees, complaint panels and case officers within PACFA and ACA is very high and is voluntary. This shows the commitment of the profession to protecting the public.
- Other regulatory mechanisms in place are adequate to deal with the low number of serious complaints that are likely to arise against Counsellors and Psychotherapists.

Option 2: A voluntary code of practice for unregistered health practitioners

Benefits

- This is a more flexible and less costly option for government than statutory regulation.
- A voluntary code could improve community awareness of acceptable and unacceptable professional conduct and expected training standards of practitioners.
- The voluntary code can be incorporated into ARCAP's existing Code of Conduct.

Costs

- There may be a lack of consensus in establishing a Voluntary Code that is applicable to a wide variety of unregistered Health Professions. To be sufficiently broad to encompass all unregistered health professions will reduce its effectiveness in regulating diverse professional groups with different risks to the public – for example acupuncture and psychotherapy have different risks.

Option 3: A national statutory code of conduct for unregistered health practitioners

Benefits

A number of benefits of this option are identified in the Consultation paper. However, the level of risk to the public from Counsellors and Psychotherapists, and the effectiveness of existing mechanisms of self regulation, does not merit the inclusion of counsellors and psychotherapists in a National statutory code of conduct for Unregistered Health Practitioners.

Costs

If a Code similar to the NSW Code were adopted in all states and territories, it should be noted that some elements of the NSW Code are not relevant or are inappropriate for the Counselling and Psychotherapy profession. For example, Section 6.1 states 'A health practitioner must adopt standard precautions for the control of infection in his or her practice' (NSW Government, 2002).

It also provides an inappropriate message for the public given the level of actual risk compared to the Registered Health Professions. For example, the title of the NSW Department of Health publication *Getting tough on Unregistered Health Practitioners* (2006) is an inappropriate communication to the public given the actual level of risk. The title conveys the strong impression that Unregistered Health Practitioners are unprofessional.

Self-regulation has involved the development of the ARCAP Code of Conduct tailored to the counselling and psychotherapy profession and benchmarked against international codes such as the BACP Code of Ethics. The ARCAP code provides a high level of guidance on professional conduct which is specific to our profession, and will provide practitioners and associations with opportunities for consultation and professional development with the ARCAP Ethics Committee.

When serious cases of misconduct are amplified by the media, there is a tendency for the reporting of these incidents to lead to a perception of a need for regulation (McGivern et. al., 2009, p. 7). This is contrary to the actual level of risk associated with the counselling and psychotherapy profession.

Extent to which national uniformity is desirable

ARCAP provides a national code which unifies the profession of counselling and psychotherapy through the partnership of ACA and PACFA to operate the company.

ANY OTHER COMMENTS

Recommendations

1. ARCAP supports Option 1: No Change – rely on existing regulatory and non-regulatory mechanisms, because the evidence points to these being sufficient protection for the public. ARCAP advocates for handling complaints against counsellors and psychotherapists using existing procedures.
2. However, ARCAP prefers Option 2: Strengthen self-regulation – A Voluntary Code of Practice, because this option provides greater opportunities to build on current self-regulation mechanisms. The majority of complaints to professional associations in the counselling and psychotherapy field are minor in nature.
3. If Option 2 proceeds, there should be consultation with the diverse professional groups to develop the Voluntary Code of Practice.

The Code should specify where principles apply only to particular professions, for example those providing physical health interventions.

The Code should include the principle that Unregistered Health Professionals should engage in ongoing professional development as required by each discipline.

Communication to the public by governments about the Voluntary Code of Practice should not convey that Unregistered Health Practitioners are unprofessional. Rather, that Unregistered Health Practitioners have collaborated with government to develop the Code and protect the public.

4. Government recognition of effectively self regulating professions who enforce standards with their members is an important step. Such recognition would see more practitioners willing to register with ARCAP from 1 July 2011, and ensure that counselling and psychotherapy practice is ethical and professional. The government's support of ARCAP and its shareholding associations, ACA and PACFA, will ensure the highest level of effective self regulation is reached.
5. Where Registered Health Practitioners such as Psychologists, Psychiatrists and Mental Health Nurses become unregistered as a result of investigation of ethical breaches by HCEs, Prohibition Orders should explicitly prohibit them from practicing as counsellors and psychotherapists.

Appendices

Appendix One: ARCAP Code of Conduct

References

- Borys, D.S. & Pope, K.S. (1989). Dual Relationships Between Therapist and Client: A National Study of Psychologists, Psychiatrists, and Social Workers. *Professional Psychology: Research and Practice*, 20(5), 283-293.
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APPENDIX ONE ARCAP Code of Conduct and Complaint Procedures

ARCAP CODE OF CONDUCT FOR PROFESSIONAL PRACTICE (2009)

Ethics for counselling and/or psychotherapy practice

This statement, Ethics for Counselling and Psychotherapy, supports and recognises the codes of the ACA and PACFA for counsellors, trainers and supervisors and the NHMRC and is also applicable to counselling research, teaching, supervision of trainees and other activities that relate to the self-regulation of the workforce engaged professionally as counsellors and psychotherapists in the use of counselling skills and management of these services within organisations for the benefit of individuals and the community.

This code of practices is intended to inform the practice of each practitioner who has voluntarily accepted this code of practice as a condition of Registration on the Australian Register of Counsellors and Psychotherapists (ARCAP). It also provides a default criterion for compliance procedures in respect of ethical practice guidelines for rationes who choose to adopt them in Australia. Depending upon the circumstances compliance or non-compliance with this code of conduct may be admissible in some legal proceedings.

ARCAP has been established by the ACA and PACFA to:

- (a) Provide an inclusive industry based national register for persons engaged in professional practice of counselling and/or psychotherapy,
- (b) Monitor, set, maintain and improve professional standards for the development of science associated with the art and practice of counselling and psychotherapy
- (c) Manage a self-regulatory, single national credentialing and accreditation system that upholds best practice performance and compliance with the preferred and desired standards of the professions and
- (d) Build the standing and reputation of the professions with the governments, community, clients and citizens who trust the profession to provide quality assured outcomes from the professional practice of counselling and psychotherapy.

In this statement the term 'practitioner' is used generically to refer to anyone with responsibility for the provision of counselling- or psychotherapy-related services. 'Practitioner' includes anyone undertaking the role(s) of counsellor, psychotherapist, trainer, educator, supervisor, researcher, provider of counselling skills or manager of any of these services. The term 'client' is used as a generic term to refer to the recipient of any of these services. The client may be an individual, couple, family, group, organisation or other specifiable social unit. Alternative names may be substituted for 'practitioner' and 'client' in the practice setting, according to custom and context.

This statement indicates a critical client service orientation to ethics within the professions of counselling and psychotherapy. One of the characteristics of contemporary society is the coexistence of different approaches to ethics and diversity of supply of counselling and psychotherapy services. This statement reflects this professional practice diversity by considering:

- * Values
- * Principles
- * Personal moral qualities
- * Recognition of diversity and alternative approaches
- * Commitment to maintain the appropriate level of training, education and standards of professional practice as a Registered Counsellor and/or psychotherapist or as an ARCAP Mental Health Practitioner.

This selection of ways of expressing standards of conduct and ethical commitments does not seek to invalidate other approaches. The presentation of different ways of conceiving ethics alongside each other in this statement is intended to draw attention to the limitations of relying too heavily on any single ethical approach. Ethical principles are well suited to examining the justification for particular decisions and actions. However, reliance on principles alone may detract from the importance of the practitioner's personal qualities and their ethical significance in the counselling or therapeutic relationship. The provision of culturally sensitive and appropriate services is also a fundamental ethical concern... This code of practice applies these values and ethical principles to more specific situations that may arise in the practice of professional counselling and psychotherapy. No clause or section should be read in isolation from the rest of this code of conduct and ethics.

Values of counselling and psychotherapy

The fundamental values of counselling and psychotherapy include a commitment to:

- * Respecting human rights and dignity
- * Ensuring the integrity of practitioner-client relationships
- * Enhancing the quality of professional knowledge and its application
- * Alleviating personal distress and suffering
- * Fostering a sense of self that is meaningful to the person(s) concerned
- * Increasing personal effectiveness
- * Enhancing the quality of relationships between people
- * Appreciating the variety of human experience and culture
- * Striving for the fair and adequate provision of counselling and psychotherapy services

Values inform principles. They represent an important way of expressing a general ethical commitment that becomes more precisely defined and action-orientated when expressed as a principle. Practitioners voluntarily considering registration on the Australian Register of Counsellors and Psychotherapists (ARCAP) to indicate to their clients and the community that they will:

- (i) Offer a non-judgemental professional service, free from discrimination, honouring the individuality of the client, protecting the privacy of that relationship through an offer of confidentiality and expression of the requirements of a duty of care
- (ii) Establish the helping relationship in order to maintain the integrity and empowerment of the client guided by a commitment to ongoing personal and professional development
- (iii) Ensure informed consent and understanding of the form and function of the counselling and/or psychotherapy purpose, process and boundaries of the professional relationship;
- (iv) Undertake regular supervision and debriefing as an element of professional self care and maintenance of best practice performance standards in order to maintain professional accountability; and
- (v) Be responsive to the needs of peers and provide the community with a quality assured source of professional counselling and psychotherapy services, including acceptance of procedures for withdrawal or Registration for proven breaches of this code of ethics and professional code of conduct.

Appropriate professional behaviours

This code of conduct and the accepted Codes of Conduct and Ethics that are a minimum condition of PACFA and the ACA are also to be taken as guides to appropriate professional behaviours that are accepted as the boundaries for the professional practice of counselling and psychotherapy. This necessarily includes consideration of other sources of ethical responsibility and legal accountability to protect and promote responsibility to the client for clinical/therapeutic decisions in their work with clients to ensure client safety, client self-determination, and responsibility to professional colleagues, counsellors and psychotherapists committed to the supply of best practice services in the community

Registrants must at all time take reasonable steps to be aware of current legal and regulatory provisions that apply to the practice of counselling and psychotherapy. In particular Registrants must accept compliance provisions that indicate behaviour that will not be accepted for these professions including:

- (i) Accountability to the Courts, colleagues, employers, finding bodies and the community for their behaviour as professionals as appropriate;
- (ii) Willingness to play a demonstrable part in the provision of emergency and pro-bono services in times of special community need and ability to explore and resolve conflicts of interest between parties acting in good faith in the interests of the provision of greater access and equity for diverse communities of interest and individual clients seeking professional services;

(iii) Avoiding the perception of hazardous or other conduct that involves behaviours that relate to the initiation, development or pursuit of relationships that involve an abuse of power or communication in a relationship with clients, be it based on authority, sexual or non-sexual relationships or knowledge gained with past or current clients within two years of the last clinical contact or professional relationship; and

(iv) Refraining from acting or practicing legal council or acting for a third party in respect of the relationship with a client or as a consensual agent for a client, whilst remaining responsive to legal and other requirements of personnel employed in counselling or psychotherapy services that build upon a supportive environment for the provision and development of appropriate professional services.

Ethical principles of counselling and psychotherapy

Principles direct attention to important ethical responsibilities. Each principle is described below and is followed by examples of good practice that have been developed in response to that principle.

Ethical decisions that are strongly supported by one or more of these principles without any contradiction from others may be regarded as reasonably well founded. However, practitioners will encounter circumstances in which it is impossible to reconcile all the applicable principles and choosing between principles may be required.

A decision or course of action does not necessarily become unethical merely because it is contentious or other practitioners would have reached different conclusions in similar circumstances. A practitioner's obligation is to consider all the relevant circumstances with as much care as is reasonably possible and to be appropriately accountable for decisions made.

Fidelity: honouring the trust placed in the practitioner

Being trustworthy is regarded as fundamental to understanding and resolving ethical issues. Practitioners who adopt this principle: act in accordance with the trust placed in them; regard confidentiality as an obligation arising from the client's trust; restrict any disclosure of confidential information about clients to furthering the purposes for which it was originally disclosed.

Autonomy: respect for the client's right to be self-governing

This principle emphasises the importance of the client's commitment to participating in counselling or psychotherapy, usually on a voluntary basis. Practitioners who respect their clients' autonomy: ensure accuracy in any advertising or information given in advance of services offered; seek freely given and adequately informed consent; engage in explicit contracting in advance of any commitment by the client; protect privacy; protect confidentiality; normally make any disclosures of confidential information conditional on the consent of the person concerned; and inform the client in advance of foreseeable conflicts of interest or as soon as possible after such conflicts become apparent. The principle of autonomy opposes the manipulation of clients against their will, even for beneficial social ends.

Beneficence: a commitment to promoting the client's well-being

The principle of beneficence means acting in the best interests of the client based on professional assessment. It directs attention to working strictly within one's limits of competence and providing services on the basis of adequate training or experience. Ensuring that the client's best interests are achieved requires systematic monitoring of practice and outcomes by the best available means. It is considered important that research and systematic reflection inform practice.

There is an obligation to use regular and on-going supervision to enhance the quality of the services provided and to commit to updating practice by continuing professional development. An obligation to act in the best interests of a client may become paramount when working with clients whose capacity for autonomy is diminished because of immaturity, lack of understanding, extreme distress, serious disturbance or other significant personal constraints.

Non-maleficence: a commitment to avoiding harm to the client

Non-maleficence involves: avoiding sexual, financial, emotional or any other form of client exploitation; avoiding incompetence or malpractice; not providing services when unfit to do so due to illness, personal circumstances or intoxication. The practitioner has an ethical responsibility to strive to mitigate any harm caused to a client even when the harm is unavoidable or unintended. Holding appropriate insurance may assist in restitution. Practitioners have a personal responsibility to challenge, where appropriate, the incompetence or malpractice of others; and to contribute to any investigation and/or adjudication concerning professional practice that falls below that of a reasonably competent practitioner and/or risks bringing discredit upon the profession.

Justice: the fair and impartial treatment of all clients and the provision of adequate services

The principle of justice requires being just and fair to all clients and respecting their human rights and dignity. It directs attention to considering conscientiously any legal requirements and obligations, and remaining alert to potential conflicts between legal and ethical obligations. Justice in the distribution of services requires the ability to determine impartially the provision of services for clients and the allocation of services between clients. A commitment to fairness requires the ability to appreciate differences between people and to be committed to equality of opportunity, and avoiding discrimination against people or groups contrary to their legitimate personal or social characteristics. Practitioners have a duty to strive to ensure a fair provision of counselling and psychotherapy services, accessible and appropriate to the needs of potential clients.

Self-respect: fostering the practitioner's self-knowledge and care for self

The principle of self-respect means that the practitioner appropriately applies all the above principles as entitlements for self. This includes seeking counselling or therapy and other opportunities for personal development as required. There is an ethical responsibility to use supervision for appropriate personal and professional support and development, and to seek training and other opportunities for continuing professional development. Guarding against financial liabilities arising from work undertaken usually requires obtaining appropriate insurance. The principle of self-respect encourages active engagement in life-enhancing activities and relationships that are independent of relationships in counselling or psychotherapy.

Personal moral qualities

The practitioner's personal moral qualities are of the utmost importance to clients. Many of the personal qualities considered important in the provision of services have an ethical or moral component and are therefore considered as virtues or good personal qualities. It is inappropriate to prescribe that all practitioners possess these qualities, since it is fundamental that these personal qualities are deeply rooted in the person concerned and developed out of personal commitment rather than the requirement of an external authority. Personal qualities to which counsellors and psychotherapists are strongly encouraged to aspire include:

Respect: showing appropriate esteem to others and their understanding of themselves.

Integrity: commitment to being moral in dealings with others, personal straightforwardness, honesty and coherence.

Fairness: the consistent application of appropriate criteria to inform decisions and actions and promote both social justice and social inclusion.

Sincerity: a personal commitment to consistency between what is professed and what is done.

Competence: the effective deployment of the skills and knowledge needed to do what is required.

Humility: the ability to assess accurately and acknowledge one's own strengths and weaknesses.

Courage: the capacity to act in spite of known fears, risks and uncertainty.

Resilience: the capacity to work with the client's concerns without being personally diminished

Wisdom: possession of sound judgement that informs practice.

The ARCAP challenge:

The challenge of working ethically and meeting the accepted codes of practice of the professions of counselling and psychotherapy means that practitioners will inevitably encounter situations where there are competing obligations. In such situations it is tempting to retreat from all ethical analysis in order to escape a sense of what may appear to be unresolvable ethical tension. These codes of practice are intended to be of assistance in such circumstances by directing attention to the variety of ethical factors that may need to be taken into consideration and to alternative ways of approaching ethics that may prove more useful. No statement of ethics can totally alleviate the difficulty of making professional judgements in circumstances that may be constantly changing and full of uncertainties. By accepting this ARCAP code of conduct, Registrants are committing themselves to engaging with the challenge of striving to be ethical, even when doing so involves making difficult decisions or acting courageously.

Guidance on good practice in counselling and psychotherapy

ARCAP is committed to sustaining and advancing good practice. This guidance on the essential elements of good practice has been written to take into account the changing circumstances in which counselling and psychotherapy are now being delivered, in particular:

- (i) Changes in the range of issues and levels of need presented by clients;
- (ii) The growth in levels of expertise available from practitioners with the expansion in the availability of training and consultative support/supervision;
- (iii) The accumulated experience of the ACA and PACFA over more than a decade of professional practice promotion;
- (iv) The continuing interest and involvement of clients, patients, carers and family members in setting preferred and desired standards of care and service.
- (v) The public interest in promoting social inclusion, social justice and emotional and social wellbeing throughout the community
- (vi) National and international standards that should apply to the provision of professional services within a wider social development context.

The diversity of settings within which counselling and psychotherapy services are delivered has also been carefully considered. These services may be provided by the independent practitioner working alone, one or more practitioners working to provide a service within an agency or large organisation, specialists working in multidisciplinary teams, and by specialist teams of counsellors and psychotherapists. Most work is undertaken face to face but there are also a growing number of telephone and online services.

Some practitioners are moving between these different settings and modes of delivery during the course of their work and are therefore required to consider what constitutes good practice in different settings. All practitioners encounter the challenge of responding to the diversity of their clients and finding ways of working effectively with them. This statement therefore responds to the complexity of delivering counselling and psychotherapy services in contemporary society by directing attention to essential issues that practitioners ought to consider and resolve in the specific circumstances of their work.

Providing a good standard of practice and care

All clients are entitled to good standards of practice and care from their practitioners in counselling and psychotherapy. Good standards of practice and care require professional competence; good relationships with clients and colleagues; and commitment to and observance of professional ethics.

Good quality of care

Good quality of care requires competently delivered services that meet the client's needs by practitioners who are appropriately supported and accountable. Practitioners should give careful consideration to the limitations of their training and experience and work within these limits, taking advantage of available professional support. If work with clients requires the provision of additional

services operating in parallel with counselling or psychotherapy, the availability of such services ought to be taken into account, as their absence may constitute a significant limitation.

Good practice involves clarifying and agreeing the rights and responsibilities of both the practitioner and client at appropriate points in their working relationship. Dual relationships arise when the practitioner has two or more kinds of relationship concurrently with a client, for example client and trainee, acquaintance and client, colleague and supervisee. The existence of a dual relationship with a client is seldom neutral and can have a powerful beneficial or detrimental impact that may not always be easily foreseeable. For these reasons practitioners are required to consider the implications of entering into dual relationships with clients, to avoid entering into relationships that are likely to be detrimental to clients, and to be readily accountable to clients and colleagues for any dual relationships that occur.

Practitioners are encouraged to keep appropriate records of their work with clients unless there are adequate reasons for not keeping any records. All records should be accurate, respectful of clients and colleagues and protected from unauthorised disclosure. Practitioners should take into account their responsibilities and their clients' rights under data protection legislation and any other legal requirements.

Clients are entitled to competently delivered services that are periodically reviewed by the practitioner. These reviews may be conducted, when appropriate, in consultation with clients, supervisors, managers or other practitioners with relevant expertise.

Maintaining competent practice

All counsellors, psychotherapists, trainers and supervisors are required to have regular and on-going formal supervision/consultative support for their work in accordance with professional requirements. Managers, researchers and providers of counselling skills are strongly encouraged to review their need for professional and personal support and to obtain appropriate services for themselves.

Regularly monitoring and reviewing one's work is essential to maintaining good practice. It is important to be open to, and conscientious in considering, feedback from colleagues, appraisals and assessments. Responding constructively to feedback helps to advance practice.

A commitment to good practice requires practitioners to keep up to date with the latest knowledge and respond to changing circumstances. They should consider carefully their own need for continuing professional development and engage in appropriate educational activities.

Practitioners should be aware of and understand any legal requirements concerning their work, consider these conscientiously and be legally accountable for their practice.

Keeping trust

The practice of counselling and psychotherapy depends on gaining and honouring the trust of clients. Keeping trust requires:

- (i) Attentiveness to the quality of listening and respect offered to clients;

- (ii) Culturally appropriate ways of communicating that are courteous and clear;
- (iii) Respect for privacy and dignity;
- (iv) Careful attention to informed client consent and maintenance of confidentiality. Practitioners should obtain adequately informed consent from their clients and respect a client's right to choose whether to continue or withdraw;
- (v) Supply of information about the nature of the services being offered; and
- (vi) Delivery of services on the basis of the client's explicit consent.

Reliance on implicit consent is more vulnerable to misunderstandings and is best avoided unless there are sound reasons for doing so. Overriding a client's known wishes or consent is a serious matter that requires commensurate justification. Practitioners should be prepared to be readily accountable to clients, colleagues and professional associations and the requirements of statutory provisions if they override a client's known wishes.

Situations in which clients pose a risk of causing serious harm to themselves or others are particularly challenging for the practitioner. These are situations in which the practitioner should be alert to the possibility of conflicting responsibilities between those concerning their client, other people who may be significantly affected, and society generally. Resolving conflicting responsibilities may require due consideration of the context in which the service is being provided. Consultation with a supervisor or experienced practitioner is strongly recommended, whenever this would not cause undue delay. In all cases, the aim should be to ensure for the client a good quality of care that is as respectful of the client's capacity for self-determination and their trust as circumstances permit.

Working with young people requires specific ethical awareness and competence. The practitioner is required to consider and assess the balance between young people's dependence on adults and carers and their progressive development towards acting independently. Working with children and young people requires careful consideration of issues concerning their capacity to give consent to receiving any service independently of someone with parental responsibilities and the management of confidences disclosed by clients.

Respecting client confidentiality is a fundamental requirement for keeping trust. The professional management of confidentiality concerns the protection of personally identifiable and sensitive information from unauthorised disclosure. Disclosure may be authorised by client consent or the law. Any disclosures should be undertaken in ways that best protect the client's trust. Practitioners should be willing to be accountable to their clients and to their profession for their management of confidentiality in general and particularly for any disclosures made without their client's consent.

Practitioners should normally be willing to respond to their client's requests for information about the way that they are working and any assessment that they may have made. This professional requirement does not apply if it is considered that imparting this information would be detrimental to the client or inconsistent with the counselling or psychotherapeutic approach previously agreed with the client. Clients may have legal rights to this information and these need to be taken into account.

Practitioners must not abuse their client's trust in order to gain sexual, emotional, financial or any other kind of personal advantage. Sexual relations with clients are prohibited within two years of the last clinical contact or professional relationship. 'Sexual relations' include intercourse, any other type of sexual activity or sexualised behaviour. Practitioners should think carefully about, and exercise considerable caution before, entering into personal or business relationships with former clients and should expect to be professionally accountable if the relationship becomes detrimental to the client or the standing of the profession.

Practitioners should not allow their professional relationships with clients to be prejudiced by any personal views they may hold about lifestyle, gender, age, disability, race, sexual orientation, beliefs or culture.

Practitioners should be clear about any commitment to be available to clients and colleagues and honour these commitments.

Teaching and training

All practitioners are encouraged to share their professional knowledge and practice in order to benefit their clients and the public in accordance with the educational and professional standards determined for the accreditation of courses for Counsellors and Psychotherapists accepted by ARCAP recognised professional associations.

Practitioners who provide education and training should acquire the skills, attitudes and knowledge required to be competent teachers and facilitators of learning and make a formal commitment to the ethical and procedural standards of their professional associations.

Practitioners are required to be fair, accurate and honest in their assessments of their students and to be accountable to external audit in the event of dispute over the fairness and adequacy of such assessments.

Prior consent is required from clients if they are to be observed, recorded or if their personally identifiable disclosures are to be used for training purposes.

Supervising and managing

Practitioners are responsible for clarifying who holds responsibility for the work with the client.

There is a general obligation for all counsellors, psychotherapists, supervisors and trainers to receive supervision/consultative support independently of any managerial relationships.

Supervisors and managers have a responsibility to maintain and enhance good practice by practitioners, to protect clients from poor practice and to acquire the attitudes, skills and knowledge required by their role.

Researching

ARCAP is committed to recognising research that will inform and develop practice. All practitioners are encouraged to support research undertaken on behalf of the profession and to participate actively in research work. All research should be undertaken with rigorous attentiveness to the

quality and integrity both of the research itself and of the dissemination of the results of the research and to meet the standards set out for the conduct of ethical research by the NHMRC.

The rights of all research participants should be carefully considered and protected. The minimum rights include the right to freely given and informed consent, and the right to withdraw at any point. Research methods used should comply with the standards of good practice in counselling and psychotherapy and must not adversely affect clients

Fitness to practise

Practitioners have a responsibility to monitor and maintain their fitness to practise at a level that enables them to provide an effective service. If their effectiveness becomes impaired for any reason, including health or personal circumstances, they should seek the advice of their supervisor, experienced colleagues or line manager and, if necessary, withdraw from practice until their fitness to practise returns. Suitable arrangements should be made for clients who are adversely affected.

If things go wrong with clients or concerns are legitimately raised by related third parties:

(i) Practitioners should respond promptly and appropriately to any complaint received from their clients or related parties. An appropriate response in agency-based services would take account of any agency policy and procedures.

(ii) Practitioners should endeavour to remedy any harm they may have caused to their clients and to prevent any further harm. An apology may be the appropriate response.

(iii) Practitioners should discuss, with their supervisor, manager or other experienced practitioner(s), the circumstances in which they may have harmed a client in order to ensure that the appropriate steps have been taken to mitigate any harm and to prevent any repetition.

(iv) Practitioners are required to ensure that their work is adequately covered by insurance for professional indemnity and liability.

(v) If practitioners consider that they have acted in accordance with good practice but their client is not satisfied that this is the case, they may wish to use independent dispute resolution, for example: seeking a second professional opinion, mediation, or conciliation where this is both appropriate and practical.

(vi) Clients should be informed about the existence of the ARCAP Professional Conduct Procedure and any other applicable complaints or disciplinary procedures of related Member Associations that have ratified acceptance of this code of conduct... If requested to do so, practitioners should inform their clients about how they may obtain further information concerning these procedures or those of the ACA and/or PACFA in respect of professional conduct and compliance provisions.

Responsibilities to all clients

Practitioners have a responsibility to protect clients when they have good reason for believing that other practitioners are placing them at risk of harm.

They should raise their concerns with the practitioner concerned in the first instance, unless it is inappropriate to do so. If the matter cannot be resolved, they should review the grounds for their concern and the evidence available to them and, when appropriate, raise their concerns with the practitioner's manager, agency or professional body.

If they are uncertain what to do, their concerns should be discussed with an experienced colleague, a supervisor or raised with their professional association.

All Registrants and practitioners who are members of recognised professional associations of counsellors and psychotherapists share a responsibility to take part in its professional conduct procedures whether as the person complained against or as the provider of relevant information.

Working with colleagues

The increasing availability of counselling and psychotherapy means that most practitioners have other practitioners working in their locality, or may be working closely with colleagues within specialised or multidisciplinary teams. The quality of the interactions between practitioners can enhance or undermine the claim that counselling and psychotherapy enable clients to increase their insight and expertise in personal relationships. This is particularly true for practitioners who work in agencies or teams.

Working in teams

Professional relationships should be conducted in a spirit of mutual respect. Practitioners should endeavour to attain good working relationships and systems of communication that enhance services to clients at all times, and should treat all colleagues fairly and foster equality opportunity.

Practitioners should not allow their professional relationships with colleagues to be prejudiced by their own personal views about a colleague's lifestyle, gender, age, disability, race, sexual orientation, beliefs or culture. It is unacceptable and unethical to discriminate against colleagues on any of these grounds.

Practitioners must not undermine a colleague's relationships with clients by making unjustified or unsustainable comments. All communications between colleagues about clients should be on a professional basis and thus purposeful, respectful and consistent with the management of confidences as declared to clients.

Awareness of context

The practitioner is responsible for learning about and taking account of the different protocols, conventions and customs that can pertain to different working contexts and cultures.

Making and receiving referrals

All routine referrals to colleagues and other services should be discussed with the client in advance and the client's consent obtained both to making the referral and also to disclosing information to accompany the referral. Reasonable care should be taken to ensure that:

(i) The recipient of the referral is able to provide the required service;

- (ii) Any confidential information disclosed during the referral process will be adequately protected;
- (iii) The referral will be likely to benefit the client; and
- (iv) The practitioner is experienced and qualified to accept the referral.

Prior to accepting a referral the practitioner should give careful consideration to:

- (i) The appropriateness of the referral;
- (ii) The likelihood that the referral will be beneficial to the client;
- (iii) The adequacy of the client's consent for the referral; and
- (iv) The documentation of the preferred and desired outcomes of the referral.

If the referrer is professionally required to retain overall responsibility for the work with the client, it is considered to be professionally appropriate to provide the referrer with brief progress reports. Such reports should be made in consultation with clients and not normally against their explicit wishes.

Providing clients with adequate information

Practitioners are responsible for clarifying the terms on which their services are being offered in advance of the client incurring any financial obligation or other reasonably foreseeable costs or liabilities. All information about services should be honest, accurate, avoid unjustifiable claims, and be consistent with maintaining the good standing of the profession. Particular care should be taken over the integrity of presenting qualifications, accreditation and professional standing.

Financial arrangements

Practitioners are required to be honest, straightforward and accountable in all financial matters concerning their clients and other professional relationships and maintain adequate records that enable professional reviews of probity and service performance.

Conflicts of interest

Conflicts of interest are best avoided, provided they can be reasonably foreseen in the first instance and prevented from arising. In deciding how to respond to conflicts of interest, the protection of the client's interests and maintaining trust in the practitioner should be paramount.

Care of self as a practitioner

Attending to the practitioner's well-being is essential to sustaining good practice. Practitioners have a responsibility to themselves to ensure that their work does not become detrimental to their health or well-being by ensuring that the way that they undertake their work is as safe as possible and that they seek appropriate professional support and services as the need arises. Practitioners are entitled to be treated with proper consideration and respect that is consistent with this Guidance.

Professional Conduct Procedure

It is the responsibility of all Members and Complainants to ensure that they fully understand the Professional Conduct Procedure and the associated protocols associated with the Member Association in which they have committed to maintain professional practice standards. This procedure forms an essential part of ARCAP commitment to the protection of the public. Registrants are required to inform any client who indicates that they have a complaint or grievance about the existence of this procedure and any other applicable complaints or disciplinary procedures. If requested to do so, practitioners should inform their clients about how they may obtain further information concerning these procedures. Further information may be obtained by contacting either the CEO of the ACA or EO PACFA directly.

1 Required Professional Conduct

1.1 Aim

The aim of the Professional Conduct Procedure is to provide complainants with an open and transparent route of remedy where complaints are made against members of this Association. In processing such complaints, the Association aims to protect members of the public, the name and reputation of ARCAP Counsellors, ARCAP Psychotherapists and/or ARCAP National Mental Health Practitioners and, more generally, the professions of counselling and psychotherapy.

1.2 Bringing a complaint

A complaint can be brought by either:

- (i) A member of the public who has sought or received a service provided by a Registrant; or
 - (ii) A current member of a recognised Member Association who may bring complaints for services sought or received directly from another member; or who has witnessed poor practice delivered by another member; or on behalf of another where their written permission has been obtained and where that person is unable to bring the complaint on their own behalf (explanation is required in writing as to the nature of the inability); or
 - (iii) A legal guardian or other appropriately authorised adult on behalf of a minor and/or an adult lacking legal capacity for services sought or received; or
- (i) A third party who can demonstrate, to the Board's satisfaction, sufficient interest and who has been directly affected by the actions of the practitioner, subject to the protocol on third party complaints; or
 - (ii) It is also possible for ARCAP to act in the absence of a complaint in cases where it is deemed that not to act would be prejudicial to the good name and standing of ARCAP and/or the profession as a whole.

1.3 Complaints against non-members

ARCAP cannot deal with complaints against individuals or organisations that are not Registrants and/or member of a recognised Member Association that is associated with the ACA or PACFA at the time of the alleged misconduct and/or are not currently consenting parties to this ARCAP. Complaints against non-members will be referred to the relevant statutory authority or the professional association to which the non-member may belong, but cannot be considered by ARCAP.

1.4 Complaints against Registrants

A complaint made against a Registrant and brought within the timescale detailed below, may cover the entirety of the professional relationship in so far as the member concerned was a member of an ARCAP recognised Member Association of Counsellors and/or Psychotherapists at the time of the alleged professional misconduct and will be referred in the first instance to the Member Association(s) to which that Registrant belongs unless otherwise provided by law.

1.5 ARCAP Complaints procedures

The ARCAP complaints procedures only come into effect where:

- (i) The complaint against a Registrant shall initially be referred to the relevant ACA or PACFA compliance procedures against a Registrant in Sections A and/or B of ARCAP;
- (ii) The complaint has been referred by the ACA or PACFA Ethics Committees against a Registrant who is no longer a member of Member Association that has the capacity to hear the complaint;
- (iii) The complaint has been referred by a statutory authority for determination by ARCAP in respect of a matter of professional conduct. Such a case will not prejudice ARCAP's use of '(i)' where appropriate.

1.6 Legal Action

- (i) Complainants and Members Complained Against are required to notify the Tribunal if they learn of any type of legal action (civil or criminal) being filed related to the complaint. In the event any type of legal action is filed regarding an accepted complaint, all actions related to the complaint will be stayed until the legal action has been concluded. The Tribunal will consult with legal counsel concerning whether the processing of the complaint will be stayed if the legal action does not involve the same complainant and the same facts complained of.
- (ii) If actions on a complaint are stayed, the Complainant and Respondent will be notified.
- (iii) The actions on a complaint may be continued after legal action has been concluded. In this case the Complainant and Respondent will be notified.
- (iv) The Complaints Tribunal has the right to take into account the results of the legal action.

1.7 Timescale

A complaint must be submitted either:

- (i) Within a reasonable time of the alleged professional misconduct; or
- (ii) Within three years of the ending of the professional relationship; or

(iii) Within three years of the date when the Complainant reasonably became aware of the alleged professional misconduct.

(iv) There is the ability, if due cause is shown, for longer timeframes to be admitted.

The Complainant must provide a written explanation as to when/how they became aware of the issue and the Pre-Hearing Assessment Panel, which will decide if the explanation given is good and/or sufficient, will consider this.

ARCAP will not consider any complaints where a Member Association under these procedures has previously considered the substantive matters unless it can be shown that there has been a breach of natural justice or appropriate administrative procedure with respect to the complaint. The decision of the ARCAP Panel is final and without further appeal where a matter has previously been considered by a Registered professional association of counsellors and/or psychotherapists.

1.8 Records

All records will be kept for a period of seven years. ARCAP reserves the right to reconsider complaints previously submitted when similar/other complaints subsequently arise that give good reason to suggest that the practitioner's legitimate right to remain a Registrant justifies further consideration.

Where the outcome of a complaint has resulted in termination of membership of any Member Association, all records will be kept unless and/or until such time as the person concerned has successfully regained members of a recognised Member Association and is deemed to have established good standing in accordance with this code of practice. Such records will be considered in any re-application for membership of the Association.

1.9 Administration

The administration of the Professional Conduct Procedure will follow the protocols laid down and as amended from time to time by the ACA and/or PACFA and this ARCAP code of professional practice. The Registrar of Professional Conduct will administer these in association with the ACA and/or PACFA Complaints procedures for Registrants who are in Sections A and B of ARCAP.

There is benefit in furthering the health promotion aims of the ACA and/or PACFA by carrying out audits and/or research into complaints. The data from complaints will be processed for the purposes of research and statistical analysis. Where this work is carried out, either by the ACA and/or PACFA, ARCAP or a third party, under strict controls of confidentiality, the confidentiality of the parties concerned will be respected and any published research and/or analysis will not contain any personally identifiable information.

1.10 Expenses

ARCAP is not responsible for travel or any other expenses incurred either by the Complainant or the Member Complained Against or any support person/representative in connection with any stage of the complaint. ARCAP cannot order one party in a complaint to pay another party's costs. However, where the Chair of the Panel calls a witness, ARCAP will reimburse reasonable travel expenses upon

the production of valid receipts and completion of an expense claim form, or, should it be deemed appropriate, contact can be made by other means (email, teleconference etc).

1.11 Dual accountability

ARCAP may decide to hear a complaint against a member when another organisation is involved in a similar process arising out of the same substantive matters. Where legal proceedings have been instigated prior to a complaint being received ARCAP will not hear the complaint until those proceedings have been completed. ARCAP reserves the right to take those proceedings into account. Where information is received for consideration under the Professional Conduct Procedure and where it is known that the member concerned is also a member of another professional body ARCAP reserves the right to formally notify any other organisation of the issues being considered.

1.12 Resolution

Before submitting a complaint to ARCAP, the Complainant is expected to attempt to resolve the issue with the individual or organisational Member Complained Against. The Complainant must demonstrate that all formal or informal channels have been attempted or exhausted where the complaint is against an individual member; and in the case of organisational members, that the internal processes and procedures have been attempted and exhausted. If local resolution is not possible/feasible or is considered inappropriate in the particular circumstances of the case, the Complainant will be required to provide a written explanation as to why this is the case. This explanation will be considered by the Pre-Hearing Assessment Panel, which will decide if it is a good and/or sufficient reason.

1.13 Complaints and findings

ARCAP reserves the right to notify other professional bodies and/or agencies including the ACA and PACFA about complaints that may properly fall within their jurisdiction and to distribute any findings upheld against a member, where it considers it right and just to do so in all relevant circumstances. The Board of ARCAP shall appoint a Registrar of Professional Conduct to manage complaints lodged with ARCAP and approve the Pre-Hearing Assessment Panel that shall grant an initial consideration of the grounds for the complaint. The Board of ARCAP shall establish the cost recovery structure for this appeal process and formalise arrangements before referring any matter to the Pre-Hearing Assessment Panel or the Independent Appeals Assessor.

2 Making a Complaint

2.1 The complaint

The complaint must satisfy the following conditions:

(i) The Complainant must provide a detailed account of the practice giving rise to the complaint, together with details of dates when the event(s) occurred. Reference may be made to the standards of practice outlined in the Ethical Framework for Good Practice in Counselling and Psychotherapy and/or the relevant Codes of Ethics and Practice in force at the time, together with all supporting evidence if appropriate.

(ii) The individual or organisational Member Complained Against is named and is a current member of a recognised Member Association and/or was a member of that Association at the time the alleged breach occurred.

(iii) It is in writing, dated, signed and received by the Registrar of Professional Conduct.

A complaint not satisfying the above conditions will not be accepted or processed under these procedures but may still be referred for consideration to the professional Member Association to which the Registrant belongs as a member in good standing.

2.2 Notification

The Member or registered organisation complained against will be notified that a complaint has been received, given a copy of that complaint and details of the procedure to be followed upon acceptance of the complaint under section 3.2. The Member Complained Against is not required to respond at this stage, but will be given an opportunity at a later stage if the complaint is accepted under the formal Professional Conduct Procedure (as set out in section 3).

2.3 Receipt of a complaint

The complaint will be submitted to a Pre-Hearing Assessment Panel, if it has not been referred to the relevant ACA and/or PACFA Complaints procedures, whereupon the Panel will decide:

(i) Whether to accept the complaint to be dealt with at a Professional Conduct Hearing refer it back for further information/clarification or reject it. The Panel has discretion to interview or collect evidence in accordance with the agreed procedures for the hearing with the Complainant and the Member Complained Against if deemed appropriate;

(ii) If further information/clarification is requested, upon receipt of same, the complaint will be re-submitted to the Pre-Hearing Assessment Panel which will decide whether to accept it or reject it, and if accepted, make such information available to all parties.

Once a complaint is accepted, the Complainant and Member Complained Against will be formally notified of this decision in writing. The Registrar of Professional Conduct will then start the formal Professional Conduct Procedure (as set out in section 3); If the Pre-Hearing Assessment Panel does not accept the complaint, the Complainant and member Complained Against will be formally notified of this decision in writing.

2.4 Appeal following decision of the Pre-Hearing Assessment Panel

The Complainant and Member Complained Against may appeal against the decision of the Pre-Hearing Assessment Panel. The Member Complained Against may only appeal if a written submission was requested and considered by the Pre-Hearing Assessment Panel. The Registrar of Professional Conduct must receive an appeal within 14 days of notification of the Panel's decision. Either party can appeal on the following grounds:

(i) the decision was made against the weight of evidence;

- (ii) There is new evidence that was not available at the time of the Pre-Hearing Assessment Panel (subject to the conditions laid down in the relevant protocol).
- (iii) There has been intimidation of any party involved in the Complaints Procedure.
- (iv) There is a bias by any person involved in the Complaints Procedure in a 'judiciary' capacity.
- (v) There has been failure to disclose a relationship between the investigator or a member of the adjudication panel and a person involved in the Complaints Procedure.

The intention to appeal must be accompanied by the evidence to support the submission. An independent Appeal Assessor appointed by the ARCAP Board will consider the ground(s) of appeal, together with the original submissions and any new evidence considered by the Pre-Hearing Assessment Panel. The Appeal Assessor's decision will be final.

3 The Formal Professional Conduct Procedure

3.1 Acceptance of complaint

The Complainant and Member Complained Against will be notified in writing that the complaint will proceed to a Professional Conduct Hearing.

3.2 Responding to a formal complaint

At the time of notification of acceptance of the complaint, a full copy of the formal complaint will be submitted to the Member Complained against, who will have 28 days to respond to the complaint. Any response to the complaint must be forwarded to the Registrar of Professional Conduct.

3.3 Evidence

All evidence submitted for the purpose of the Professional Conduct Hearing, by either the complainant or the Member Complained Against, shall be available to the parties involved in the complaint. The Registrar of Professional Conduct will distribute to the parties a copy of all submissions made prior to arrangement of a formal consideration of the complaint. The respondent is entitled to provide the Registrar of Professional Conduct with an initial response to the complaint that will be made available to the complainant prior to a hearing of the matter to ensure procedural fairness in the hearing of the matter.

3.4 Conduct

It is the duty of the parties taking part in the Professional Conduct Procedure to comply with the implementation of the Professional Conduct Procedure. Such persons shall comply with the relevant protocols as laid down by their Member Associations and ARCAP. Any failure to comply may result in the termination of the Professional Conduct Procedure or termination of the right to Registrant status after consideration of any Appeal by the ARCAP Board. .

3.5 Suspension of membership and/or rights of membership

The Pre-Hearing Assessment Panel may suspend the rights of membership of the Registrant Complained Against, pending the finalisation of the Professional Conduct Procedure when, having regard to the nature of the complaint, it appears appropriate and just to do so in all the circumstances. The Professional Conduct/Appeal Panel will review this decision.

The Registrar of Professional Conduct will notify the Registrant Complained Against of the suspension of membership and/or of any rights of associated with ARCAP registration. No liability for any loss suffered, or expenses incurred, will attach to the ACA, PACFA or ARCAP for the suspension of membership and/or rights of membership by any ARCAP registered association or organisation even where a complaint is not upheld.

3.6 Lapsed membership

Failure to renew membership by a Registrant Complained Against during the course of a complaint will not normally terminate the Professional Conduct Procedure.

A members' resignation from membership of a recognised Member Association will not normally terminate nor invalidate the processing and/or hearing of a complaint by that Association or by ARCAP.

4 The Professional Conduct Hearing

4.1 Venue

Professional Conduct Hearings will be held at a neutral venue within the vicinity of ARCAP headquarters, other than in exceptional circumstances provided that hearings may with the consent of all parties be held by means of electronic communications.

4.2 Professional Conduct Panel

The Registrar of Professional Conduct will appoint an independently constituted panel of not less than three persons, including lay representation, to hear the complaint. Others with a required and relevant speciality maybe co-opted to the panel to help with technical determinations at any time during the panel's deliberations.

4.3 Declaration of interests

Members of the Professional Conduct Panel have a duty to declare an interest which may be considered by the Registrar of Professional Conduct to affect their impartiality, or likely to be thought to do so.

4.4 Purpose

The purpose of the Professional Conduct Hearing is for the Professional Conduct Panel to examine all the written and oral evidence presented by both parties and decide whether the complaint is proved or not. If proved, the Panel will decide whether or not any sanction should be imposed. Sanctions proposed may include courses to be done, books reviewed, papers written, further supervised practice undertaken with the specific aim being educative and protective of the public interest rather than punitive. The Professional Conduct Panel shall recommend such sanctions to the ARCAP

Board for determination and making arrangements to monitor responsibilities of parties accepting the final Board determinations.

4.5 Presence of a representative/support person

When appearing at the Professional Conduct Hearing, the Complainant and Member Complained Against may seek the authority of the Chair of the Professional Conduct Panel to permit a representative of the respondent to support and/or speak on behalf of the party concerned accompanies each. The Registrant of Professional Conduct must receive such application for appearance of such a representative/support person not less than 28 days prior to the date fixed for the professional conduct hearing. It shall be open to the Chair of the Professional Conduct Panel to determine whether there shall be a formal hearing or whether an alternative form of consideration, including a teleconference, shall be deemed appropriate under the circumstances set out in the complaint.

4.6 Written evidence

The Complainant and the Member Complained Against must submit written evidence and/or submissions and witness statements in advance. The Registrar of Professional Conduct must receive such papers not less than 28 days prior to the date fixed for the Professional Conduct Hearing. Such papers will be circulated to the Professional Conduct Panel, the Complainant and the Member Complained Against, within a reasonable period prior to the Hearing. The Chair of the Professional Conduct Panel may take advice on these papers and/or procedural matters from the Registrar of Professional Conduct or such relevant person as may be deemed appropriate.

4.7 New evidence

The Chair of the Professional Conduct Panel will determine whether or not new evidence will be accepted on the day of the Hearing. The decision will be based on the conditions laid down in the relevant protocol. The Chair of the Professional Conduct Panel may take advice on such matters from the Registrar of Professional Conduct.

4.8 Attendance by witnesses

The Professional Conduct Panel, Complainant and Member Complained Against may call witnesses to attend the Hearing. Parties wishing to call witnesses must notify the Registrar of Professional Conduct of the names and details of such witnesses not less than 28 days prior to the date fixed for the Hearing. The Chair of the Panel will only permit attendance if the witness has supplied a written statement that the Panel considers requires further clarification. The Chair of the Panel has discretion to refuse attendance by a witness if it is reasonably believed that such attendance is not relevant and/or will not add any weight to the issue(s) being considered. Witnesses may be questioned by the Panel and by either party connected with the case.

4.9 Failure to Co-operate

Where a Complainant or Member Complained Against fails or refuses, without good and/or sufficient reason and/or reasonable notice, to co-operate with the conduct of a Professional Conduct Hearing, the Chair of the Professional Conduct Panel has the power to decide to either:

- (i) Proceed with the Hearing in the absence of one or both of the parties; or
- (ii) Adjourn the Hearing to a date not less than 28 days in advance; or
- (iii) Terminate the proceedings; or
- (iv) Refer the matter for consideration by the recognised Member Association.

What constitutes good and/or sufficient reason and/or a reasonable time shall be solely at the discretion of the Chair of the Professional Conduct Panel, who may take advice from the Registrar of Professional Conduct.

4.10 Notification of findings

The decision of the Professional Conduct Panel will be notified in writing to the parties within 28 days of the Professional Conduct Hearing. Where the complaint is upheld, the entirety of the decision of the Professional Conduct Panel, without identifying the names of the complainant without written consent, together with the details of any sanction, will be published on both the Member Association's website and on the ARCAP website.

5 Sanctions

5.1 Imposing sanctions

The Professional Conduct Panel, having regard to the findings, may impose one or more of the sanctions detailed in the relevant protocol. The Registrar of Professional Conduct will appoint an independently constituted Sanction Panel which will consist of not less than three people, one from the ACA and one from PACFA together with one lay member or community representative who is not a counsellor or a psychotherapist, to consider any evidence of compliance.

5.2 Lifting of sanctions

The Sanction Panel will decide if the requirements of the sanction have been fulfilled and thus, whether a sanction should be lifted. The Member Complained Against will be notified in writing of any decision made. Where a sanction has been successfully complied with and, thus, lifted, a Sanction Compliance Notice will be published on the Member Association's website and on the ARCAP website.

5.3 Failure or refusal to comply with sanction or a Panel determination

Failure or refusal to comply with a sanction or a Panel determination may result in ARCAP Registration being immediately suspended or terminated. The Chair of the Member Association will notify the Registrant Complained Against of any such decision in writing. In such circumstances, a Termination of Membership Notice will be published on the ARCAP website and the Registrant's

Member Association will be notified in writing and requested to take appropriate action under its rules.

6 Formal Appeals Procedure

6.1 Right of Appeal

The Registrant complained against may appeal on the ground(s) detailed in paragraph 6.5. An appeal against the decision of the Professional Conduct Panel must be submitted in writing by the deadline given (see paragraph 6.6), be accompanied by any supporting documentation and submitted to the Registrar of Professional Conduct.

6.2 Grounds of Appeal

An independent Appeal Assessor appointed by the Registrar of Professional Conduct will consider the ground(s) for appeal.

6.3 Notification of result of Appeal

If the appeal is accepted under paragraph 6.2, a notice to that effect shall be given to the Registrar of Professional Conduct and thereupon the Appeal Procedure set out in Section 7 will take effect. The Appellant and the Complainant will be notified of this decision and given details of the procedure to be followed.

6.4 Insufficient evidence

If there is insufficient evidence to satisfy any of the ground(s) for appeal, the appeal will be rejected. The Appellant and the Complainant will be notified in writing of this decision, which will be final.

6.5 Consideration of Appeal

An appeal will be considered on any of the following grounds:

- (i) The facts were found against the weight of evidence;
- (ii) The sanction is disproportionate to the findings and decision of the Professional Conduct Panel and is unjust in all the circumstances;
- (iii) There is evidence to suggest that a procedural impropriety may have had a material effect on the findings and decision of the Professional Conduct Panel;
- (iv) There is new evidence which was not available at the time of the Professional Conduct Hearing, subject to the conditions laid down in the relevant protocol;
- (v) There has been a material breach of procedure laid down in ARCAP's Protocols and Procedures including where there is evidence that.
 - (a) There has been intimidation of any party involved in the Complaints Procedure.
 - (b) There is a bias by any person involved in the Complaints Procedure in a 'judiciary' capacity.

- (c) There has been failure to disclose a relationship between the investigator or a member of the adjudication panel and a person involved in the Complaints Procedure.

6.6 Timescale for Appeal

An appeal must be made in writing, and must specify which ground(s) it is submitted under and be accompanied by any supporting documentation and served upon the Registrar of Professional Conduct within 28 days of notification of the findings and decision and/or sanction of the Professional Conduct Panel.

7 Appeal Hearing

7.1 Venue

Appeal hearings will be held at a neutral venue within the vicinity of the ARCAP headquarters, other than in exceptional circumstances. Hearings may be conducted making use of written submissions, email or teleconference.

7.2 Appeal Panel

The Registrar of Professional Conduct will appoint an independently constituted panel of not less than three persons, including lay representation, to decide the appeal.

7.3 Declaration of interest

Members of an appeal panel have a duty to declare any interest, which may be considered by the Registrar of Professional Conduct to affect their impartiality, or likely to be thought so to do.

7.4 Purpose

The purpose of an appeal hearing is for an appeal panel to examine all the written and oral evidence presented by both parties to decide whether the appeal is upheld or not.

7.5 Format of the Appeal Hearing

The Appeal Hearing will be by way of a review of the Professional Conduct Panel's decision in light of the evidence put before it. The Appeal Panel will then consider the appeal documentation in its entirety, together with any verbal submissions and mitigating factors before reaching its decision.

7.6 Presence of a representative/support person

Where authority has been granted to a respondent to have a representative to support and/or speak on behalf of the party concerned, the Registrar of Professional Conduct must receive such details of representative/support person not less than 14 days prior to the date fixed for the Appeal Hearing and ensure that all parties have been notified of the attendance of such proposed representative.

7.7 Written evidence

The Appellant and the Complainant must submit written evidence and/or submissions and witness statements in advance. The Registrar of Professional Conduct must receive such papers not less than 28 days prior to the date fixed for the Appeal Hearing. Such papers will be circulated to the Appeal

Panel, the Appellant and the Complainant, within a reasonable period prior to the Hearing. The Chair of the Appeal Panel may take advice on these papers and/or procedural matters from the Registrar of Professional Conduct or such relevant person as may be deemed appropriate.

7.8 New evidence

The Chair of the Appeal Panel will determine whether or not new evidence will be accepted on the day of the Appeal Hearing. The decision will be based on the conditions laid down in the relevant protocol. The Chair of the Appeal Panel may take advice on such matters from the Registrar of Professional Conduct.

7.9 Attendance by witnesses

The Appeal Panel, Appellant and Complainant may call witnesses to attend the Hearing. Parties wishing to call witnesses must notify the Registrar of Professional Conduct of the names and details of such witnesses not less than 28 days prior to the date fixed for the Hearing. The Chair of the Panel will only permit attendance if the witness has supplied a written statement that the Panel considers requires further clarification and shall make such statement available to the respondent if such a statement is considered relevant. The Chair of the Panel has discretion to refuse attendance by a witness if it is reasonably believed that such attendance is not relevant and/or will not add any weight to the issue(s) being considered. The party that calls that particular witness, unless determined by the Registrar of Professional Conduct, shall carry the cost of appearance of witnesses. Witnesses may be questioned by the Panel and by either party connected with the case.

7.10 Failure to co-operate with an Appeal Hearing

Where an Appellant or Complainant fails or refuses, without good and/or sufficient reason and/or reasonable notice, to co-operate with any aspect of an Appeal Hearing, the Chair of the Appeal Panel has the power to decide to either:

- (i) Proceed with the Hearing in the absence of one or both of the parties; or
- (ii) Adjourn the Hearing to a date not less than 28 days in advance; or
- (iii) Refer the matter for consideration to the recognised Member Association for consideration of a compliance failure under their Articles of Association.

What constitutes good and/or sufficient reason and/or a reasonable time shall be solely at the discretion of the Chair of the Appeal Panel, who may take advice from the Registrar of Professional Conduct.

7.11 Notification of decision

The decision of the Appeal Panel will be notified to the parties in writing and normally within 14 days of the Appeal Hearing. Where an Appeal has not been successful, the decision of the Appeal Panel, including details of any sanction, incorporating any amendment(s) made by the Appeal Panel, will be published on the website of the Registrant's Member Association and the ARCAP Website.

If the decision is that the Appellant's Registration of the Association should be terminated, the Registrar of Professional Conduct will communicate this decision to the Chair of the appropriate recognised Member Association who, in turn, will formally notify the Appellant in writing and implement the Panel's decision, which will be final.

8 Publication

8.1 Publication of decisions

The decision of the Professional Conduct and/or Appeal Panel, together with details of any sanction, will be published on the website of the Registrant's Member Association website and on the ARCAP website in such detail as deemed appropriate to the findings and at its discretion.

8.2 Termination of Registration

The termination of Registration under the Professional Conduct Procedure will be published on the Association's website, in its journal and elsewhere as it considers appropriate and just to do so, and in the interests of public protection.

8.3 Wider publication and protection of title

Under these procedures, any notification that ARCAP or a related professional association is entitled to publish on its website and in its journal may be published elsewhere at its discretion and in the interests of public protection and protection of title associated with registration on the Australian Register of Counsellors and Psychotherapists.

9 Effective Date

This Professional Conduct Procedure 2009 applies to all complaints received by the ARCAP Board from 1 July 2011.

9.1 Standards of civil law

The Professional Conduct Panel is responsible for determining whether the ground(s) of the complaint are upheld or not, according to the standards of civil law. If upheld, the Panel has to consider its decision and make a finding under one or more of the following categories of complaint. The decision about the categories must ultimately rest upon consideration of all the circumstances in the case. The information that follows is intended to inform the choice between the three categories of complaint available to the Panel. These are:

- (i) Professional Misconduct
- (ii) Professional Malpractice
- (iii) Bringing the Profession into Disrepute

9.2 Professional Misconduct

A finding of professional misconduct signifies that the practitioner has contravened the ethical and behavioural standards that should reasonably be expected of a member of this profession.

Misconduct is defined as acting in contravention of the written and unwritten guidance of the profession.

A finding of serious professional misconduct is appropriate if the misconduct is of sufficient seriousness to merit a period of suspension of rights and/or membership of the recognised Member Association and ARCAP.

9.3 Professional Malpractice

A finding of professional malpractice signifies that the service(s) for which the practitioner is responsible have fallen below the standards that would reasonably be expected of a practitioner exercising reasonable care and skill. Examples of malpractice include, but are not restricted to:

- (i) Incompetence
- (ii) Negligence
- (iii) Recklessness
- (iv) Provision of inadequate professional services
- (v) Failure to comply with the standards and codes of conduct of Member Association and/or the principles set forth in this Code of Conduct.

A finding of serious professional malpractice is appropriate if the malpractice is of sufficient seriousness to merit a period of suspension of rights and/or registration on ARCAP and/or referral to the Registrant's Member Association or civil law authorities.

9.4 Bringing the Profession(s) into Disrepute

A finding of bringing the profession into disrepute signifies that the Registrant has acted in such an infamous or disgraceful way that the public's trust in the profession might reasonably be undermined, or might reasonably be undermined if they were accurately informed about all the circumstances of the case.

A finding under this head must amount to "disgraceful conduct in a professional respect". This involves consideration of three elements:

- (i) Conduct that is regarded as "disgraceful" need not amount to moral turpitude or be restricted to acts of serious immorality.
- (ii) The conduct must have had some connection with a professional role in order to be considered as falling "in a professional respect". It ought not to be concerned with matters that can reasonably be viewed as solely personal and private.
- (iii) Conduct "in a professional respect" is not confined to the pursuit of the profession in question.

9.5 Standards to be applied

What is not considered to be disgraceful to an ordinary person may be considered to be disgraceful to a professional person and represent a standard of behaviour that the

ARCAP Board may determine to be detrimental to the legislative requirements that apply to qualified practitioners of counselling and psychotherapy in Australia in respect of the COAG provisions for the national regulation of health, allied health and ancillary health professions.

10 Authority to issue or direct withdrawal of ARCAP TRADEMARKS

The Board of ARCAP shall have the sole authority to issue and withdraw the use of ARCAP Trademarks in accordance with Schedule C and D of the ARCAP Constitution without any further consideration in order to protect the titles set forth in the schedule to protect the public against incompetent and dishonourable practices in counselling and psychotherapy, including misrepresentation and maintain the integrity, safety and credibility of the counselling and psychotherapy professions in their standing with government and the community.

11 Understanding and legal implications

Registrants have a responsibility to ensure that they are familiar with this Code Conduct to understand its application to their professional conduct, and to strive to adhere to its principles and values. Violations of this Code, however, do not automatically imply legal liability. Such a determination can only be made by legal and judicial proceedings. This peer review process is intended to enable ARCAP to advise and to discipline registrants in response to substantiated complaints originating either with peers or the public.

ARCAP appreciates that this Code provides a foundation for the ethical and accountable practice of counselling and psychotherapy in accord with the Private Health Insurance (Accreditation) Rules but it cannot be a substitute for the active process of ethical decision-making. Members increasingly confront challenging ethical demands and dilemmas in a complex and dynamic society to which a simple and direct application of this code may not be possible. Also, reasonable differences of opinion can and do exist among members with respect to how ethical principles and values should be rank-ordered when they are in conflict.

Therefore, this Code is not a static document but will need revisions over time because of the continuing development of ethical knowledge and the emergence of consensus on challenging ethical issues and standards of professional practice under law. Therefore professional associations and others, including members of the public, are invited to submit comments and suggestions at any time to the ARCAP Board.

12 Acknowledgements and revisions

This interim Code acknowledges the experience and case experience of the ACA, BACP, and PACFA and draws upon their published codes of conduct and ethics as the basis for determination of initial determinations of ARCAP. The permission of the BACP to adopt its published documentation of procedures is also acknowledged with appreciation of the ARCAP Board.