

2018

Complaints Policy and Procedural Guidelines

TABLE OF CONTENTS

1. PREAMBLE	4
2.0 INTRODUCTION	4
2.1 Aim	4
2.2 Bringing a Complaint	4
2.3 Complaints against Non-members	4
2.4 Procedure	4
2.5 Procedural Requirements	4
2.6 Timescale	4
2.7 Record Keeping	4
2.8 Administration	5
2.9 Expenses	5
2.10 Preparatory Consultations	5
2.11 Dual Accountability	5
2.12 Periodic Updates	5
3.0 PROCESSING A COMPLAINT	5
3.1 The Complaint	6
3.2 Acceptance of a Complaint	6
4.0 THE COMPLAINTS TRIBUNAL	6
4.1 Composition of the Tribunal	6
4.2 Conduct	6
4.3 Evidence	7
4.4 Suspension of Rights of Membership	7
4.5 Lapsed Membership/Failure to Co-operate	7
5.0 THE FORMAL COMPLAINT – PROCEDURAL GUIDELINES	8
5.1 Initial Notification	8
5.2 Information Required from the Complainant	8
5.3 Notification to Respondent	9
5.4 Responding to Formal Complaint	9
5.5 Brief of Adjudication Meeting	10
5.6 The Adjudication Meeting	10
5.7 Declaration of Interest	10
5.8 Conduct of the Meeting	10
5.9 The Adjudication	11
5.10 Notification of findings	11
5.11 Venue	11
6.0 SANCTIONS	11
6.1 Failure to Comply with Sanctions	13
7.0 CRITERIA FOR APPEAL AND ACTIONS TO BE TAKEN	13
7.1 Appeals to go to President of The Association	13
7.2 Criteria for Appeal	13
7.3 Action to be taken if Criteria Satisfied	13
7.4 Failure to Satisfy Criteria	14

7.5 Decision to be Final	14	
8.0 APPEAL – PROCEDURAL GUIDELINES	14	
8.1 Timeframe	14	
8.2 Criteria	14	
8.3 Composition of the Appeal Panel	14	
8.4 Brief of the Appeal Panel	14	
8.5 Decision of the Appeal Panel	15	
8.6 Notification of Decision	15	
8.7 Publication	15	
9.0 PUBLICATION	15	
9.1 Right to Publish	15	
9.2 Place of Publication	15	
9.3 Termination of Membership to be Published	16	
10.0 LEGAL ACTIONS RELATED TO COMPLAINTS	16	
10.1 Requirement re Legal Action	16	
10.2 If Legal Action is Undertaken	16	
10.3 If Stay of Action is Required	16	
10.4 Continuation of Complaint after Legal Action	16	
10.5 Account Taken of Result of Legal Action	16	
10.6 Referral of Complaint	16	
APPENDICES		
APPENDIX A	LETTER/CLIENT RELEASE FORM	18
APPENDIX B	PROCEDURAL FLOWCHART	20
APPENDIX C	CHECKLISTS FOR ALL PARTIES	22

1.0 PREAMBLE

We confirm that the Australian Counselling Association Inc (ACA), in making decisions pursuant to the Guidelines, is bound by procedural fairness. Essentially, decisions of this nature should satisfy the following procedural criteria:

- a) The ACA will inform the Respondent of his/her right to object to a complaint or to appeal a decision. ***In those cases where a respondent decides to employ legal counsel the Tribunal will immediately hand all information to the relevant State Health Care Rights body. This ensures no unnecessary protraction to the case and protects the Association and its members from incurring undue costs;***
- b) The ACA will make the Respondent aware of the case sought to be made against him / her and will give him/her a proper opportunity of replying to it; The Respondent will be given access to the material available to the ACA decision-makers (especially adverse material) in accord with **section 4.4** and the proper opportunity (including a reasonable timeframe) to respond to that material;
- c) ACA decision-making is not necessarily bound by the rules of evidence but will not grossly depart from the rules of evidence. That is, it will proceed upon evidence that reasonably proves or helps to prove a fact or issue, e.g., credible witnesses, no reception of hearsay evidence. All evidence provided to the Association may be subpoenaed by a court of law;
- d) There will be no real or ostensible bias from the part of the ACA decision-makers. This means that the decision-makers will be, and will be seen to be, impartial. There will neither be a real possibility of bias on the available material nor will there be a reasonable apprehension that any decision-maker does not bring an objective mind to the assessment.

2.0 Introduction

2.1 Aim

The aim of this procedure is to afford protection to both the public and counsellors, and to protect the name of the profession of counselling as conducted by both individuals and organisational members of the Association.

Accordingly, it is possible for the Association 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 the Association and/or the counselling profession. In the same way, acts by individual members deemed to be prejudicial to the good name and standing of the Association, and/or the counselling profession are liable to action by the Association.

2.2 Bringing a Complaint

A complaint can be brought either by a member of the public seeking or using a service provided by a member of the Association, or by a member of the Association themselves.

2.3 Complaints against Non-members

The Association cannot deal with complaints against individuals or organisations who are not members of the Association.

2.4 Procedure

In outline the complaints procedure provides that:

On receipt of a complaint a decision will be made EITHER:

a) To accept the complaint for further investigation and possibly adjudication

OR

b) To reject the complaint.

2.5 Procedural Requirements

A complaint should be per Section 2 for a decision to be made regarding progression to adjudication or not. Where information is considered insufficient for adjudication, the Chair of the Complaints Tribunal may seek further information for adjudication. The facts discovered at the preliminary investigation stage will inform the decision on whether the complaint should be accepted for adjudication or not.

2.6 Timescale

Subsequent to the event, a complaint can be lodged without time restriction.

2.7 Record Keeping

All documentary records of complaints will be kept for a period of 7 years from the finalisation of the Complaints Procedure.

2.8 Administration

The Administration of the Complaints Procedure will follow the protocols laid down from time to time by the Complaints Tribunal of the Association and these will be administered by a member of the Complaints Tribunal or designated Head Office Staff.

2.9 Expenses

The Association is not responsible for travel or any other expenses incurred either by the Complainant or the Respondent relating to any stage of the complaint.

2.10 Preparatory Consultations

Before making the complaint, the Complainant is advised to attempt to resolve the issue with the Individual or Organisational Respondent. The Complainant may contact the ACA for guidance on how to go about this. An attempt should be made to use available informal channels or, in the case of organisational members, appropriate internal channels. Any person considering making a complaint may have preliminary discussions concerning the proper formulation of the complaint (see **Section 2**) and the implementation of the Complaints Procedure with the Chair of the Complaints Tribunal who can be contacted through the Head Office of the Association.

2.11 Dual Accountability

The Complaints Tribunal may decide to stay a complaint if they become aware that another organisation is involved in a similar process arising out of the same substantive matters. Once the other organisation has finalised their procedure the Complaints Tribunal will proceed with the Complaints Procedure. The Complaints Tribunal may consider the other organisations findings.

2.12 Periodic Updates

This document and the ACA Code of Ethics and Practice are subject to periodic updates. It is the responsibility of the member to familiarise themselves with these updates. The Association's website and E-Zine will highlight the fact that a new update is available.

In the event of a complaint being made against a member it will be heard in accordance with the ACA Code of Ethics and Practice and the Complaints Policy and Procedural Guidelines in force **at the time that the alleged complaint took place**. No changes to either document will be applied retrospectively.

3.0 PROCESSING A COMPLAINT

3.1 The Complaint

In consideration of a complaint and during the procedure itself, the Tribunal may consider any or all of the following:

- a) The allegation is about a breach of a specific clause of the ACA Code of Ethics and Practice or of the Membership Agreement as set out in the ACA Membership Application form.
- b) The complaint is brought either by a member of the public seeking or using a service provided by a member OR by a current member of the Association against another member of the Association or in accord with section 1.1a. In cases involving minors, parent(s) or Guardians may act on their behalf.
- c) The written and signed complaint is received by the Chair of the Complaints Tribunal.
- d) Whether legal proceedings have been issued or pending regarding matters forming the subject matter of the complaint.

3.2 Acceptance of a Complaint

Once the complaint is accepted, the Complaints Tribunal will be asked by the Chair to start the formal Complaints Procedure. If the Complaints Tribunal rejects the complaint the Complaints Procedure will be terminated, and the parties notified accordingly. If the complaint is rejected the Complaints Tribunal may send the Respondent a letter of advice regarding the content of the complaint.

4.0 THE COMPLAINTS TRIBUNAL

4.1 Composition of the Tribunal

Upon receipt of a complaint the Chair of the Complaints Tribunal will appoint no less than three members, one of whom may be the Chair of the Complaints Tribunal to preside over the complaint. The members can be permanent members of the Complaints Tribunal or co-opted onto the Tribunal for the term of the complaint. This enables the tribunal to access expert skills in the area specific to the complaint. If the Chair of the Complaints Tribunal is not able to preside over the complaint, then a senior member of the Tribunal will be appointed to head the complaints procedure.

4.2 Conduct

Parties to the Complaints Procedure are required to act in a manner that preserves confidentiality and avoids prejudicing the procedure's outcome or exercising an improper influence upon it. Any breach of this may result in the procedure being halted or terminated at any stage by the Chair of the Complaints Tribunal.

4.3 Evidence

All evidence received in the initial complaint and the Respondent's response to that complaint will be open and available to all parties directly involved in the complaint. Though the complainant will have a chance to submit a written reply to the Respondent's response to their complaint, this reply will not usually be made available to the respondent. It is hoped that this will help to redress some of the imbalance caused by the nature of the client/practitioner relationship. The Association will be responsible for this distribution of material. A person who is not a party to the complaint or a member of the Complaints Tribunal shall not be entitled to copies of any documentation that comes into the possession of the Association as a result of the complaint.

4.4 Suspension of Rights of Membership

The Chair of the Complaints Tribunal can, after consultation with the President of the Association, pending the completion of the adjudication, suspend the Respondent's rights of membership of the Association when the majority of the Complaints Tribunal is reasonably satisfied that or because;
EITHER:

- i. Physical or emotional harm has been caused
AND/OR
- ii. The exploitation of a member of the public is involved
AND/OR
- iii. Where the complaint is of such a kind that it could result in the expulsion of the individual or organisational member from the Association if the complaint is upheld.

In addition to or instead of the aforementioned the following rights of membership can be suspended with immediate effect:

- a) Promotion in publications of the Association
- b) The occupancy of a role within any structures or affiliated groups of the Association
- c) The right to put oneself forward for election to the Management Committee, the Chair of a Committee or any committee position
- d) Voting rights
- e) Any professional status conferred by virtue of membership such as Accreditation, Registration and Certification

The President of the Association will notify the Respondent of the suspension of membership or of the suspension of any rights of membership.

No liability for any loss suffered will attach to the Association for the suspension of membership or rights of membership where a complaint is not upheld.

4.5 Lapsed Membership/Failure to Co-operate

Failure to renew membership, resignation, or a failure to co-operate with Tribunal directives by a Respondent during a complaint shall not normally terminate the complaints procedure, which will continue to a conclusion determined by the Tribunal.

5.0 THE FORMAL COMPLAINT - PROCEDURAL GUIDELINES

5.1 Initial Notification

If the Tribunal accepts a complaint, then the Complainant is to be sent a letter asking for permission for a copy of the complaint to be sent to the Respondent (see section 4). If this permission is not forthcoming the complaints procedure is halted in accord with the principles laid down in section 3 and the complainant notified of same.

Upon receipt of the above permission the respondent will be notified in writing that a complaint against them has been received and a copy of the letter of release sent by the complainant. They will also be advised of where to find a copy of the latest version of the Code of Ethics and Practice, and a copy of the Complaints and Appeals procedures.

The Respondent will also receive notification of those matters in the complaint of principle concern to the complaints tribunal. This notification will include a list of what sections of the code they are considered in violation of and an invitation to respond to the Tribunal's concerns. This initial notification shall take place before any publication re the complaint occurs in the Association's Journal.

As soon as these notifications are received ***NEITHER PARTY SHOULD CONTACT OR ATTEMPT TO CONTACT THE OTHER.***

If the complaint is rejected at any time during this process the Complaints Tribunal reserve the right to send the Respondent a letter of advice regarding the content of the complaint.

5.2 Information Required from the Complainant

Once the complaint has been accepted the Complainant is notified of receipt of complaint and informed that in order for the complaint to proceed that they must agree in writing that;

- a) All information presented by them will be passed on to the Respondent.
- b) They give the Respondent authorisation to release, to the Complaints Tribunal, confidential information relevant to the complaint.

AND

- c) That they are not, at this stage, intending legal action against the member and if they decide to take independent legal action they will notify the Association of their intention to pursue legal matters.

If no confirmation is received from the Complainant within 21 working days, then the complaint is rejected (in accord with the principles laid down in section 4.3) and the Respondent and the Complainant are notified of the decision.

5.3 Notification of Respondent

Upon receipt of notification from the complainant regarding information being passed on to the Respondent, release of case notes and assurance that they are not at this time pursuing independent legal action, copies of the complaint will

be forwarded to:

- The individual or Organisational Respondent.

And notification of the complaint (but not its substance) will be passed on to:

- An Organisational Member of the Association of which the Individual respondent is a member or is known to be currently working for (if applicable).

The Respondent will also receive notification of those matters in the complaint of principle concern to the complaints tribunal. This notification will include a list of what sections of the Code they are considered in violation of. The latest version of the ACA Code of Ethics and Practice, Complaints Policy and Procedural Guidelines is available on the ACA website www.theaca.net.au . This will be pointed out to the respondent at this time.

All notifications to both the Complainant and the Respondent will be forwarded by:

- i. Express post; or
- ii. Courier; or
- iii. Registered post and facsimile; or
- iv. Registered post and e-mail;

5.4 Responding to a formal complaint

The Respondent will be invited to submit a written response to the formal complaint, based on the list of concerns and code breaches already sent to them, to the Complaints Tribunal to be received by the Association within 14 working days. This Response should include supporting documentation, evidence, or comments from those in a position to have observed the counsellor in a counselling context. In this regard, comments from a supervisor may also be helpful. Responses are not to introduce third parties into the complaints process unless the third party being introduced is supplying documentary evidence to support the respondent's case. **Note; this may be the Counsellor's only chance to respond to the complaint.**

- 5.4.1 If a response is not received within 14 working days, then the complaint will be upheld, and sanctions imposed, and the complaint published in the Association's Journal.
- 5.4.2 If a response is received, then this response is forwarded to the Complainant for comment. If a Complainant wants to respond, then response must be received by the Association within 7 working days.
- 5.4.3 The Tribunal **MAY**, (though this is not usual) at their discretion, seek to clarify points already presented, or, ask for more information from either party via letter, phone interview or face to face interview. **Please Note** that, should the Tribunal choose to do this, then both parties will be given the opportunity to provide additional information regarding that particular aspect of the complaint, and both will be interviewed via the same media.

5.5 Brief of Adjudication Meeting

The brief of the Adjudication Meeting is to examine complaint(s) in a formal manner, decide on their validity and recommend sanctions as appropriate. Where there are several complaints against the same member they may be heard separately or at the same Adjudication Meeting at the discretion of the Chair of the Complaints Tribunal. The Tribunal has the right to examine and take into account any former, or pending, complaints against the Respondent.

5.6 The Adjudication Meeting

The Complaints Tribunal will meet to adjudicate the complaint. The composition of the Complaints Tribunal will have regard to the aims of the Complaints Procedure, and the requirement on members of the Tribunal to be impartial. It will also have regard to the Association's equal opportunity policies and to the need for expertise required by the substance of the complaint.

5.7 Responding to a formal complaint

Members of the Complaints Tribunal have a duty to declare any interest that may be considered to compromise their impartiality. The views of the Complainant and the Respondent will be taken into consideration when deciding

whether the impartiality of any member of the Complaints Tribunal might be so compromised as to require that they be replaced. Any member of the Complaints Tribunal who is found to have actual bias or ostensible bias (i.e., there is a reasonable apprehension that he or she does not bring an objective mind to the assessment) in the matter will be immediately replaced. For the avoidance of any doubt, a member of the Complaints Tribunal will be deemed to have ostensible bias if he or she has any monetary or financial interest in the outcome of the matter.

5.8 Conduct of meeting

The Chair of the Adjudication meeting (either the Chair of the Complaints Tribunal or the senior member presiding over the complaint) is responsible for ensuring that the Adjudication meeting is conducted in a manner that shows due regard to the gravity of the situation and to consideration of confidentiality.

5.9 The Adjudication

The Complaints Tribunal will decide whether the complaint is proved or not proved and may make recommendations on sanctions to be imposed. The Complaints Tribunal will, within 14 working days, produce a report outlining the complaint, the Tribunal findings and the sanctions to be imposed, which will be presented to the President of the Association to be applied in accordance with **Section 5** of this document.

5.10 Notification of Findings

- a) Within 14 working days, the Complaints Tribunal will produce a report outlining the complaint, the Tribunal findings and the sanctions to be imposed, if for some reason this becomes impossible both parties and the President of the Association shall be notified.
- b) The Chair of the Complaints Tribunal will notify the decision of the Complaints Tribunal to the President of the Association.
- c) The Respondent will be notified of the sanctions imposed by the President of the Association.
- d) The decision to uphold the complaint will be published, detailing the clauses held to have been breached and the expiry date of the sanctions that have been imposed, in the Association's Journal or elsewhere should this be deemed appropriate. Any sanctions imposed can be published in the Association's Journal. The publication of the decision and sanctions will be made only after the necessary time for notification of appeal has lapsed. (See Section 7). Or, if appealed, the appeal has been unsuccessful.
- e) The Chair of the Complaints Tribunal will also notify any Complainant(s) of the decision and where applicable the sanctions imposed.
- f) In a case where the individual Respondent is a member of or is known to be currently working for an Organisational Member of the Association, the Organisational Member will be informed of the outcome of the Complaints Procedure.

5.11 Venue

Adjudication Meetings will be held at a location deemed appropriate by the Chair of the Complaints Tribunal or the senior member presiding over the complaint. The venue selected for an Adjudication meeting will provide a secure and confidential environment.

6.0 SANCTIONS

Any of the following sanctions, or others deemed appropriate by the complaints tribunal, may be imposed. The compliance/non-compliance of these sanctions is to be supervised by the Chair of the Complaints Tribunal.

A PROBATIONARY PERIOD FROM 1 – 5 YEARS WITH:

- a) A requirement to demonstrate (by, but not limited to reflective paper/fully referenced paper/course completion) specified change/improvement by a specific date
- b) Provision for a reporting supervisor, acceptable to the Association, but chosen by the member, to monitor the member's work
 - i) Where a supervisor is a requirement, the qualifications and experience of the nominated supervisor must be submitted to the Complaints Tribunal for approval.
 - ii) Upon acceptance as a supervisor the Respondent should forward the supervisor a copy of the Tribunal's findings which will outline and list the relevant concerns that need to be addressed in the supervisor's reports.
 - iii) The supervisor shall be notified by the respondent of the time frame in which reports are to be submitted.
 - iv) All correspondence is to be forwarded to the Australian Counselling Association Inc. marked: Attention Chair of the Complaints Tribunal,
 - v) C/-Australian Counselling Association Inc., PO Box 88, Grange, Queensland 4051.
 - vi) It is the responsibility of the member NOT of the Complaints Tribunal to ensure that reports are submitted within the allocated time frame.
 - vii) Upon receipt of a supervisor's report the Chair of the Complaints Tribunal is to call a meeting of the Tribunal within 14 working days.
- c) Suspension of any professional status conferred by virtue of membership, such as Accreditation, Recognition (including the Registry and Referral Database), and rights of membership for the specified period following the fulfilment of conditions specified by the Association. ***In cases of suspension from the register or deregistration it is the responsibility of the counsellor to notify any providers with whom they are registered and their insurance company of this fact.***

AN EDUCATIVE PROBATIONARY PERIOD FROM 1 – 18 MONTHS

- a) A requirement to demonstrate (by but not limited to; reflective paper/fully referenced paper/course completion) specified change/improvement by a specific date
- b) Provision for a reporting supervisor, acceptable to the Association, but chosen by the member, to monitor the member's work
 - a. Where a supervisor is a requirement, the qualifications and experience of the nominated supervisor must be submitted to the Complaints Tribunal for approval.
 - b. Upon acceptance as a supervisor the Respondent should forward the supervisor a copy of the Tribunal's findings which

will outline and list the relevant concerns that need to be addressed in the supervisor's reports.

- c. The supervisor shall be notified by the respondent of the time frame in which reports are to be submitted.
- d. All correspondence is to be forwarded to the Australian Counselling Association Inc. marked: Attention Chair of the Complaints Tribunal, Australian Counselling Association Inc., PO Box 88, Grange, Queensland 4051.
- e. It is the responsibility of the member not of the Complaints Tribunal to ensure that reports are submitted within the allocated time frame.
- c. Upon receipt of a supervisor's report the Chair of the Complaints Tribunal is to call a meeting of the Tribunal within 14 working days.

EXCLUSION FROM THE ASSOCIATION WITH:

- a) Termination of any professional status or membership
- b) a directive to cease counselling/training/supervision or other counselling related activities under the auspices of ACA for a specific period or indefinitely
- c) Other such sanctions may from time to time be deemed appropriate to the particular circumstances of a case.

6.1 Failure to comply with sanctions

Failure to comply with sanctions will result with the Chair of the Complaints Tribunal writing to the President of the Association with information and recommendations as to whether membership should be terminated or not. The President of the Association will notify the member of their decision, which may in turn be published in the Association's Journal.

7.0 CRITERIA FOR APPEAL AND ACTIONS TO BE TAKEN

7.1 Appeals to go to the President of the Association

The President of the Association will receive all Appeals. All Appeals must be accompanied by any supporting documentation.

7.2 Criteria for appeal

The President of the Association, or their delegate, who may take advice from the Association's Solicitor, will consider the Appeal. In deciding whether an Appeal shall proceed or not the President of the Association, or their delegate, is empowered to investigate and interview witnesses in relation to any possible breach of the following criteria:

1. There has been a material breach of procedure laid down in the Association's Protocols and Procedures.
2. There has been intimidation of any party involved in the Complaints Procedure by any person in a 'judiciary' capacity.

3. There is an actual or ostensible bias by any person involved in the Complaints Procedure in a 'judiciary' capacity.
4. 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.
5. In cases where the Complaints Tribunal has decided upon de-registration the respondent may ask for the case to be reconsidered by the Appeals Tribunal.

7.3 Action to be taken if criteria satisfied

If the Appeal satisfies any of the criteria, the Appeal Procedure set out in **Section 7** shall take effect.

7.4 Failure to Satisfy Criteria

If an Appeal does not satisfy any of the criteria the person lodging the Appeal will be notified by the President of the Association of the fact.

7.5 Decision to be final

The decision of the President of the Association, or their delegate, shall be final as to whether any of the criteria are met.

8.0 APPEALS – PROCEDURAL GUIDELINES

8.1 Timeframe

The Respondent may appeal the decision and/or the sanction(s) by writing to the Clerk of the Complaints Procedure within 14 working days of the notification of the sanctions (except in cases of de-registration where the Chair of the Complaints Tribunal is to be notified of a desire to appeal within 7 working days).

8.2 Criteria

The criteria for making an Appeal and for determining whether those criteria are satisfied will be made under the provisions of **Section 7.2** hereto. Only if the criteria are satisfied shall the remainder of the procedure take effect, as set out in this section.

8.3 Composition of the appeal panel

The President of the Association, or his delegate, will appoint up to three people not previously involved in the case (though there is provision to second extra members for their expertise), to decide the appeal (the Appeal Panel). The Chair of the panel should be at minimum an ACA level three qualified counsellor. In cases where the appeal has been made by a member of the public, one member must be from outside the counselling profession. Any member of the Appeal Panel who is found to have actual bias or ostensible bias (i.e., there is a reasonable apprehension that he or she does not bring an

objective mind to the assessment) in the matter will be immediately replaced. For the avoidance of any doubt, a member of the Appeal Panel will be deemed to have ostensible bias if he or she has any monetary or financial interest in the outcome of the matter.

8.4 Brief of the appeal panel

The Appeal Panel will review the evidence on which the decision was made, the decision and the sanctions imposed. The Appeal Panel can, at its discretion, interview the Respondent and the Complainant.

Please note that no new or additional information will be sought at this stage – only points of clarification – and both parties must be interviewed via the same media means. The Appeal Panel is not bound by the rules of evidence, but may not grossly depart from them, i.e., it must take into account all relevant evidence and considerations submitted by the parties, it must proceed upon logically probative evidence, and it must not accept hearsay evidence or evidence from witnesses who are not credible. In order to uphold a complaint, the Appeal Panel must be reasonably satisfied on the evidence that the counsellor committed a breach referred to in Section 3.1a).

8.5 Decision of the appeal panel

The Appeal Panel will report its decision to the President of the Association, or his delegate, who will implement its decision which will be final.

8.6 Notification of decision

The decision of the Appeal Panel will be notified to the appellant parties and the Complaints Tribunal in writing within 7 working days. Reasons shall be required to be appended to that decision.

8.7 Publication

Where the appeal is not allowed the original decisions of the Tribunal and the sanctions imposed by the President of the Association and the date of their effect will be published in the Association's Journal or elsewhere in accordance with section 5.10.

9.0 PUBLICATION

9.1 Right to publish

Subject to **Section 5.10d** the Association reserves the right to publish such details of complaints as it considers appropriate. Normally details shall include the members name, date of effect of probation/termination and articles of the code under which membership has been placed under probation/terminated.

9.2 Place of publication

Any notification that the Association, under these procedures, is entitled to publish in its Journal may, at its discretion, be published elsewhere by the Association. An example might be:

“xyz has received a probationary period from the Complaints Tribunal for breaches of the ACA Code of Ethics and Practice. This period of probation, which includes suspension of membership rights, will finish on ___/___/___ if all sanctions have been complied with.”

Or

“xyz has received an educative probationary period from the Complaints Tribunal for breaches of the ACA Code of Ethics and Practice. This period of probation, which **does not** include the suspension of membership rights, will finish on ___/___/___ if all sanctions have been complied with.”

9.3 Termination of membership to be published

The Termination of membership under the Complaints Procedure will be reported in the Association's Journal and/or elsewhere in accord with **10.2**. An example might be:

“xyz has been de-registered from the ACA by the Complaints Tribunal for the following breach(es) of the ACA Code of Ethics and Practice. This de-registration is permanent and commenced as of ___/___/___”

10.0 LEGAL ACTION RELATED TO COMPLAINTS

10.1 Requirements Regarding Legal Action

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.

10.2 If Legal Action is Undertaken During Complaints Procedure

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. This action is undertaken to avoid be seen to have, or to actually begin, adopting a semi-judicial role in potentially reviewing the legal impact of an order in place or reviewable by a judicial, quasi-judicial or other legal body.

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.

10.3 If Stay of Action is Required

If actions on a complaint are stayed, the Complainant and Respondent will be notified.

10.4 Continuation of Complaint After Legal Action

The actions on a complaint may be continued after legal action has been concluded. In this case the Complainant and Respondent will be notified.

10.5 Account to be Taken of Result of Legal Action

The Complaints Tribunal has the right to take into account the results of the legal action after the time for the filing of an Appeal has elapsed or, if appealed, the Appeal has been unsuccessful.

10.6 Referral of Complaint to State Health Care Rights or Similar Body

If the Tribunal considers that to do so is in the best interests of Natural Justice, the Tribunal may, with the permission of the complainant, exercise the option

of transferring all material relating to the complaint to the relevant State Health Care Rights Body as appropriate.

In those cases where a respondent decides to employ legal counsel the Tribunal will immediately hand all information to the relevant State Health Care Rights body. This ensures no unnecessary delay to the case and protects the Association and its members from incurring undue costs.

APPENDIX A – CLIENT RELEASE FORM

Date: / /

Dear

Re: Complaint.

In accord with the ACA Complaints Procedural Guidelines sections 2.1 (e), 3.3, 4.1, and 9.6 I hereby request that you sign the following and return it to:

Chair of the Complaints Committee
P.O.Box 88
Grange Qld 4051

Please Note: All correspondence should be marked “Private and Confidential”.

CLIENT AUTHORISATION

I, _____ hereby give my consent for my Counsellor:

Address: _____

_____ Postcode: _____

Phone #: _____ E-mail: _____

to discuss and/or provide specific session information to ACA Complaints Tribunal [or the relevant State Health Care Rights Body should the ACA Tribunal deem the use of that forum to be in the best interest of the Association, myself or the respondent] to assist them in the investigation of my complaint.

I authorise the ACA Complaints Tribunal [or the relevant State Health Care Rights Body should the ACA Tribunal deem the use of that forum to be in the best interest of the Association, myself or the respondent] to pass on information I give to them to the respondent.

I declare that I am not, at this stage, intending legal action against the member and if I do decide to take independent legal action I will notify the Association of my intention to do so.

This authority is valid from the date of my signature.

All information given is to be treated as confidential.

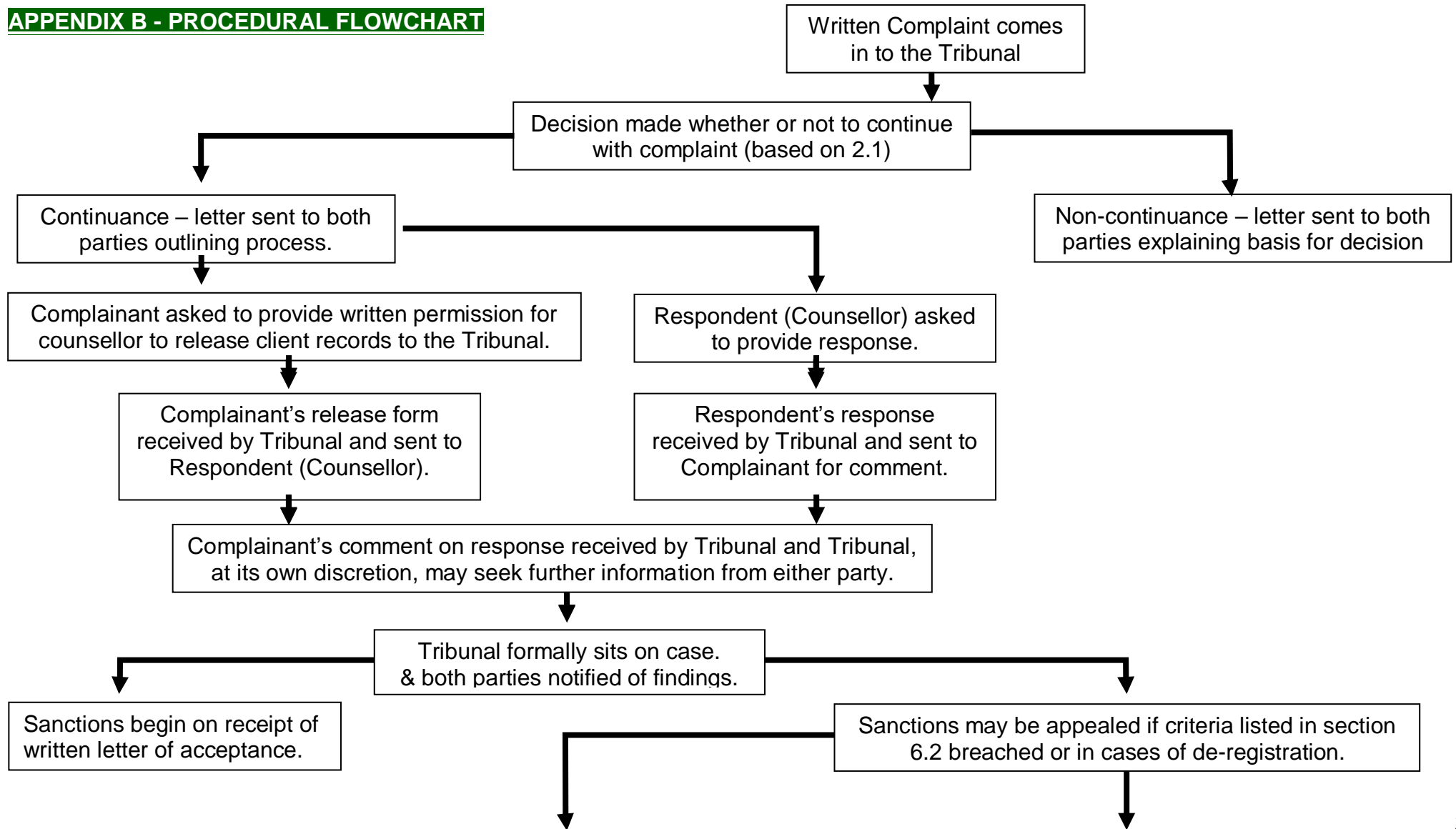
Client’s Name: _____

Client's Signature: _____ Date: / /

Yours faithfully,

Chair, Australian Counselling Association Complaints Tribunal.

APPENDIX B - PROCEDURAL FLOWCHART



The peak body for counsellors and psychotherapists in Australia.

If breached, Appeal Process (Sect 7) comes into effect and new Tribunal receives all files and begins new process.

De-registration may be appealed once, and a new Tribunal appointed to re-hear case. Appeals as per section 6.2 are not precluded by this process.

APPENDIX C – CHECKLISTS FOR ALL PARTIES

Checklist for Complainant:

- 1) Familiarise yourself with the ACA Complaints Procedural Guidelines.
- 2) If possible, relate your complaint to sections of the Code of Ethics and Practice.
- 3) Make sure you have initialed each page of the complaint and signed and dated it *.
- 4) Make sure you have downloaded a copy of the Client release form and signed and dated it *.

* ***These should be witnessed by a Justice of the Peace***

Checklist for Respondent:

- 1) Familiarise yourself with the ACA Complaints Procedural Guidelines.
- 2) Make contact with the ACA support person who will help guide you through the process.
- 3) Answer, to the best of your ability, each alleged breach of the code.
- 4) Include only relevant material [especially case notes or supervision notes**] with your response.

** All counsellors should keep extensive and detailed notes.

Checklist for Tribunal:

- 1) Check that a letter of Complaint has been sign and notarized.
- 2) Ensure Client release form has been received.
- 3) If Complaint has not been related to the Code of Conduct inform the respondent that this is the case and list possible breaches.
- 4) When sending complaint to Respondent ensure information re available support is included.
- 5) Check correspondence for consistency and validity of terminology.
- 6) Include timelines for responses are clear to all participants.
- 7) Original hardcopies of all documents should be kept.

