



**Psychotherapy & Counselling  
Federation of Australia**

# **Professional Conduct Procedures 2020**

# Table of Contents

Table of Contents .....	1
Preamble .....	3
Definitions.....	3
1. Introduction .....	5
2. Aim of the PACFA Professional Conduct Procedures .....	5
3. Implementation of Complaint, Grievance and Appeal Procedures .....	6
3.1 Effective Date .....	6
3.2 Responsibility for Oversight .....	6
3.3 Pathways for Complaints and Grievances.....	6
3.3.1 Informal Determination .....	6
3.3.2 Complaint .....	6
3.3.3 Grievance .....	6
3.4 Processing of Appeals .....	6
3.5 Applying the Professional Conduct Procedures .....	6
3.5.1 Compliance with Professional Conduct Procedures .....	6
3.5.2 Considering a Complaint or Grievance .....	7
3.5.3 Complaints or Grievances against Registrants belonging to Member Associations.....	7
3.5.4 Complaints or Grievances against Student Members.....	8
3.5.5 Complaints and Grievances against lapsed Members, Registrants and those taking leave of absence .....	8
3.5.6 Investigations initiated by the PACFA Ethics Committee.....	9
3.6 Forms of Ethical Misconduct.....	9
3.6.1 Unsatisfactory Professional Conduct .....	9
3.6.2 Serious Professional Misconduct .....	9
3.6.3 Bringing the Profession into Disrepute.....	10
3.7 Exclusions to these Complaint, Grievance and Appeal Procedures .....	10
3.7.1 Complaints or Grievances before other Complaints bodies.....	10
3.7.2 Complaints or Grievances about Members or Registrants who were not PACFA members at the time of the events .....	10
3.7.3 Matters of a legal nature.....	10
3.7.4. Claims for compensation.....	10
3.7.5 Complaints or Grievances heard under the jurisdiction of the Family Law Act.....	10
3.7.6 Vexatious or frivolous Complaints or Grievances .....	10
3.7.7 Referral of Complaints or Grievances to other bodies .....	11
3.7.8 Complaints against PACFA, its Committees or its Member Associations .....	11
4. Complaints and Grievances Procedures .....	11
4.1 Complaints Procedures .....	11
4.1.1 Filing a Complaint.....	11
4.1.2 Receipt of a Complaint .....	11

4.1.3 If it is appropriate for PACFA to proceed with the Complaint.....	12
4.1.4 Letter of Advice .....	12
4.1.5 Alternative Dispute Resolution (ADR) .....	13
4.2 Grievance Procedures .....	13
4.2.1. Lodging a Grievance .....	13
4.2.2 Receipt of a Grievance.....	13
4.2.3. Process.....	13
4.2.4 Outcomes .....	14
4.2.5 Sanctions.....	15
4.3 Publication of adverse findings .....	15
5. Step by step processes - Complaints .....	15
5.1 Initial contact with the PACFA Ethics Officer and decision to proceed .....	15
5.2 Letter of Advice.....	16
.....	16
5.3 Alternative Dispute Resolution (ADR) .....	17
6. Step by step processes - Grievances .....	18
7. Procedures for Appeals.....	20
7.1 Lodging an Appeal.....	20
7.2 The grounds under which an Appeal will be considered .....	20
7.3 Assessing the Appeal .....	21
7.4 Hearing of the Appeal .....	22
7.5 Appeal outcomes and actions .....	22
7.6 Communicating the decision.....	23
8. Administration of Complaints, Grievances and Appeals.....	23
8.1 Costs incurred by parties to Complaints, Grievances or Appeals .....	23
8.2 Records of Complaints, Grievances and Appeals .....	23
8.3 Notification of findings to other professional bodies .....	24
Acknowledgements .....	24

## Preamble

PACFA affirms that the decisions made in conjunction with these Professional Conduct Procedures will observe the provisions of procedural fairness and follow the principles of natural justice.

The PACFA Complaints, Grievances and Appeals processes set out in this document are not legal procedures. They are ethics procedures that are part of PACFA's role as a regulator for the counselling and psychotherapy profession which support the delivery of high quality, ethical services by counsellors and psychotherapists.

## Definitions

The following definitions are capitalised where used throughout this document.

**Alternative Dispute Resolution (ADR)** – A non-legal process that is similar to mediation for seeking resolution of a Complaint.

**Appeal** – A process that is lodged against the decision of the Grievance Panel in order for the case to be reviewed.

**Appellant** - Person appealing a decision resulting from a formal Grievance

**Complaint** – is defined by clause 3.3.2.

**Complainant** – Person making a Complaint, as defined in clause 3.5.2 (b).

**Ethical Misconduct** – Behaviour that contravenes the principles and conduct outlined in the PACFA Code of Ethics.

**Ethics Officer** – A PACFA staff member designated to hold the role of Ethics Officer

**Findings Report** – A report of the findings of the Grievance investigation including sanctions if applicable.

**Grievance** – is defined by clause 3.3.3.

**Grievance Panel** – A panel convened to investigate the substance of the Grievance lodged to determine if there is evidence of a PACFA Member or Registrant ethical misconduct.

**Grievance Panel Report** – A report from the Grievance Panel that informs the PACFA Ethics Committee of the findings and recommendations resulting from a Grievance investigation.

**Grievance Process Person** – A PACFA Clinical Member/Registrant with Supervisory skills who has experience in handling Grievances and who will, as a person independent of the process, provide professional support throughout the Grievance process for the PACFA Member or Registrant who is the subject of the Grievance.

**Intermediary** – A PACFA Clinical Member/Registrant trained in Professional Conduct Procedures who offers a neutral and independent support to clarify and resolve the matter at ADR level. The Intermediary converses separately with those involved in a Complaint, helps to articulate what is to be conveyed to the other person, ensures all opinions are heard, aims to reach a resolution and makes sure the outcome is clearly stated.

**Letter of Advice** – A process for seeking resolution of a Complaint if there has been a minor or technical breach of professional standards.

**Member Association** – PACFA is made up of individual members (PACFA Members) and Member Associations whose members who have chosen to join the PACFA Register are PACFA Registrants.

**Natural Justice** – While the term **natural justice** is often retained as a general concept, it has largely been replaced and extended by the general "**duty to act fairly**".

**Offenders Rehabilitation Legislation** – Includes any state/territory or Commonwealth legislation applicable in a relevant jurisdiction that sets conditions on record-keeping or disclosure for spent criminal convictions or any period of time after which an offender is deemed to be rehabilitated of offending.

**Peer Reporting Obligation** – The obligation of Counselling and Psychotherapy practitioners to report alleged transgressions of ethical behaviour by their peers.

**Practitioner** – means a PACFA Member or PACFA Registrant. In the Professional Conduct Procedures 2020, the terms Practitioner and PACFA Member or PACFA Registrant are used interchangeably.

**Procedural Fairness** – The use of fair and proper procedure when making a decision.

**Procedural Impropriety** – Failure to follow PACFA's Professional Conduct Procedures or conducting the Complaint or Grievance process in a way that is not in accordance with the principles of natural justice

**Professional Misconduct** – also referred to as Ethical Misconduct – A failure of a Practitioner to conduct themselves in a manner that is considered by their peers to be of an ethical and behavioural standard expected of the profession.

**Professional Conduct Procedure** – A process for making Complaints and lodging Grievances against PACFA Members or Registrants.

**Reportable Breach** – A breach of the principles, standards and/or professional conduct set out in the PACFA Code of Ethics by a PACFA Member or a PACFA Registrant

**Representative** – A duly appointed adult guardian; administrator or attorney appointed pursuant to an enduring attorney; or family member of an adult person who produces sufficient certification from a sufficiently qualified medical professional that the adult person lacks capacity, and who is charged with the responsibility of representing the Complainant or the PACFA Member or Registrant

**Respondent** – Person responding to a Complaint, a Grievance or an Appeal.

**Right or legitimate interest** – a person has a right or legitimate interest if they are given the ability to take an action or request that action be taken under this Procedure or, in the case of a PACFA Member or Registrant, if the person is or may be the subject of disciplinary action or sanctions in accordance with the Procedure. A person does not have a right or legitimate interest only because they are dissatisfied with any exercise by PACFA of its discretion to take disciplinary action against, or impose sanctions on, a PACFA Member or Registrant.

**Sanction** – Penalties applied to the PACFA Member or Registrant who has been found to have committed an ethical breach of practice standards.

**Vexatious Complaint** – A vexatious Complaint is one that aims to harass, distress or disrupt by such means as providing false or no new information, reporting burdensome and unrelated information, raising trivialities, failing to identify precise issues, or is otherwise malicious. It is a Complaint that is brought without sufficient grounds to be processed.

## 1. Introduction

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

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

This framework has been established to offer parties to a Complaint, Grievance or Appeal an expeditious method to resolve real issues in dispute between them at minimal expense. Parties are encouraged to participate in the Professional Conduct procedure as an alternative to legal proceedings.

Parties to a Complaint, Grievance or Appeal do not require legal advice to participate in this non-legal process. All parties have a right, and are encouraged, to:

- obtain independent legal advice;
- obtain independent advice of another appropriate professional.

PACFA Members or Registrants have also a right, and are encouraged, to have the assistance of a Grievance Process Person.

If either party decides to employ legal representation, however, PACFA reserves the right, should the Ethics Committee recommend to do so, to cease to proceed with the Complaint, Grievance or Appeal and hand all information to the relevant Health Care Complaints entity.

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

Most States and Territories require practitioners to display, in their practice rooms, the relevant Code of Conduct for Unregistered Health Practitioners. Counsellors and Psychotherapists may include this as part of their informed consent process.

## 2. Aim of the PACFA Professional Conduct Procedures

The aim of the PACFA Professional Conduct Procedures is to provide a transparent process for making Complaints and Grievances in relation to services provided by PACFA Members or Registrants or for parties to a Grievance to Appeal decisions. In processing such Complaints, Grievances and Appeals, PACFA aims to facilitate the resolution of concerns of the PACFA Member or Registrant's clients. Through this process PACFA also aims to support PACFA Members or Registrants to improve the service provided to their clients and to enhance the practice of Counselling and Psychotherapy.

The Procedures also provide a mechanism for the PACFA Ethics Committee to investigate alleged ethical misconduct in the absence of a formal Complaint where Peer Reporting Obligation or a Reportable Breach (as defined in the PACFA Code of Ethics) is reported to PACFA or where a Member

or Registrant is subject to criminal investigation in relation to alleged professional misconduct or other conduct impacting on their professional practice.

## **3. Implementation of Complaint, Grievance and Appeal Procedures**

### **3.1 Effective Date**

These Professional Conduct Procedures will apply to all Grievances, Complaints and Appeals received by PACFA after the date of publication of these procedures. This supersedes any previous Professional Conduct Procedures.

### **3.2 Responsibility for Oversight**

It is the responsibility of the Ethics Committee to oversee the implementation of these procedures.

### **3.3 Pathways for Complaints and Grievances**

Any individual who has received a service from a PACFA Member or Registrant and wishes to make a Complaint or lodge a Grievance against that Member or Registrant has the right to contact PACFA and seek information about the different options available to them.

There are 3 pathways for Complainants: Informal Determination; Complaint and Grievance.

#### **3.3.1 Informal Determination**

Before submitting a Complaint or Grievance to PACFA, the Complainant is encouraged to attempt to resolve the issue informally with the Member or Registrant complained against. PACFA is not involved in this process.

#### **3.3.2 Complaint**

PACFA defines "Complaint" as a concern that a client has in relation to a practitioner's action or inaction. In terms of these procedures, a Complaint will be addressed and resolved by a Letter of Advice or Alternative Dispute Resolution. In some cases, a Complaint may lead to the formal lodging of a Grievance.

#### **3.3.3 Grievance**

PACFA defines "Grievance" as a concern of more serious or on-going nature. The Grievance procedure is a formal process that starts by the submission of a document that sets out the facts and the reasons that the Complainant believes are sufficient to support the lodging of a Grievance against the PACFA Member or Registrant.

### **3.4 Processing of Appeals**

The processing of Appeals follows the procedures defined in section 7 of the present document.

### **3.5 Applying the Professional Conduct Procedures**

#### **3.5.1 Compliance with Professional Conduct Procedures**

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

PACFA will not tolerate abusive, bullying or intimidating behaviour from parties to a Complaint, Grievance or Appeal. Such behaviour may result in the discontinuation of the Complaint, Grievance or Appeal process, or the imposition of sanctions on the PACFA Member or Registrant.

### **3.5.2 Considering a Complaint or Grievance**

- a. PACFA will only consider a Complaint or Grievance if:
- i. the Member/Registrant was, at the time the services complained about were provided, either:
    - a PACFA individual member in any membership category (with limitations on Complaints against Student members as detailed under 4.2.3.), or
    - a member of a PACFA Member Association who is listed at the PACFA Register (only in limited circumstances as detailed under 4.2.2.);

and

  - ii. where there is alleged evidence of unethical conduct that may be in breach of the PACFA Code of Ethics in existence at the time of the events and the events occurred within the past 7 years.

and

  - iii. where the Member/Registrant is a current Member or Registrant at the time of lodging the Complaint or Grievance

See 3.7. below for exclusions.

- b. Complaints or Grievances may be made by:
- i. someone who received a therapeutic service from a PACFA Member or Registrant;
  - ii. a parent or legal guardian representing a child where the child has received a therapeutic service from a PACFA Member or Registrant;
  - iii. the Representative of an adult who has received a therapeutic service from a PACFA Member of Registrant.
- c. Complaints or Grievances may be made about:
- i. Unsatisfactory Professional Conduct;
  - ii. Serious Professional Misconduct; or
  - iii. Bringing the Profession into Disrepute.

See details below under section 3.6.

### **3.5.3 Complaints or Grievances against Registrants belonging to Member Associations**

- a. Complaints or Grievances about a PACFA Registrant who belongs to a PACFA Member Association must be submitted to and heard by the PACFA Member Association to which the practitioner belongs, following the Code of Ethics and the Complaint procedure put into place by that Member Association.
- b. PACFA will only hear a Grievance or a Complaint about a Registrant who is a member of a Member Association if:
- i. the Member Association is unable to hear a Complaint or Grievance due to:

- a conflict of interest within the Member Association’s Executive Committee or sub-committees in relation to one or both of the parties;
- the Complaint being of a serious or complex nature that is deemed to be outside the expertise or jurisdiction of the Member Association;

or

- ii. the Complainant had a Complaint or Grievance heard by a Member Association against one of their members who is a current PACFA Registrant, and the Complainant is not satisfied that fair and due process was followed.
- c. In circumstances where the Member Association to which the Registrant belongs is unable to hear a Complaint or Grievance, PACFA will consider hearing the Complaint or Grievance as in points (a) and (b) above.

#### **3.5.4 Complaints or Grievances against Student Members**

- a. With the exception of 3.5.4. b., PACFA does not hear Complaints or Grievances against Student Members of PACFA. Complaints or Grievances against PACFA Student Members would be limited to their client work in the context of their training, as PACFA does not endorse students to practice outside of their training. Hearing such Complaints or Grievances is the responsibility of the training provider where the person is a student.
- b. However, if the PACFA member has completed their training and graduated but remains in the category of “Student Member”, PACFA will hear the Complaint or Grievance in accordance with these procedures, provided that this Complaint or Grievance does not relate to their practice in the course of their training.

#### **3.5.5 Complaints and Grievances against lapsed Members, Registrants and those taking leave of absence**

- a. Resigning from PACFA membership or registration, or taking leave of absence, does not affect the obligation on a Member or Registrant to participate in a Complaint, Grievance or Appeal or to abide by any sanctions imposed as a result of a Complaint, Grievance or Appeal.
- b. Once a Complaint, Grievance or Appeal process has commenced, the following acts will not terminate or invalidate the processing and/or consideration of the matter by PACFA:
  - i. resigning from PACFA membership or registration;
  - ii. failing to renew PACFA membership or registration; or
  - iii. taking leave of absence.
- c. If a Member or Registrant fails to participate or withdraws from the process, the Grievance Panel will determine the result and send the findings to the Person who has lodged the Grievance and the PACFA Member or Registrant. The records will note the lack of engagement by the Member or Registrant and the findings (including sanctions, if relevant) will need to be satisfactorily complied with for successful re-application for PACFA membership or PACFA registration in the future.
- d. When a Member or Registrant cannot be contacted despite reasonable efforts by the PACFA Office to locate them using email, internet searches, phone and ordinary mail, the Complaint or Grievance cannot proceed.

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

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

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

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

- i. undertake an initial short investigation conducted by two members of the Ethics Committee gathering and considering all available evidence and making a determination;  
or
- ii. conduct a full investigation in the same way as if a Grievance had been made about the alleged misconduct with a Grievance Panel being formed to consider the allegations.
- iii. Sanctions may be applied in the same way that sanctions can be applied in response to Grievances.

### **3.6 Forms of Ethical Misconduct**

There are three types of ethical misconduct that can be identified in a decision made about a Complaint, Grievance or Appeal that is under consideration by PACFA:

- i. Unsatisfactory Professional Conduct;
- ii. Serious Professional Misconduct; and
- iii. Bringing the Profession into Disrepute.

#### **3.6.1 Unsatisfactory Professional Conduct**

- a. Professional Conduct is defined as acting in accord with the written and unwritten guidance of the profession, as guided by the expectations of a peer group of the PACFA Member or Registrant.
- b. A finding of Unsatisfactory Professional Conduct signifies that the Member or Registrant has not acted in accord with the ethical and behavioural standards that can reasonably be expected of members of the counselling and psychotherapy profession.
- c. A finding of Unsatisfactory Professional Conduct may occur in circumstances where there was a breach of the PACFA Code of Ethics that did not cause serious harm.

#### **3.6.2 Serious Professional Misconduct**

- a. A finding of Serious Professional Misconduct signifies that the service(s) for which the PACFA Member or Registrant is responsible has/have fallen below the standards that would reasonably be expected of a Member or Registrant exercising reasonable care and skill.
- b. A finding of Serious Professional Misconduct is appropriate if the misconduct is of sufficient seriousness or caused such serious harm to merit suspension of a Member or Registrant for a period of time and/or the withdrawal of PACFA membership or registration.

### **3.6.3 Bringing the Profession into Disrepute**

- a. A finding of Bringing the Profession into Disrepute signifies that the PACFA Member or Registrant has acted in such a dishonourable or disgraceful way that the public's trust in the profession might reasonably be undermined.
- b. A finding under this heading must amount to dishonourable or disgraceful professional conduct that had some connection with a professional role in counselling or psychotherapy. It ought not to be concerned with matters that can reasonably be viewed as solely personal and private.
- c. A finding of Bringing the Profession into Disrepute will result in permanent withdrawal of the membership or registration of the person against whom the Grievance was upheld, in addition to any other sanctions considered appropriate to the circumstances.

## **3.7 Exclusions to these Complaint, Grievance and Appeal Procedures**

### **3.7.1 Complaints or Grievances before other Complaints bodies**

PACFA will not investigate matters that are already before a Health Care Complaints Entity or before another professional association in any State or Territory. This is considered a duplication of the Complaints process.

### **3.7.2 Complaints or Grievances about Members or Registrants who were not PACFA members at the time of the events**

It is not possible for PACFA to apply the Professional Conduct Procedures to investigate Complaints or Grievances against anyone who was not in membership – or on the Register – at the time of the service being provided. Pursuant to clause 3.7.7., PACFA may refer the Complainant or the person who has a Grievance to the relevant Health Care Complaints entity.

### **3.7.3 Matters of a legal nature**

- a. PACFA will not hear Complaints or Grievances that are currently before a legal body.
- b. In addition to the above, where either party decides to employ legal representation, as explained in the Introduction above, the Ethics Committee may decide to cease immediately to proceed with the Complaint or Grievance and to hand all information to the relevant Health Care Complaints entity.

### **3.7.4. Claims for compensation**

PACFA will not engage in any claims for compensation by either the Complainant, the person who has lodged a Grievance, an Appellant or a PACFA Member or Registrant. This includes refunds of monies paid for services rendered.

### **3.7.5 Complaints or Grievances heard under the jurisdiction of the Family Law Act**

PACFA will not hear Complaints or Grievances where the PACFA Member or Registrant is a Family Dispute Resolution Practitioner as defined by the *Family Law Act 1975* (Cth) and where such Complaint or Grievance relates to their work in this role.

### **3.7.6 Vexatious or frivolous Complaints or Grievances**

If the Ethics Committee deems that a Complaint or Grievance is vexatious or frivolous – i.e. made to cause annoyance and with no serious purpose or value, the Complaint or Grievance will not proceed and the Ethics Committee will inform the Complainant or the person who has a Grievance and the Member/Registrant in writing of its decision.

### **3.7.7 Referral of Complaints or Grievances to other bodies**

- a. In some cases, PACFA may refer matters to the relevant Health Care Complaints entity or other relevant professional body. This may occur under the following circumstances:
  - the person complained about is not, or is no longer, a PACFA Member or Registrant;
  - the Complaint or Grievance is of a serious nature and the Member or Registrant has had a previous Complaint or Grievance upheld by an HCC Entity;
  - the Complaint or Grievance is of a serious nature and is of such significant complexity that PACFA would not have the resources or expertise to hear the Complaint or Grievance; or
  - criminal proceedings are underway in relation to the Complaint or Grievance.

### **3.7.8 Complaints against PACFA, its Committees or its Member Associations**

- a. Complaints against PACFA, its Committees, Leadership Groups or its Member Associations are not considered under these Procedures.
- b. Please see the relevant PACFA policies and procedures, i.e. the PACFA Code of Good Governance, the PACFA Code of Conduct or the PACFA Complaints and Feedback Policy.

## **4. Complaints and Grievances Procedures**

### **4.1 Complaints Procedures**

#### **4.1.1 Filing a Complaint**

- a. The Complainant must, in the first instance, make contact with the PACFA Ethics Officer. The Complaint must also be made on the official PACFA Complaint Form. This Form requires details of the Complainant and the PACFA Member or Registrant and the conduct being complained about according to the PACFA Code of Ethics in place at the time of the event complained about.
- b. The Complaint is dated and signed by the Complainant and sent to the PACFA Office.
- c. A Complaint not satisfying the above requirements will not be accepted or processed by PACFA.

#### **4.1.2 Receipt of a Complaint**

- a. The PACFA Ethics Officer acknowledges receipt of the Complaint Form in writing within five (5) working days and submits it to the Chair of the PACFA Ethics Committee.
- b. The PACFA Ethics Committee determines, within ten (10) working days of the date of receipt if it is appropriate for PACFA to consider the matter. The Complainant will be informed of the determined outcome.
- c. There are four possible outcomes:
  - i. The matter will not proceed as it is determined that it is not appropriate for PACFA to consider the matter (see 3.7 above for the exclusions).
  - ii. The matter will not proceed as it is determined that there is no alleged breach of the PACFA Code of Ethics that can be identified.
  - iii. The matter will proceed as it is determined that it is appropriate for PACFA to consider the Complaint.

- iv. The matter will proceed as it is determined to be of a serious enough nature to proceed immediately to a Grievance.

#### **4.1.3 If it is appropriate for PACFA to proceed with the Complaint**

- a. The Ethics Committee determines which option is the most appropriate to address and seek resolution of the Complaint.
- b. The two options in place to address and seek resolution of a Complaint are: Letter of Advice or Alternative Dispute Resolution (ADR). In exceptional cases, it may be deemed appropriate to proceed with a formal Grievance.

If a Letter of Advice is deemed appropriate the Complainant will be informed of this.

If Alternative Dispute Resolution process is deemed appropriate the Complainant will be asked if they are willing to participate in such a process.

If the Ethics Committee deems it appropriate for the Complainant to proceed with lodging a formal Grievance the Ethics Officer will inform the Complainant of this option.

- c. The PACFA Ethics Officer informs the Complainant of the Ethics Committee's decision that the Complaint will proceed and of the action to be taken.

#### **4.1.4 Letter of Advice**

- a. A Letter of Advice is a process for seeking resolution of a Complaint if there appears to have been a minor or technical breach of professional standards. The breach will generally have had no significant impact and there must be a low likelihood of repetition. It is not a formal disciplinary action. A Letter of Advice provides, in appropriate cases, an alternative to Alternative Dispute Resolution or to a Grievance process.
- b. If the Ethics Committee has determined on the basis of the information provided by the Complainant that the PACFA Member or Registrant may have failed to meet PACFA's Professional Standards and that a Letter of Advice is the appropriate action to address the matter, the Member or Registrant is informed of this by the Ethics Committee in a Letter of Advice. The Letter of Advice will as well indicate the nature of the alleged professional standards breaches and the actions recommended by the Ethics Committee to address the matter.
- c. The Letter of Advice is sent to the Member or Registrant only. The Member or Registrant is requested within ten (10) working days to acknowledge receipt of the Letter of Advice. The Member or Registrant is given the opportunity to reply to the Ethics Committee within ten (10) working days.
- d. If the Member or Registrant agrees to the Letter of Advice and to the Recommendations made, the matter is closed.
- e. If no agreement can be reached, the Ethics Committee may suggest the matter be presented for ADR. In some cases, lodging a formal Grievance may be the better option. The decision to formally lodge a Grievance is left to the Complainant.
- f. The Letter of Advice, as well as the Member or Registrant's response if applicable, will be kept on the Member or Registrant's file in accordance with clause 8.2 and will be taken into account if any similar Complaints or Grievances are received by PACFA within that time.

#### **4.1.5 Alternative Dispute Resolution (ADR)**

- a. Alternative Dispute Resolution is a second process for seeking resolution of a Complaint. ADR, in the context of a Complaint made to PACFA, is a non-legal process, similar to mediation. It is facilitated by a PACFA Clinical Registrant who acts as an Intermediary in the process and who has mediation skills. ADR considers all aspects of the Code of Ethics.
- b. If ADR is the chosen process and if the matter is resolved (see below clause 5), this is stated in writing and signed by the Complainant, the Member or Registrant and the Intermediary. There will be no further action taken and the Complaint does not proceed to the formal lodging of a Grievance.
- c. If the matter is not resolved by ADR, and the Complainant wishes to proceed, they will be required to formally lodge a Grievance.

#### **4.2 Grievance Procedures**

##### **4.2.1. Lodging a Grievance**

- a. The person who has a Grievance must, in the first instance, make contact with the PACFA Ethics Officer. The filing of a Grievance must also be made on the official PACFA Grievance Form. This Form requires details of the person who has a Grievance, details of the PACFA Member or Registrant, the conduct that is the object of the Grievance according to the Code of Ethics in operation at the time of the event(s).
- b. The Grievance Form is completed, dated and signed by the person who has a Grievance and sent to the PACFA Office.
- c. A Grievance not satisfying the above requirements will not be accepted or processed by PACFA.

##### **4.2.2 Receipt of a Grievance**

- a. The PACFA Ethics Officer acknowledges receipt of the Grievance in writing within five (5) working days.
- b. The Ethics Committee will determine, within ten (10) working days, if it is appropriate for PACFA to proceed with the Grievance. The Person who has lodged a Grievance will be informed of the Ethics Committee's decision.
- c. There are three possible outcomes:
  - i. The matter will not proceed as it is determined that it is not appropriate for PACFA to consider the matter (see 3.7. above for the exclusions).
  - ii. The matter will not proceed as it is determined that there is no alleged breach of the PACFA Code of Ethics that can be identified.
  - iii. The matter will proceed as it is determined that it is appropriate for PACFA to consider the Grievance.

##### **4.2.3. Process**

- a. Grievances are heard by a Grievance Panel.
- b. The Grievance Panel is a volunteer Panel appointed solely for the purpose of hearing a specific Grievance. It generally consists of three (3) people: a member of the PACFA Ethics Committee, a PACFA Clinical Registrant, and an Independent Person. Where an Independent Person is not available, a second PACFA Clinical Registrant is allocated to the Panel.

- c. A Chair is appointed from the Panel; however, the Chair may not be the Independent Member.
- d. It may be feasible to co-opt a person with specialised expertise on to the panel for a particular situation – the panel may seek this external expertise in consultation with the Chair of the Ethics Committee, who retains the option of declining.
- e. The PACFA Ethics Committee member who is participating in the Grievance Panel will not participate in PACFA Ethics Committee meetings or electronic communications whenever this Grievance is discussed.
- f. Grievance Panel members are required to declare any conflicts of interest they may become aware of once they have been issued with the names of the person who has lodged a Grievance and of the PACFA Member or Registrant.
- g. Grievance Panel members are required to consider any factors that may influence their ability, or be seen to influence their ability, to be impartial. All panel members will receive a conflict of interest declaration that they will be asked to sign and return to the PACFA Ethics Officer before the Grievance Panel can convene.
- h. In order to hear the Grievance, the Grievance Panel will convene, via teleconference, web conference or in person, and consider all of the documentation regarding the Grievance provided to PACFA by all parties concerned. The Grievance Panel may request clarification from the person who has lodged a Grievance and/or the PACFA Member or Registrant. This request may include interviews with the parties involved or additional written documentation.

#### 4.2.4 Outcomes

- a. If a Grievance is heard, the decision of the Grievance Panel is set out in a Grievance Panel Report to the Ethics Committee. The Grievance Panel Chair is responsible for preparing the Report for the PACFA Ethics Committee within thirty (30) working days of receiving all relevant information about the Grievance from the PACFA Office.
- b. The Report prepared by the Grievance Panel consists of a Findings Report and a Grievance Panel report.
- c. The **Findings Report** is a succinct report which includes:
  - i. the findings of the Grievance Panel in terms of the Grievance:
    - confirmation, or not, that there are grounds for a Grievance, and
    - if applicable, any ethical misconduct identified by the Grievance Panel as well as the provisions of the Code of Ethics that the Grievance Panel finds have been breached, not limited to those provisions identified by the person who has lodged a Grievance in the Grievance Form;
  - ii. the recommendations to the Ethics Committee in terms of any sanctions that may be applied.
- d. The Findings Report will be sent to both parties after having been endorsed by the Ethics Committee.
- e. The **Grievance Panel Report** is intended to inform the PACFA Ethics Committee when examining the Grievance Panel findings and recommendations. It is confidential and includes:
  - details of supporting documents examined by the Grievance Panel;
  - a description of the process followed by the Grievance Panel;
  - the findings of the Grievance Panel;
  - the recommendations for the Ethics Committee;

- f. The Grievance Panel Report is confidential and will be kept securely by the PACFA Office together with all relevant documentation in accordance with the record keeping requirements in clause 8.2.

#### **4.2.5 Sanctions**

##### **4.2.5.1 Imposition of sanctions**

- a. The Grievance Panel, after determining the findings, may recommend one or more sanctions. It must be noted here that the final decision and responsibility rests with the Ethics Committee. These sanctions may include:
- undertaking specified supervision explicitly defined in the panel's report, professional development or additional training;
  - directed communication by the Member or Registrant to the Person who has lodged a Grievance;
  - temporary suspension from PACFA membership or registration;
  - temporary disqualification from eligibility for PACFA membership or registration;
  - permanent de-registration with PACFA;
  - any other action deemed suitable by the Grievance Panel.

##### **4.2.5.2 Lifting of sanctions**

- a. The PACFA Office will monitor implementation of sanctions against PACFA Members or Registrants and keep the Ethics Committee informed.
- b. Practitioners against whom sanctions are imposed are required to provide the Ethics Committee with the evidence that the sanctions have been fulfilled within the required time line.
- c. The Ethics Committee will inform the PACFA Member or Registrant that it is satisfied that the sanctions have been fulfilled and that the file is closed.

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

- a. If the sanctions are not fulfilled within the required time line without a valid explanation, the Ethics Committee will decide on appropriate further action. This may include suspension of membership until a valid explanation is provided or the sanctions are fulfilled, or de-registration.
- b. Refusal to comply with the sanctions may result in the PACFA Member or Registrant being immediately removed from the PACFA Register and/or in their permanent disqualification from PACFA membership or registration.
- c. The PACFA Member or Registrant subject to the sanctions will be notified of any such decision in writing.

#### **4.3 Publication of adverse findings**

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

## **5. Step by step processes - Complaints**

### **5.1 Initial contact with the PACFA Ethics Officer and decision to proceed**

- a. This initial contact enables the Ethics Officer to provide the Complainant with information about options regarding their Complaint.

- b. Receipt of the Complaint Form must be acknowledged by the PACFA Ethics Officer within five (5) working days. The Complaint Form is submitted to the Ethics Committee to determine within ten (10) working days if it is appropriate for PACFA to consider the matter (see section 4).
- c. If the Ethics Committee decides the Complaint can proceed, the decision is made about which pathway (Letter of Advice or Alternative Dispute Resolution) is appropriate. The Complainant is informed of the Ethics Committee decisions.

## 5.2 Letter of Advice

If the Ethics Committee decides in favour of the Letter of Advice option to address and seek resolution of the Complaint, the following process applies:

### LETTER OF ADVICE PROCESS

- a. The Complainant is informed by the Ethics Officer of the Ethics Committee's decision to address and seek resolution of the Complaint by the Letter of Advice action.
- b. The Member/Registrant is informed by the Ethics Officer that a complaint has been lodged against them, and that the Ethics Committee has decided to consider the Complaint and to proceed by implementing the Letter of Advice action.
- c. The Ethics Committee drafts a Letter of Advice that will be sent to the Member/Registrant via the Ethics Officer.
- d. This Letter of Advice will:
  - i. inform the Member or Registrant of their client's feedback (Complaint);
  - ii. clarify that, on the basis of this information, the Ethics Committee considers that a breach of the Code of Ethics (clauses of the Code being named) may have occurred;
  - iii. indicate steps that may be taken by the Member or Registrant to remedy the breach (including where appropriate an apology) and recommend actions to be completed to address the matter;
  - iv. require acknowledgment of receipt of the Letter of Advice within ten (10) working days;
  - v. inform the Member or Registrant of their right to respond to this Letter of Advice within ten (10) working days;
  - vi. invite the Member or Registrant to indicate in their response if, and how, their client's feedback will be integrated into their practice and how the Ethics Committee's recommendations will be implemented;
  - vii. inform the Member or Registrant that the Letter of Advice as well as their response will be kept on their file in accordance with clause 8.2.
- e. The matter is closed with the Member or Registrant's acknowledgment of receipt of the Letter of Advice or, if applicable, after receipt of the Member or Registrant's response, with the implementation of the Ethics Committee's recommendations by the Member or Registrant.
- f. Once the Ethics Committee considers the matter closed, the Ethics Committee informs the Member or Registrant in writing that the matter is closed and advises the Complainant in writing that the matter has been addressed with the Member or Registrant.

- g. Should the Member or Registrant not accept the terms of the Letter of Advice, the Complainant would be informed. The Ethics Committee may, if appropriate, suggest the matter be presented for ADR. In some cases, it may appear that the Complaint may only be addressed by formally lodging a Grievance. The decision to formally lodge a Grievance remains with the Complainant at all times.
- h. As a Letter of Advice is not a formal finding there is no right of Appeal for either the Complainant or the Member or Registrant.

### 5.3 Alternative Dispute Resolution (ADR)

- a. If the Ethics Committee decided ADR is appropriate, the following process is followed:

#### **ADR PROCESS**

1. The Complainant has to have agreed to proceed with ADR.
2. An Intermediary is selected by the Ethics Committee from the Intermediary Group after determining that there is no potential conflict of interest.
3. The Intermediary will provide their services with the aim to reach a resolution between both persons concerned. Through the entire ADR process no information about what has been said/agreed will be kept in writing. The only information that will be retained will be the dates of the interventions (for example, in a diary) kept by the Intermediary.
4. The PACFA Ethics Officer informs the Complainant of the name of the Intermediary and confirms that the Intermediary will contact them within ten (10) working days.
5. The Intermediary will have a conversation with the Complainant, either by video-link or telephone or face-to-face, to hear their experience, concerns and desired outcomes and determine if and how they wish to take the action further.
6. If ADR seems to be appropriate to both the Intermediary and the Complainant, they will together determine what is to be conveyed to the PACFA Member or Registrant.
7. The PACFA Ethics Officer will then inform the Member or Registrant (verbally and in writing) that a Complaint has been filed against them and that an Intermediary will have a conversation with them within ten (10) working days, either by video-link or telephone or, if possible, face-to-face.
8. In that conversation with the Member or Registrant, the Intermediary will hear the Member or Registrant's experience, concerns and desired outcomes. The Intermediary will determine with the Member or Registrant whether or not the Member or Registrant agrees to ADR and, if so, what is to be conveyed back to the Complainant.
9. The Intermediary will then inform the Complainant of the Member or Registrant's position.
10. Depending on the outcome of these first individual contacts, both the Complainant and the Member or Registrant may agree with the Intermediary to continue with ADR to resolve the matter.
11. If a meeting is considered helpful in the ADR process, a meeting between both persons concerned and the Intermediary is set up by video-link or telephone or face-to-face. The meeting is conducted by the Intermediary and aims to reach a resolution between both persons concerned.
12. If one or both of the persons involved do not wish to continue with ADR, or if ADR does not resolve the Complaint, and if the Complainant still wishes to proceed, the Complainant will have to lodge a formal Grievance.

13. ADR will only have two possible outcomes either 'the matter was resolved' or 'the matter was not resolved', the discussion being confidentially kept between all the persons present (the Complainant, the Member or Registrant, the Intermediary).
14. The outcome of the ADR is documented (as above) and signed by the Intermediary and by both persons present. No further records of what took place during the ADR meeting are kept.
15. If the matter was resolved, there will be no further action taken.
16. If the matter was not resolved, and the Complainant wishes to proceed, the Complainant will have the option to formally lodge a Grievance (see 4.2. above and 6. below).

- b. The parties are to be informed at the commencement of the ADR process that all matters discussed are confidential and that the outcome of the ADR process is not formally documented. In the absence of formal documentation, the Intermediary cannot be required to report on these confidential proceedings in any subsequent Complaint, Grievance or Appeal that is brought under these procedures.
- c. Any representations or documents prepared for the ADR are understood to be provided on a 'without prejudice' basis, are to be kept confidential by the parties for the purposes of the ADR process and may not be used in any subsequent formal Complaint procedure. The documents are not to be relied upon or used other than as required by law and then only to the extent required by law.
- d. As the ADR process is not a formal finding, there is no right of Appeal for either the Complainant or the Member or Registrant.

## 6. Step by step processes - Grievances

- a. If the Ethics Committee has determined that it is appropriate for PACFA to proceed with a Grievance initiated by the Person who has lodged a grievance, the following occurs:

### **GRIEVANCE PROCESS**

1. The PACFA Member or Registrant is advised of the Grievance by the PACFA Ethics Officer (verbally and in writing) and is sent the relevant sections of the PACFA Grievance Form, which contains details of the Grievance according to the Code of Ethics and the outcomes that would help to resolve the Grievance. The Member or Registrant is advised in writing that a response to this Grievance is to be provided within twenty (20) working days and that the Member or Registrant may consult a Grievance Process Person throughout the Grievance Process.
2. As a PACFA Member or a PACFA Registrant, the Member or Registrant will be able to access support from another PACFA member (Grievance Process Person) who is independent of the process. Contact with a Grievance Process Person will be offered via the PACFA Ethics Officer.
3. Once the Member or Registrant's response has been received, the Ethics Committee has fifteen (15) days to form a Grievance Panel. Where an extension of time is required to form the Grievance Panel, the Ethics Committee communicates the reasons for the extension time to the Person who has lodged the Grievance and the Member or Registrant, via the PACFA Ethics Officer.
4. The Grievance Panel Chair and the two other Grievance Panel members are determined by the PACFA Ethics Committee.

5. Conflict of Interest Forms are sent via email to all Grievance Panel members by the PACFA Ethics Officer for return within five (5) working days.
6. Details of the Grievance Panel members are communicated to the Person who has lodged the Grievance and the PACFA Member or Registrant by email, with a request for confirmation of receipt of this information within five (5) working days. If no reply is forthcoming from one or both parties, the PACFA Ethics Officer will contact the non-replying party or parties by phone to confirm receipt. If no response is received, the Grievance will proceed.
7. The documentation regarding the Grievance supplied to PACFA by the Person who has lodged the Grievance and the PACFA Member or Registrant is submitted to the Grievance Panel.
8. The Member/Registrant's response to the Grievance is only intended for the Grievance Panel. In addition to the Panel members, the response to the Grievance is only seen by the PACFA Ethics Officer and the PACFA Ethics Chair. The Member/Registrant's response to the Grievance is drafted for professional peers and may have the potential, if misinterpreted, to create additional harm to the Person who has lodged the Grievance. It is therefore not communicated to the Person who has lodged the Grievance. However, the Grievance Panel will, within fifteen (15) working days, provide a summary of the Member or Registrant's response to the Grievance (as well as any relevant further documents) to the Person who has lodged the Grievance, via the Ethics Officer. Should the Person who has lodged a Grievance request to see the PACFA Member or Registrant's response, the decision to do so will be at the discretion of the Chair of the Ethics Committee.
9. Upon receiving the Grievance Panel's summary of the Member or Registrant's response, the Person who has lodged the Grievance will be given a further ten (10) working days to reply to any of the matters raised in the summary and provide further evidence in support of that reply. No new allegations can be raised at this stage.
10. At the end of this period of time, the PACFA Ethics Officer informs the Person who has lodged the Grievance and the Member or Registrant that it is considered that all documents have been received and that the Grievance Panel is now instructed to investigate the Grievance and draft their reports within thirty (30) working days. No other documentation can be provided by the parties once the investigation has started, except where there is a specific requirement for additional information by the Grievance Panel Chair.
11. The Grievance Panel will consider the Grievance against the entire relevant Code of Ethics. Should the Grievance Panel identify further breaches than the Person who has lodged the Grievance has provided on the Grievance form, this information will be conveyed to both parties. The PACFA Member or Registrant will be given an additional ten (10) working days to respond.
12. If 11 is enacted, the Grievance Panel will be given an additional twenty (20) days to consider the new information supplied by the PACFA Member or Registrant before their final report is submitted.
13. The Grievance Panel Report, composed of the Findings Report with its recommendations and the Grievance Panel Report destined solely for the Ethics Committee, is submitted to the PACFA Ethics Committee via the PACFA Ethics Officer. The PACFA Ethics Committee will receive the Grievance Panel Report and review the Findings Report within twenty (20) working days.
14. If the PACFA Ethics Committee has any concerns about the findings and recommendations not being appropriate or complete, or has concerns about the way the report has been prepared, it may decide not to approve the Report.

15. If the Report is not approved, the Ethics Committee may require the Grievance Panel to re-draft the Report with input from the PACFA Ethics Committee. This is to be completed within a further ten (10) working days.
16. Once approved by the Ethics Committee, the Findings Report is sent by email to the Person who has lodged the Grievance and the PACFA Member or Registrant by the PACFA Ethics Officer with a request for confirmation of receipt. If no receipt is received a hard copy of the Findings Report will be sent by ordinary mail. The Person who has lodged the Grievance and the PACFA Member or Registrant will have twenty (20) working days, from the date the report is sent, to lodge an Appeal. (See section 7).
17. The PACFA Ethics Officer will monitor compliance with the sanctions required and report all outcomes and processes to the PACFA Ethics Committee and the Committee will determine if further sanctions are required.

## **7. Procedures for Appeals**

### **7.1 Lodging an Appeal**

- a. The PACFA Member or Registrant – or the Person who has lodged a Grievance - may lodge an Appeal against the Grievance Panel's Findings Report, endorsed by the Ethics Committee, as follows:
  - The Appeal must be in writing and be made on the official PACFA Appeal Form,
  - The Appeal must be received by PACFA within twenty (20) working days of reception of the Findings Report,
  - The Appeal must be dated, signed and sent to the PACFA Ethics Officer who confirms receipt of the Appeal form within five (5) working days.
- b. The Appeal must include the grounds under which the Appeal is being made (see 7.2 below). Where relevant, the Appeal Form should provide a detailed account of the events giving rise to the Appeal that must include relevant information, including dates. Reference should be made to the PACFA Code of Ethics existing at the time of the original Grievance.

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

- a. An Appeal will only be considered by PACFA if one or both of the following apply:
  - i. There is new evidence that warrants consideration of an Appeal that was not available at the time of the Grievance being heard by the Grievance Panel.
  - ii. There has been a procedural impropriety (see definition) that has caused the Grievance Panel to make findings and/or recommendations adversely to the rights and legitimate interest of the person appealing ('Appellant') that it would not have made were it not for the procedural impropriety.
- b. Appeals that do not satisfy one or both of these conditions will not be accepted or addressed under these procedures.
- c. PACFA will not hear Appeals relating to a matter that is currently before:

- a legal body such as a Court of law;
  - a statutory body such as a Health Care Complaints entity;
  - another professional association.
- d. If either party decides to employ legal representation, PACFA reserves the right to cease to proceed with the Appeal and to hand the matter to the relevant Health Care Complaints entity.

### **7.3 Assessing the Appeal**

- a. Notice of the Appeal is submitted to the Ethics Committee who appoints an Independent Person from PACFA's pool of trained volunteers or other independent expert, within ten working days of receiving the Appeal, to determine whether or not it is appropriate that the Appeal proceeds through the PACFA Appeal Procedure. The Independent Person must have had no previous involvement in the grievance under Appeal.
- b. In the case of an Appeal lodged pursuant to clause 7.2.a.i. the Independent Person must determine whether the Appeal lodged by the Appellant:
- i. discloses the existence of new evidence relevant to the original complaint that did not exist or was not reasonably available to the parties at or before the time the Grievance Panel made its findings or recommendations;
  - ii. discloses that the Appellant can provide that evidence for the conduct of an Appeal; and
  - iii. that the new evidence offers a reasonable basis for the decision of the Grievance Panel to be reviewed.
- c. In the case of an Appeal lodged pursuant to clause 7.2.a.ii. the Independent Person must determine whether the Appeal lodged by the Appellant:
- i. discloses that the Appellant has a right or legitimate interest that has been adversely affected by the Grievance Panel;
  - ii. discloses a valid reason that the decision of the Grievance Panel was affected by a procedural impropriety; and
  - iii. explains why the procedural impropriety caused the Grievance Panel to make an error in its findings or recommendations.
- d. If the Independent Person determines that each of the requirements of either 7.3.b. or 7.3.c. have not been satisfied, the Appellant will be formally notified of this outcome in writing. This decision is final and cannot be further Appealed.
- e. If the Independent Person determines that each of the requirements of either 7.3.b. or 7.3.c. have been satisfied, the Appeal is allowed to proceed. The Appellant (and the PACFA Member or Registrant, if the PACFA Member or Registrant is not the Appellant) will be formally notified in writing that the Appeal is proceeding and:
- i. if the Appeal is lodged pursuant to clause 7.2.a.i. the Independent Person will notify Member/Registrant (if the Appellant is the Person who lodged the Grievance) or the Person who lodged the Grievance (if the Appellant is the PACFA Member or Registrant) what the new evidence is;
  - ii. if the Appeal is lodged pursuant to clause 7.2.a.ii. the Independent Person will notify the Person who lodged the Grievance (if the Appellant is the PACFA Member or Registrant) that the decision is under review or the PACFA Member or Registrant (if the Person who lodged the

Grievance is the Appellant) of the matters in clause 7.3.c and in either case will notify the Ethics Committee of the matters in clause 7.3.c..

- f. If an Appeal under clause 7.2.a.ii. is lodged by the PACFA Member or Registrant, the Ethics Committee will be the Respondent to the Appeal. If it is lodged by the Person who lodged the Grievance, the Ethics Committee and the PACFA Member or Registrant will be the Respondents.

g. The Respondent/s will be given the opportunity to respond to the specified Appeal grounds in writing within fifteen working days.

#### **7.4 Hearing of the Appeal**

- a. The first part of this procedure is the formation of the Appeal Panel by the Independent Person with administrative assistance from the Ethics Officer. The Appeal Panel is a volunteer panel formed solely for the purpose of hearing a specific Appeal. It consists of two PACFA Clinical Registrants, one of whom will chair the Appeal Panel.
- b. Appeal Panel members are required to declare any conflicts of interest once they have been issued with the name of the Appellant and of the Respondent who is the subject of the Appeal. Appeal Panel members are required to consider any factors that may influence their ability, or be seen to influence their ability, to be impartial. All Appeal Panel members will receive a conflict of interest declaration and will be asked to sign and return these forms to the PACFA Ethics Officer prior to the Appeal being heard.
- c. All Appeal documentation is supplied to the Appeal Panel via email with instructions to produce a Report within twenty (20) working days.
- d. The Appeal Panel will convene, via teleconference, video link or in person, and consider all of the information provided in order to hear the Appeal. The Appeal Panel may request clarification from the Appellant or the Respondent who is the subject of the Appeal.

#### **7.5 Appeal outcomes and actions**

- a. There are two possible outcomes to an Appeal:
  - i. The Appeal is dismissed because one or both of the grounds for Appeal have not been met;
  - ii. The Appeal is upheld because one or both of the grounds for Appeal have been met.
- b. Where the Appeal is dismissed the original decision is confirmed.
- c. Where the Appeal is upheld, the following actions may be taken by the Appeal Panel:
  - i. The original decision may be amended to reflect the Appeal findings;
  - ii. Sanctions may be applied;
  - iii. In exceptional circumstances, a new hearing may be ordered.
- d. If the Appeal Panel cannot reach agreement as to their decision:
  - i. the Appeal Panel will confidentially notify the Chair of the Ethics Committee that there is a deadlock;
  - ii. the Appeal Panel will provide the Chair of the Ethics Committee with all material and submissions from the parties and with written draft reasons of each Appeal Panel member; and
  - iii. the Chair of the Ethics Committee will determine the Appeal.

## **7.6 Communicating the decision**

- a. The decision of the Appeal Panel is set out in an Appeal Panel Report to the Independent Person. This is a detailed report including all supporting information and background to the Appeal Panel decision-making process.
- b. The Appeal Panel Report includes a Findings Report which is a summary of the decisions of the Appeal Panel, once approved by the Independent Person, to be sent to the Appellant and the Respondent who is the subject of the Appeal.
- c. Within ten (10) working days, the Independent Person will either:
  - i. approve the reports and recommendations or
  - ii. not approve the reports and recommendations and provide reasons.
- d. In the latter instance, the Independent Person may request the Appeal Panel to re-draft the reports within ten (10) working days, with input from the Independent Person.
- e. Once the reports are approved by the Independent Person, the decision will be communicated to both parties and the Chair of the Ethics Committee by the Ethics Officer. This decision is final and cannot be further appealed. The Appeal Panel report is sent by email by the PACFA Ethics Officer to the Appellant and Respondent who is the subject of the Appeal with a request for confirmation of receipt.
- f. The Appeal Panel Report together with all documentation will be kept by PACFA in a confidential file in accordance with the record keeping requirements in clause 8.2.
- g. The PACFA Ethics Officer will monitor the compliance of recommendations with the report and report all outcomes and processes to the Chair of the Ethics Committee.

## **8. Administration of Complaints, Grievances and Appeals**

- a. The administration of Complaints, Grievances, and Appeals will be in accordance with these Professional Conduct Procedures as approved by the PACFA Board and as amended from time to time. Complaints, Grievances and Appeals will be administered by the PACFA Ethics Officer in conjunction with the Chair of the PACFA Ethics Committee.
- b. Data on Complaints, Grievances and Appeals will be kept for the purposes of research and statistical analysis with the aim to further the work of PACFA by carrying out audits and/or research into Complaints and Grievances. Any publications will not contain any personally identifiable information.

### **8.1 Costs incurred by parties to Complaints, Grievances or Appeals**

PACFA is not responsible for travel or any other expenses incurred by a Complainant, Person who has lodged a Grievance, Appellant, PACFA Member or Registrant, or any representative. In addition, PACFA has no capacity to order one party in a Complaint, Grievance or Appeal to pay another party's costs.

### **8.2 Records of Complaints, Grievances and Appeals**

- a. Records of Complaints, Grievances and Appeals are confidential and will be kept confidentially and securely by PACFA and may be relied on by PACFA for at least:

- i. in the case of records concerning Unsatisfactory Professional Conduct, for a period of three (3) years following the final resolution of the Complaint, Grievance or Appeal;
  - ii. in the case of records concerning Professional Misconduct, for a period of seven (7) years following the final resolution of the Complaint, Grievance or Appeal; and/or
  - iii. in the case of records concerning Bringing the Profession into Disrepute, permanently.
- b. Notwithstanding subclause (a):
- i. any records concerning the commission of a criminal offence by a PACFA Member or Registrant may only be relied on for the maximum period of time permitted by any Offenders' Rehabilitation legislation applicable in the state or territory in which the offence occurred unless otherwise authorised or required by law;
  - ii. any records concerning threatened or anticipated litigation against or involving PACFA may be securely and confidentially retained until the expiry of any applicable limitation period for that litigation (or for no less than 80 years if no limitation period applies); and
  - iii. PACFA may otherwise securely and confidentially hold any records in accordance with the requirements of its insurers.
- c. When considering a Grievance, PACFA reserves the right to take into account other Complaints, Grievances or Appeals made or investigated previously against the same Member or Registrant.
- d. Where the outcome of a Grievance has resulted in the termination of PACFA membership or registration, this outcome will be considered in any future re-application for PACFA membership or registration by the former Member or Registrant.

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

- a. PACFA reserves the right to notify other professional bodies and/or agencies about Grievances and to distribute any findings upheld against a PACFA Member or Registrant, where it considers it right and just to do so in the interests of public safety.
- b. When a Registrant is suspended or deregistered by PACFA as a result of an upheld Grievance, PACFA will display the former Registrant as *suspended* or *deregistered* on the PACFA Register for the duration of the sanction.

## **Acknowledgements**

PACFA wishes to acknowledge that this document has been sourced from:

- PACFA Professional Conduct Procedures 2017
- British Association for Counselling and Psychotherapy: 'Making a Complaint- a guide to BACP's Professional Conduct Procedure'
- Australian Counselling Association: Complaints Policy and Procedural Guidelines 2018
- Discussion paper: Mandatory Reporting under the Health Practitioner Regulation National Law, December 2017: <https://www.health.nsw.gov.au/legislation/Documents/dp-mandatory-reporting-hprnl.pdf>
- The Ombudsman Western Australia <http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Procedural-fairness-guidelines.pdf>