



**Psychotherapy & Counselling  
Federation of Australia**

**PACFA response to consultation:  
Draft Public Health (Code of Conduct for Certain  
Health Practitioners) Regulation 2011**

**NSW Department of Health**

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## EXECUTIVE SUMMARY

This submission is made by the Psychotherapy and Counselling Federation of Australia (PACFA), a peak body for the Counselling and Psychotherapy profession which is made up of 32 Member Associations. From its inception, PACFA has been involved in a consultative process with the field to set rigorous professional standards for training Counsellors and Psychotherapists, the ethical practice of practitioners, trainers and supervisors and the governance of Member Associations.

PACFA has considered the likely impact of the proposed new statutory Code of Conduct on Counsellors and Psychotherapists in NSW. While there are elements of the draft Code of Conduct that are entirely consistent with the established ethical codes for the Counselling and Psychotherapy profession, the draft Code of Conduct does have some short-comings. In particular, there are elements of the Code, due to its very generic nature, that do not accurately reflect the services provided by Counsellors and Psychotherapists or the ethical breaches that Counselling and Psychotherapy clients may be concerned about.

PACFA makes 6 recommendations (see page 13) in relation to the draft Code of Conduct and the continuing role for self-regulation of the Counselling and Psychotherapy profession:

1. There is a need to include Counsellors and Psychotherapists in the Definitions section of the Code of Conduct (and to make the necessary legislative changes) to ensure that all services provided by Counsellors and Psychotherapists are caught by the Code.
2. PACFA makes suggested amendments to the draft Code of Conduct to ensure the generic provisions will work for the Counselling and Psychotherapy profession.
3. There is a recommendation for professional associations to be able to develop their own version of the Code of Conduct, thereby tailoring the Code to the requirements of particular health professions and their clients. It is suggested that the tailored version would go through an approval process with the HCCC. PACFA suggests that particular clauses, which are not relevant to Counsellors and Psychotherapists, would be removed from the Counselling and Psychotherapy version of the Code.
4. As self-regulation already provides effective processes for handling complaints relating to Counsellors and Psychotherapists, self-regulation should to continue to fulfil these important functions.
5. Any elements of the Draft Code of Conduct that are not already incorporated in the Codes of Ethics of PACFA and its Member Associations would be incorporated into those Codes to strength implementation and compliance of the statutory Code.
6. PACFA and its Member Associations should take a lead in educating members about the statutory Code of Conduct as well as the profession's own Codes of Conduct. The support of government is sought for these important educational activities.

## INTRODUCTION

PACFA represents a self-regulating profession in a similar way to the Australian Association of Social Workers (AASW). PACFA is a federation of thirty-two Member Associations which represent a range of modalities in Counselling and Psychotherapy. These modalities include:

- Body-oriented Psychotherapy
- Experiential Therapy
- Expressive Arts Therapies
- Family Relationship Therapies
- General Counselling and Psychotherapy
- Hypnotherapy
- Integrative Psychodynamic Psychotherapy
- Psychotherapy & Counselling Educators
- Psychoanalysis and Psychoanalytic Psychotherapy.

Due to the multidisciplinary nature of the field, PACFA Member Associations also have members who are psychologists (who are Registered Health Practitioners under the Health Practitioner Regulation National Law) as well as members who are social workers.

In NSW, with the Introduction of the statutory Code of Conduct for unregistered health practitioners, Counsellors and Psychotherapists who are members of PACFA Member Associations are still subject to PACFA's regime of self-regulation, in addition to the statutory Code of Conduct. This means all Members Associations must meet the professional standards set by the PACFA Code of Ethics 2010. This Code is annexed at Appendix 1.

PACFA has considered the likely impact of the proposed new statutory Code of Conduct on Counsellors and Psychotherapists in NSW. Key issues covered in this submission are:

1. Self-regulation of the Counselling and Psychotherapy profession
2. Complaints against Counsellors and Psychotherapists
3. Draft Code of Conduct
4. Limitations of the Draft Code of Conduct

This submission is based on PACFA's submission to the consultation on Options for regulation of unregistered health practitioners, made to the Australian Health Ministers' Advisory Council in April 2011. In this submission, PACFA concluded that self-regulation was the preferred option for regulation of Counsellors and Psychotherapists and identified some of the short-comings of introducing a statutory Code of Conduct nationally.

Although a statutory Code of Conduct is already operating in NSW, and will be further developed with the proposed new regulation, the short-comings of this approach in NSW remain, highlighting the need for continued self-regulation of the profession, in addition to the statutory Code of Conduct.

## 1. Self-regulation of the Counselling and Psychotherapy Profession

Self-regulation is provided at no cost to government or to the community. It provides effective regulation for the profession through:

- Professional training standards and probity checking undertaken by PACFA and its Member Associations
- Codes of Ethics of PACFA and its Member Associations which are tailored to Counselling and Psychotherapy, providing detailed guidance on professional conduct for the profession and its diverse modalities
- PACFA's national Register of suitably qualified and experienced Counsellors and Psychotherapists - Registrants are subject to the PACFA Code of Ethics as well as the Codes of Ethics for Member Associations to which they belong
- Appropriate complaints processes to deal with complaints against Counsellors and Psychotherapists on the PACFA Register or who belong to PACFA Member Associations
- Emphasis on clinical supervision and professional development as key mechanisms for regulating the quality of Counselling and Psychotherapy services
- Constitutionally, PACFA has the power to expel Member Associations that do not act in accordance with the constitution or who bring the profession into disrepute; PACFA can also expel Member Associations that fail to deal appropriately with complaints.

In addition to the PACFA Register, PACFA is also working with the Australian Counselling Association (the other peak body for the profession) to establish the Australian Register of Counsellors and Psychotherapists (ARCAP). This will be a single Register and credentialing systems for the profession.

The limitations to self-regulation are acknowledged:

- Self-regulation cannot reach those Counsellors and Psychotherapists who do not belong to a relevant professional association.
- Although cases of serious misconduct by Counsellors and Psychotherapists are rare, these cases are appropriately dealt with by the Health Complaints Commission in NSW as the practitioners in question may not be effectively controlled without Prohibition Orders.

## 2. Complaints against Counsellors and Psychotherapists

The prevalence of risk has been reported to be the same for Counselling and Psychotherapy delivered by registered and unregistered health practitioners. Procci (2007) in the US estimates the risk of serious ethical breaches in Psychotherapy is between 0.9 to 12%, with a mean of about 6%.

The reported incidence of complaints against unregistered practitioners in Australia is considerably lower. In NSW, 96.5% of complaints ( $n = 2,170$ ) made to the NSW Health Care Complaints Commission for the period 2009-2010 were for Registered Health Practitioners. 0.4% ( $n = 8$ ) were in relation to Counsellors and Psychotherapists, similar to the rate for Social Workers which was 0.4% ( $n = 8$ ). Social Work is accepted as appropriately self-regulating based on the low risks associated with the profession and arguably, the Counselling and Psychotherapy profession is comparable to Social Work in this regard.

The risks associated with Counselling and Psychotherapy are generally not realised in practice with a low incidence of complaints. The largest category of risk PACFA has identified from ethical complaints arises where practitioners are in multiple roles, for example Psychotherapist, trainer and supervisor. Incidents relating to the more serious ethical breaches such as sexual misconduct or practicing under the influence of alcohol or drugs were not common according to the PACFA complaints data.

An additional risk factor has also been identified where a health practitioner from another profession is deregistered. For example, when registered health professionals, such as Psychologists, Psychiatrists and Mental Health Nurses are deregistered for serious ethical breaches, they may still be able to practice as Counsellors or Psychotherapists. It is important that prohibition orders made by the NSW HCCC in these cases include a prohibition against practising as a Counsellor or Psychotherapist.

Most complaints against Counsellors and Psychotherapists are minor in nature (see complaints data below) and these complaints are generally addressed effectively through the self-regulatory complaints processes. Often complainants want acknowledgement of a mistake or an apology and to know that measures have been taken to prevent similar mistakes happening again (McGivern et al., 2009). These outcomes are more likely to be achieved through self-regulation than through Prohibition Orders, which would, in any event, only be made in the most serious cases.

Given the above, there is an important role for PACFA and its Member Associations to continue hearing complaints and to provide tailored responses that are specific to ethical breaches of Counsellors and Psychotherapists.

### **PACFA complaints data**

PACFA has collated complaints data for the five years between 2006 and 2011, including complaints against individual practitioners and against Member Associations. The data confirms that self-regulatory complaints processes play a significant role dealing with complaints in NSW. Please note, the data is not fully comprehensive as some national complaints did not have the state specified and some of these may relate to NSW.

**Table 1: Complaints in NSW by issue – January 2007 to July 2011**

<b>Complaints Issue Categories</b>	<b>No of complaints To PACFA</b>	<b>No of complaints To MAs</b>	<b>Total</b>
Breach of confidentiality	1	5	6
Sexual misconduct	0	5	5
Dual and multiple roles	1	7	8
Discrimination	0	0	0
Practicing under influence of Alcohol / Drugs	0	0	0
Other professional misconduct / breach of ethics	3	6	9
Unsatisfactory service or service outcome	1	3	4
Complaint processes	2	0	2
Fees/costs	0	0	0
MA functions/activities	2	1	3
<b>Total</b>	<b>10</b>	<b>27</b>	<b>37</b>

**Table 2: Complaints in NSW by issue – January 2007 to July 2011**

Complaint Outcomes	No of complaints To PACFA	No of complaints To MAs	Total
No case to answer	3	8	11
Withdrawn	0	7	7
Referred to another body	3	4	7
Resolution - Professional supervision required	0	3	3
Resolution – Membership & registration revoked	0	3	3
Resolution - MA suspended	1	1	2
Resolution - MA action required	2	1	3
Other	1	0	1
<b>Total</b>	<b>10</b>	<b>27</b>	<b>37</b>

### 3. Draft Code of Conduct

Members of PACFA Members Associations in NSW have been complying with the current Code of Conduct under the Public Health (General) Amendment Regulation 2008. While this has not proven difficult in terms of compliance, and may have resulted in a small number of complaints to the Health Complaints Commission in relation to Counsellors or Psychotherapists, it is important to note the continued role PACFA plays in self-regulation of the profession.

Given the importance of self-regulation for dealing with complaints against Counsellors and Psychotherapists and given the very generic nature of the Statutory Code (some sections of the Code are not even relevant to Counsellors and Psychotherapists), the draft Statutory Code is far from ideal from the perspective of the Counselling and Psychotherapy profession. It would be preferable if the statutory Code of Conduct could be incorporated into the existing Codes of Ethics of PACFA and of Member Associations, given that adherence to the PACFA Code is already a condition of PACFA membership for Member Associations and for registration of practitioners. PACFA also recommends (see page 13) a process whereby different versions of the generic Code of Conduct could be developed by professional associations to make the Code more appropriate for their profession.

#### Clause 1: Definitions

It is assumed that the services provided by Counsellors and Psychotherapists fall within the definition of mental health services (Clause 1(c) ). While many clients accessing Counselling and Psychotherapy do so for their mental health, some services may be considered (by both practitioners and clients) not to be mental health services but to be services relating to well-being or personal development. Indeed even where a mental health service is being provided, clients may prefer not to think of the service as a mental health service because of the stigma surrounding mental illness.

#### Recommendation 1:

To more accurately reflect the range of different services that Counsellors and Psychotherapists provide, Counsellors and Psychotherapists should be added to the list of practitioners in clause 1(j).

This would also require amendment of the definition of *health service* in the Public Health Act 2010 and in the Health Care Complaints Commission Act 1993. This is considered very important in order to accurately reflect the range of services provided by Counsellors and Psychotherapists and to ensure all services provided by them are caught by the Code of Conduct.

### Clause 3: Health practitioners to provide services in safe and ethical manner

(a) A health practitioner must maintain the necessary competence in his or her field of practice.	Yes
(b) A health practitioner must not provide health care of a type that is outside his or her experience or training.	Yes
(c) A health practitioner must not provide services that he or she is not qualified to provide.	This clause is problematic as the term “qualified” is not defined. The range of Counselling and Psychotherapy training programs available is very wide and not all training meets PACFA’s Training Standards. It is noted that this clause is an addition to the 2008 version of the Code, however it is questionable whether it will achieve anything, given that the word “qualified” cannot be defined for the wide range of health practitioners covered by the Code. It is suggested that this clause be deleted.
(d) A health practitioner must not use his or her possession of particular qualifications to mislead or deceive his or her clients as to his or her competence in his or her field of practice or ability to provide treatment.	Yes
(e) A health practitioner must prescribe only treatments or appliances that serve the needs of the client.	Counsellors and Psychotherapists do not “prescribe” treatments. Clause 3(2) (a) should be amended accordingly. Appliances are not relevant to Counselling and Psychotherapy.
(f) A health practitioner must recognise the limitations of the treatment he or she can provide and refer clients to other competent health practitioners in appropriate circumstances.	Yes
(g) A health practitioner must recommend to his or her clients that additional opinions and services be sought, where appropriate.	Yes
(h) A health practitioner must assist his or her clients to find other appropriate health care professionals, if required and practicable.	Yes
(i) A health practitioner must encourage his or her clients to inform their treating medical practitioner (if any) of the treatments they are receiving.	This clause may not be appropriate in relation to Counselling and Psychotherapy as it may detract from the therapy. The clause should be amended to only require this in appropriate circumstances.
(j) A health practitioner must have a sound understanding of any adverse interactions between the therapies and treatments he or she provides or prescribes and any other medications or treatments, whether prescribed or not, that the health practitioner is aware the client is taking or receiving.	This is not generally within the expertise of Counsellors and Psychotherapists who do not work within a medical model. They do not provide medication but provide supplementary therapy to assist clients to cope with their lives. It is recommended that this clause should not have to apply to Counsellors and Psychotherapists. See recommendation 3.

(k) A health practitioner must ensure that appropriate first aid is available to deal with any misadventure during a client consultation.	Yes
(l) A health practitioner must obtain appropriate emergency assistance (for example, from the Ambulance Service) in the event of any serious misadventure during a client consultation.	Yes

#### **Clause 4: Health practitioners diagnosed with infectious medical condition**

(1) A health practitioner who has been diagnosed with a medical condition that can be passed on to clients must ensure that he or she practises in a manner that does not put clients at risk.	Yes
(2) Without limiting subclause (1), a health practitioner who has been diagnosed with a medical condition that can be passed on to clients should take and follow advice from an appropriate medical practitioner on the steps to be taken to modify his or her practice to avoid the possibility of transmitting that condition to clients.	Yes

#### **Clause 5: Health practitioners not to make claims to cure certain serious illnesses**

(1) A health practitioner must not hold himself or herself out as qualified, able or willing to cure cancer or other terminal illnesses.	Yes
(2) A health practitioner may make a claim as to his or her ability or willingness to treat or alleviate the symptoms of those illnesses if that claim can be substantiated.	Yes

#### **Clause 6: Health practitioners to adopt standard precautions for infection control**

(1) A health practitioner must adopt standard precautions for the control of infection in his or her practice.	This is outside the training and expertise of Counsellors and Psychotherapists. If a client suffering from an infectious disease seeks Counselling or Psychotherapy, he/she is seeking treatment for their mental distress or to support their well-being. Counsellors and Psychotherapists should not be expected to control infection as this is the responsibility of other health practitioners. See recommendation 3.
(2) Without limiting subclause (1), a health practitioner who carries out a skin penetration procedure must comply with the relevant regulations under the Act in relation to the carrying out of the procedure.	Not applicable to Counsellors and Psychotherapists. See recommendation 3.

#### **Clause 7: Appropriate conduct in relation to treatment advice**

(1) A health practitioner must not attempt to dissuade clients from seeking or continuing with treatment by a registered medical practitioner.	Yes
(2) A health practitioner must accept the rights of his or her client to make informed choices in relation to their health care.	Yes
(3) A health practitioner should communicate and co-operate with colleagues and other health care practitioners and agencies in the best interests of their clients.	Yes



(4) A health practitioner who has serious concerns about the treatment provided to a client by another practitioner must refer the matter to the Health Care Complaints Commission.	This may be problematic for Counsellors and Psychotherapists as this would breach the client's confidentiality and may be detrimental to the therapeutic relationship. It is suggested that the requirement should be for the health practitioner to encourage the client to take this action themselves.
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### **Clause 8: Practitioners must not practise under the influence of alcohol or other drugs**

(1) Health practitioners must not practise under the influence of alcohol or other lawful drugs and is intended to ensure that practitioners do not place their patients at risk of harm.	Yes
(2) A health practitioner who is taking prescribed medication must obtain advice from the prescribing practitioner on the impact of that medication on his or her ability to practise and must refrain from treating clients in circumstances where their ability is, or may be, impaired.	Yes

### **Clause 9: A practitioners must not practise whilst suffering from certain physical or mental conditions**

A health practitioner must not practise while suffering from a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that detrimentally affects, or is likely to detrimentally affect, his or her ability to practice or that places clients at risk of harm.	Yes
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### **Clause 10: Practitioners must not financially exploit their clients**

(1) Health practitioner must not accept financial inducements or gifts for referring clients to other health practitioners or to the suppliers of medications or therapeutic goods or devices.	Yes
(2) A health practitioner must not offer financial inducements or gifts in return for client referrals from other practitioners.	Yes
(3) A health practitioner must not provide services and treatment to clients unless they are designed to maintain or improve the client's health or wellbeing.	Yes

### **Clause 11: Practitioners required to have clinical basis for treatments**

A health practitioner must not diagnose or treat an illness or condition without an adequate clinical basis.	Practitioners who meet the PACFA training standards are trained to provide Counselling and Psychotherapy services that have been demonstrated to be effective. There is a clear research-base to support the effectiveness of Counselling and Psychotherapy, although not all interventions have the same level of research to support them. However, PACFA agrees with the suggestion in the Impact Assessment Statement that the phrase "clinical basis" is vague; not all practitioners have research expertise so it may not be clear to them how to assess the interventions they use against this requirement. It is recommended that this clause be removed.
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### Clause 12: Practitioners not to misinform their clients

(1) A health practitioner must not engage in any form of misinformation or misrepresentation in relation to the products or services he or she provides or as to his or her qualifications, training or professional affiliations.	Yes
(2) A health practitioner must provide truthful information as to his or her qualifications, training or professional affiliations if asked by a client.	Yes
(3) A health practitioner must not make claims, either directly or in advertising or promotional material, about the efficacy of treatment or services provided if those claims cannot be substantiated.	Yes

### Clause 13: Practitioners must not engage in sexual or improper personal relationship with client

(1) A health practitioner must not engage in a sexual or other close personal relationship with a client.	Yes
(2) Before engaging in a sexual or other close personal relationship with a former client, a health practitioner must ensure that a suitable period of time has elapsed since the conclusion of their therapeutic relationship.	Yes

### Clause 14: Practitioner must comply with relevant privacy laws

A health practitioner must comply with the relevant legislation of the State or the Commonwealth relating to his or her clients' health information, including the <i>Privacy Act 1988</i> and the <i>Health Records and Information Privacy Act 2002</i> .	Yes
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### Clause 15: Health practitioners to keep appropriate records

A health practitioner must maintain accurate, legible and contemporaneous clinical records for each client consultation.	Yes
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### Clause 16: Health practitioners to keep appropriate insurance

A health practitioner should ensure that appropriate indemnity insurance arrangements are in place in relation to his or her practice.	Yes
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### Clause 17: Certain practitioners to display code and other information

(a) This code of conduct	It would be useful if display copies could be downloaded
(b) A document that gives information about the way in which clients may make a complaint to the Health Care Complaints Commission, being a document in a form approved by the Director-General of the Department of Health.	It would be useful if display copies could be downloaded
(2) Copies of those documents must be displayed in a position and manner that makes them easily visible to clients entering the relevant premises.	Yes
(3) This clause does not apply to any of the following premises:	Not applicable to Counsellors and Psychotherapists.

### Clause 18: Sale and supply of optical appliances

Not applicable to Counsellors and Psychotherapists.

**Recommendation 2:**

The following changes to the Draft Code of Conduct are recommended:

1. Clause 3(2)(e) should be amended to read: "A health practitioner must prescribe or provide only treatments or appliances that serve the needs of the client.
2. Clause 3(2)(i) should be amended to read: "A health practitioner must encourage his or her clients, in appropriate circumstances, to inform their treating medical practitioner (if any) of the treatments they are receiving.
3. Clause 7(4) should be amended to read: "A health practitioner who has serious concerns about the treatment provided to a client by another practitioner must encourage the client to report that practitioner to the Health Care Complaints Commission."
4. Clause 11: It is recommended that this clause be removed from the Code.
5. Clause 17(1)(a) should be amended to read: "This Code of Conduct, or an amended version of the Code of Conduct as approved by the Health Care Complaints Commission."

## 4. Limitations of the Draft Code of Conduct

The Draft Code of Conduct, being generic in nature and applying to a wide variety of different health practitioners, is not tailored to the needs of the Counselling and Psychotherapy profession. The Draft Code of Conduct does not adequately reflect the types of issues Counselling and Psychotherapy clients may be concerned about. As detailed in the analysis of the Draft Code of Conduct above, not all provisions of the Code are relevant to Counsellors and Psychotherapists, and the language used is often inappropriate to describe the standards of practice expected of the profession.

From the consumer's perspective, the Draft Code of Conduct is potentially confusing. For example, if a client is attending a therapy centre for Counselling or Psychotherapy, the displayed Code of Conduct will refer to some matters that are of no relevance to Counselling and Psychotherapy, and also omits some ethical breaches that are specific to the conduct of Counselling and Psychotherapy practitioners.

By having a Code of Conduct that is applicable to a wide variety of unregistered health practitioners, the Code will not be able to address all of the unique ethical issues applicable in different health professions. Even within the Counselling and Psychotherapy profession, there is a range of different ethical principles and challenges depending on the modality e.g. the body oriented therapists have ethical issues specific to their form of therapy.

**Recommendation 3:**

Professional Associations should have the option to develop a tailored version of the Code of Conduct, appropriate for their profession. Clauses not relevant to their profession could be removed and additional clauses added to strengthen the Code for that profession and to make the Code more accessible for clients. There could be an approval process for the tailored Code to be approved by the Health Care Complaints Commission. In the tailored version of the Code for the Counselling and Psychotherapy profession, the following clauses should be omitted:

- Clause 3(2) (j)
- Clause 6(1) and (2)
- Clause 17(3)
- Clause 18

PACFA is concerned that the form of regulation provided through the Draft Code of Conduct and the HCCC complaints process is not sufficiently subtle to regulate the practice of Counselling and Psychotherapy, which by definition involves complex relationships and emotion (McGivern et al., 2009, p. 9). Aside from the most serious ethical breaches where a Prohibition Order is needed, regulation is best provided through the profession's self-regulatory complaints processes, and specifically through clinical supervision.

The most effective preventative measure for serious boundary violations committed by Psychotherapists and Counsellors is the availability of supervision and consultation, continuing ethics education and professional support structures. It is not appropriate or necessary for complaints of a minor nature (which the vast majority of complaints are) to be dealt with by a statutory body, at public expense, when these can be dealt with more effectively through self-regulatory mechanisms.

While some complaints may be valid, others may be vexatious or unfounded and Counsellors and Psychotherapists can be caught up in complex and stressful complaint processes, regardless of whether complaints are well-founded. Counsellors and Psychotherapists need to be better supported during investigations. A self-regulated profession is well-placed to ensure fair outcomes to complaints for clients, while also supporting practitioners as appropriate (McGivern et al., 2009).

**Recommendation 4:**

Self-regulation provides effective complaints handling processes for the vast majority of complaints which are minor in nature. PACFA and its Member Associations should continue to handle complaints using existing procedures.

The broad principles set out in the Draft Code of Conduct would be supported by PACFA. These principles could be incorporated into the PACFA Code of Ethics and the Codes of Ethics of the various Member Associations to strengthen implementation and compliance. Indeed, many of these principles are already contained in the PACFA Code of Ethics. For example:

- Clause 3. Health practitioners to provide services in a safe and ethical manner
- Clause 8. Health practitioners not to practice under the influence of alcohol or drugs
- Clause 10. Health practitioners not to financially exploit clients
- Clause 12. Health practitioners not to misinform their clients
- Clause 13. Health practitioners not to engage in sexual or improper personal relationship with client

**Recommendation 5:**

The principles in the Draft Code of Conduct (excluding those not relevant to Counselling and Psychotherapy) that are not already incorporated in the Codes of Ethics of PACFA and its Member Associations should be incorporated into those Codes to strengthen implementation and compliance.

**Recommendation 6:**

PACFA and its Member Associations should take a lead in educating members about the statutory Code of Conduct as well as the profession's own Codes of Conduct. PACFA's capacity for effective self-regulation would greatly benefit from the support of government for these educational activities.

## RECOMMENDATIONS

7. To more accurately reflect the range of different services that Counsellors and Psychotherapists provide, Counsellors and Psychotherapists should be added to the list of practitioners in clause 1(j).
8. The following changes to the Draft Code of Conduct are recommended:
  - Clause 3(2)(e) should be amended to read: “A health practitioner must prescribe or provide only treatments or appliances that serve the needs of the client.
  - Clause 3(2)(i) should be amended to read: “A health practitioner must encourage his or her clients, in appropriate circumstances, to inform their treating medical practitioner (if any) of the treatments they are receiving.
  - Clause 7(4) should be amended to read: “A health practitioner who has serious concerns about the treatment provided to a client by another practitioner must encourage the client to report that practitioner to the Health Care Complaints Commission.”
  - Clause 11: It is recommended that this clause be removed from the Code.
  - Clause 17(1)(a) should be amended to read: “This Code of Code, or an amended version of the Code of Conduct as approved by the Health Care Complaints Commission.”
3. Professional Associations should have the option to develop a tailored version of the Code of Conduct, appropriate for their profession. Clauses not relevant to their profession could be removed and additional clauses added to strengthen the Code for that profession and to make the Code more accessible for clients. There could be an approval process for the tailored Code to be approved by the Health Care Complaints Commission. In the tailored version of the Code for the Counselling and Psychotherapy profession, the following clauses should be omitted:
  - Clause 3(2) (j)
  - Clause 6(1) and (2)
  - Clause 17(3)
  - Clause 18
4. Self-regulation provides effective complaints handling processes for the vast majority of complaints which are minor in nature. PACFA and its Member Associations should continue to handle complaints using existing procedures.
5. The principles in the Draft Code of Conduct (excluding those not relevant to counselling and psychotherapy) that are not already incorporated in the Codes of Ethics of PACFA and its Member Associations should be incorporated into those Codes to strength implementation and compliance.
6. PACFA and its Member Associations should take a lead in educating members about the statutory Code of Conduct as well as the profession’s own Codes of Conduct. PACFA’s capacity for effective self-regulation would greatly benefit from the support of government for these educational activities.

## REFERENCES

Psychotherapy and Counselling Federation of Australia, PACFA response to consultation: Options for regulation of unregistered health practitioners, April 2011.

McGivern, G., Fischer, M., Ferlie, E., Exworthy, M. (2009). Statutory Regulation and the Future of Professional Practice in Psychotherapy & Counselling: Evidence from the Field. *Economic & Social Research Council*.

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Psychotherapy & Counselling  
Federation of Australia

## Code of Ethics 2010

### The Ethical Framework for Best practice in Counselling and Psychotherapy

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## 1. Introduction

The Psychotherapy and Counselling Federation of Australia is a unique organisation in Australia. It is the one organisation that seeks to unite under its umbrella a diverse group of Member Associations (MAs) which have in common their contribution to the art and science of Counselling and psychotherapy, through their members delivering these services directly, or by their contribution to the development and furtherance of professional practice via supervision, training, research and other related clinical practice.

This document sets out the ethical framework for the clinical and management governance of member associations and for the professional practice of PACFA registrants. It unifies and replaces all the earlier Psychotherapy and Counselling Federation of Australia's (PACFA) codes for Member Associations, counsellors, psychotherapists, trainers and supervisors and is also applicable to Counselling research, the use of Counselling skills and the management of these services within organisations. It is intended to inform the practice of each Registrant and Member Association of the Psychotherapy and Counselling Federation of Australia. It is expected that Member Associations have ethical codes/guidelines of their own, and that these embrace the principles and procedures of the PACFA document.

In many instances, issues arise that can be viewed and/or challenged from both legal and ethical standpoints. Practitioners are required to view these guidelines in light of relevant state and federal legislation, and to seek competent, qualified advice as to which provisions may prevail in any given instance.

The British Association of Counselling and Psychotherapy (BACP) has given PACFA approval (2009) for using its code as a foundation for the development for the revised PACFA ethical guidelines.<sup>1</sup>

## 2. Ethical Principles for Operation of Member Associations

PACFA is a federation of Member Associations. Thus it has a role in determining the principles of ethical organisational conduct. Although individuals are often responsible for action, organisations also have a role in fostering ethical practices and conduct through their structures, procedures, guidelines and regulation of members.

### 2.1 Values and Principles of PACFA Member Associations

Member Associations, through their structures, processes, leaders and mechanisms, demonstrate a culture in which the following values and principles can thrive:

A. Respect for the essential humanity, worth and dignity of all people;

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<sup>1</sup> **Acknowledgement:**

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- B. Honouring the trust placed in them by their members and protecting the integrity of that relationship;
- C. Recognition of and respect for the cultural, religious and sexual diversity among people and opposing discrimination, oppressive and other unjust behaviour; ensuring the responsibility of their members to familiarise themselves with the restrictions and demands of a particular client's cultural, sexual or religious background;
- D. Respecting the privacy of their members and preserving the confidentiality of information acquired in the course of their work;
- E. Protection of the rights of, and promotion of the responsibilities of their members.
- F. Competence and good governance;
- G. Abiding by the laws of the society in which they are constituted.

## **2.2 Ethical Responsibilities of Member Associations**

### **2.2.1 Responsibilities to members**

Member Associations, through their structures, processes, leaders and mechanisms, demonstrate a culture in which the following responsibilities are enacted:

- A. Member Associations take all reasonable steps to avoid harm to their members and actively protect the integrity of their relationship with their members.
- B. Member Associations set and maintain professional structures and boundaries within the organization.
- C. Member Associations faced with situations which exceed the boundary of their competence, experience or the internal resources available seek qualified professional advice or assistance. Member Associations who, through their small size or other limitations in personnel, cannot attend to all the requirements/processes in managing a professional organisation, will seek partnerships or co-opt specialised individuals to ensure compliance with core tasks of operation.
- D. Member Associations ensure that an effective complaints mechanism exists to attend to complaints against members or against the Association. "Members" are defined as those who were paid members at the time of the service provided and/or the complaint lodged.
- E. In the event of harm resulting from organizational management or processes, Member Associations take responsibility for acknowledgment and reparation/restitution.
- F. Member Associations ensure that their Members have Professional Indemnity Insurance as part of the process of protecting members from harm by allowing for restitution.
- G. Member Associations promote members' autonomy by informing them with regard to their membership process and encourage members to make responsible decisions on their own behalf.
- H. Member Associations have clear and transparent guidelines regarding conflicts of interest in relation to members. Any member in a hierarchical position such as trainer, supervisor, committee member and/or mentor will exclude themselves from other dual relationships in matters where the member could be disadvantaged or where objectivity cannot be provided. Such disadvantage could

include decisions about membership status, marking/assessing members' work, taking part in complaints processes against members, or promotion of members' work.

I. Member Associations have transparent processes for the election and departure of office bearers. Office bearers should be appropriately qualified to hold the positions of leadership and management.

J. Member Association's practices and processes provide due attention to the social context of their members and their connections to others who are also members of Member Association.

K. Members Associations will support members in their work, including professional development, best practice, research and other benchmarking standards of practice.

### **2.2.2 Exploitation**

A. Member Associations will not develop and maintain a culture which exploits its members, past or present, in financial, sexual, emotional or any other way. Organisational processes including complaints mechanisms clearly reinforce that such practices are unacceptable.

B. Member Associations will not accept or offer payments for privileges, or engage in any financial transactions, which are unlawful or against the articles of the Association.

### **2.2.3 Confidentiality**

A. Member Associations treat in confidence any personal information about members, whether obtained directly or indirectly. This applies to all verbal, written, recorded or computer stored material pertaining to the professional and membership context. All records, whether in written or any other form, need to be protected with the strictest of confidence.

B. Member Associations protect members' rights to privacy and confidentiality.

C. Exceptional circumstances may arise which give the Member Association reasonable grounds for believing that the member may cause serious physical or other harm to others or themselves. In such circumstances, the breaking of confidentiality may be required, preferably with the member's permission, or after consultation with an appropriately qualified person(s).

D. Any breaking of confidentiality should be minimized both by restricting the information conveyed to that which is pertinent to the immediate situation and by limiting it to those persons who can provide the help required by the member.

E. Member confidentiality continues after the member's death unless there are overriding legal considerations.

F. Special care is required when using specific situations for reports and publication. The author must have the member's informed consent should there be any possibility of identification of the member.

### **2.2.4 Contracts**

A. Member Associations' activities are to be undertaken only with professional intent and not casually and/or in extra professional or personal relationships.

B. Contracts involving the members should be realistic and clear.

C. When a member is incapable of giving informed consent, Member Associations obtain consent from a legally authorised person.

- D. Member Associations publish accurate information about the nature of the service offered, qualifications and experience of members.
- E. Member Associations communicate the terms on which membership is offered.
- F. Member Associations will disclose any conflict of interest which may arise in relation to a member and will seek assistance to resolve the situation.

#### **2.2.5 Responsibility for Member Association Effectiveness and Functioning**

- A. Member Associations have a responsibility to maintain their own effectiveness, and their ability to support and develop members in their professional work.
- B. Member Associations need to monitor their organizational functioning, and seek help or suspend services when their resources are sufficiently depleted to require this.
- C. Member Associations regularly evaluate their organizational skills, performance and provide accountability for organizational practice.
- D. Member Associations, through their office bearers, members and community contacts, have an obligation to keep abreast of the current legal, quality and compliance requirements in delivering and supporting professional services. They also have a role in leading excellence in education and development of members through reference to research and best practice and other benchmarking standards in service delivery.

#### **2.2.6 Responsibilities to other Member Associations and the Professions of Counselling and Psychotherapy**

- A. Member Associations do not conduct themselves in ways which undermine public confidence in their operation, the services of their members or the professions of Counselling and Psychotherapy as a whole. MAs do not undermine the work of other associations established to provide services to Counselling and Psychotherapy professionals.
- B. As members of PACFA, Member Associations are bound by the constitution and codified requirements enshrined in that membership. Member Associations are therefore aware that non-compliance with the PACFA Constitution may result in termination of their PACFA membership.
- C. Member Associations who suspect misconduct by another Member Association which cannot be resolved or remedied after discussion with the Member Association concerned, should approach the appropriate professional body in their field of work.
- D. Member Associations do not solicit the members of other Member Associations.
- E. Member Associations respect the right of members to belong to more than one professional association.

#### **2.2.7 Responsibilities to the Wider Community**

- A. Member Associations work within the law.
- B. Member Associations take all reasonable steps to be aware of current legislation and regulations effecting their profession, their members and their work practices.
- C. Member Associations are committed to protecting the public against unlawful or unethical conduct by members.

D. Member Associations include a community representative in complaints, appeals and review processes wherever possible. Board membership is fostered to reflect its community and constituents.

## **2.3 Complaints and Appeals Framework**

A. Each Member Association is responsible for receiving, investigating and hearing complaints regarding the conduct of its Members.

B. Each member association has a procedure to be followed in the event of a complaint of unethical conduct against a member.

C. Disciplinary procedures must include the possibility that a Member can be debarred from membership. This would automatically lead to the removal of the Member from any register for which approved organizational membership is required.

D. Each member association must have an appeals mechanism including a relevant person from outside the Counselling profession.

E. Notification of the suspension or expulsion of a member from the association must be given to all other associations on whose register the person is listed.

F. The role of the PACFA ethics committee in hearing complaints and/or appeals must be documented in the complaints and appeals procedures of the Member Association. PACFA may also have a role in assisting and supporting the process of resolution of complaints against practitioners who are Members of Member Associations.

G. The role of PACFA Ethics committee in an appeal is to establish that a just and procedurally correct investigation was made by the Member Association, that it was done in accordance with the Member Association's complaints and appeals process and carried out in an ethical manner.

H. PACFA Ethics committee does not accept appeals against the decision of Member Association determinations except where there are grounds for complaint against the member Association in the fairness and due process of the conduct of the complaint.

## **3. Ethics for Practitioners**

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

One of the characteristics of contemporary society is the coexistence of different approaches to ethics. This statement reflects this ethical diversity by considering:

- Values of counselling and psychotherapy
- Principles of counselling and psychotherapy
- Personal moral qualities of counsellors and psychotherapists

This selection of ways of expressing ethical commitments does not seek to invalidate other approaches. The presentation of different ways of conceiving ethics alongside each other in this statement is intended to draw attention to the limitations of relying too heavily on any single ethical approach. Ethical principles are well suited to examining the justification for particular decisions and actions. However, reliance on principles alone may detract from the importance of the practitioner's personal qualities and their ethical significance in the Counselling or therapeutic relationship. The provision of culturally sensitive and appropriate services is also a fundamental ethical concern. Cultural factors are often more easily understood and responded to in terms of values. Therefore, professional values are becoming an increasingly significant way of expressing ethical commitment.

### **3.1 Values of Counselling and Psychotherapy**

The fundamental values of Counselling and Psychotherapy include a commitment to:

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

Values inform principles. They represent an important way of expressing a general ethical commitment that becomes more precisely defined and action-orientated when expressed as a principle.

### **3.2 Ethical principles of Counselling and Psychotherapy**

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

Ethical decisions that are strongly supported by one or more of these principles without any contradiction from others may be regarded as reasonably well founded. However, practitioners will encounter circumstances in which it is impossible to reconcile all the applicable principles and choosing between principles may be required. A decision or course of action does not necessarily become unethical merely because it is contentious or other practitioners would have reached different conclusions in similar circumstances. A practitioner's obligation is to consider all the relevant circumstances with as much care as is reasonably possible and to be appropriately accountable for decisions made.

#### **3.2.1 Fidelity: honouring the trust placed in the practitioner**

Being trustworthy is regarded as fundamental to understanding and resolving ethical issues. Practitioners who adopt this principle: act in accordance with the trust placed in them; regard

confidentiality as an obligation arising from the client's trust; restrict any disclosure of confidential information about clients to furthering the purposes for which it was originally disclosed.

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

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

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

The principle of beneficence means acting in the best interests of the client/s based on professional assessment. It directs attention to working strictly within one's limits of competence and providing services on the basis of adequate training or experience. Ensuring that the client's best interests are achieved requires systematic monitoring of practice and outcomes by the best available means. It is considered important that research and systematic reflection inform practice. There is an obligation to use regular and on-going supervision to enhance the quality of the services provided and to commit to updating practice by continuing professional development. An obligation to act in the best interests of a client may become paramount when working with clients whose capacity for autonomy is diminished because of immaturity, lack of understanding, extreme distress, serious disturbance or other significant personal constraints.

### **3.2.4 Non-maleficence: a commitment to avoiding harm to the client**

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

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

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

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

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

### **3.3 Personal moral qualities**

The practitioner's personal moral qualities are of the utmost importance to clients. Many of the personal qualities considered important in the provision of services have an ethical or moral component and are therefore considered as virtues or good personal qualities. These qualities are conveyed through the practitioner's clinical approach and practice. It is inappropriate to prescribe that all practitioners possess these qualities, since it is fundamental that these personal qualities are deeply rooted in the person concerned and developed out of personal commitment rather than the requirement of an external authority. However, it is the case that moral qualities and virtues, and their enactment through particular behaviours, can also be taught and should be part of training programs in the field.

Personal qualities to which counsellors and psychotherapists are strongly encouraged to aspire are evident in the enactment of the following behaviours/skills. They include:

- Empathy:** the ability to communicate understanding of another person's experience from that person's perspective.
- Sincerity:** a personal commitment to consistency between what is professed and what is done.
- Integrity:** commitment to being moral in dealings with others, personal straightforwardness, honesty and coherence.
- Authenticity:** the capacity to be true to self and relating truthfully to others.
- Resilience:** the capacity to work with the client's concerns without being personally diminished.
- Respect:** showing appropriate esteem to others and their understanding of themselves.
- Humility:** the ability to assess accurately and acknowledge one's own strengths and weaknesses.
- Competence:** the effective deployment of the skills and knowledge needed to do what is required.
- Fairness:** the consistent application of appropriate criteria to inform decisions and actions.
- Wisdom:** possession of sound judgement that informs practice.
- Courage:** the capacity to act in spite of known fears, risks and uncertainty.



### **3.4 Conclusion**

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

## **4. Guidance on Best practice for Practitioners**

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

- changes in the range of issues and levels of need presented by clients
- the growth in levels of expertise available from practitioners with the expansion in the availability of training and consultative support/supervision
- the accumulated experience of PACFA and its member associations

The diversity of settings within which Counselling and Psychotherapy services are delivered has also been carefully considered. These services may be provided by the independent practitioner working alone, one or more practitioners working to provide a service within an agency or large organisation, specialists working in multidisciplinary teams, and by specialist teams of counsellors and psychotherapists. Most work is undertaken face to face but there are also a growing number of telephone and online services. Some practitioners are moving between these different settings and modes of delivery during the course of their work and are therefore required to consider what constitutes best practice in different settings. Practitioners considering moving into alternative modes of delivery, such as on-line or email Counselling, are advised to seek supervision and/or consultation about the implications. All practitioners encounter the challenge of responding to the diversity of their clients and finding ways of working effectively with them. This statement therefore responds to the complexity of delivering Counselling and Psychotherapy services in contemporary society by directing attention to essential issues that practitioners ought to consider and resolve in the specific circumstances of their work.

The crucial role supervision and training has in developing and maintaining counsellors and psychotherapists is emphasised within these ethical guidelines. How people formulate their theoretical paradigm and their own best practice will be highly influenced by their role models. How organisations and senior individuals respond to competing imperatives to establish a rigorous training program that has credibility in the field while operating a viable business will continue to provide them all manner of ethical dilemmas. Many organisations are very small and specialised. This presents particular dilemmas for managing all the roles required of good governance.

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

## **4.1 Providing a good standard of practice and care**

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

### **4.1.1 Good quality of practice and care**

- A. Good quality of practice and care requires competently delivered services that meet the client's needs by practitioners who are appropriately supported and accountable.
- B. Practitioners should give careful consideration to the limitations of their training and experience and work within these limits, taking advantage of available professional support. If work with clients requires the provision of additional services operating in parallel with Counselling or psychotherapy, such services must be brought to the client's attention as part of duty of care, as their absence may constitute a failure in effective service.
- C. Best practice involves clarifying and agreeing to the rights and responsibilities of both the practitioner and client at appropriate points in their working relationship.
- D. Dual relationships arise when the practitioner has two or more kinds of relationship concurrently with a client, for example client and trainee, acquaintance and client, colleague and supervisee. The existence of a dual relationship with a client is seldom neutral and can have a powerful beneficial or detrimental impact that may not always be easily foreseeable. For these reasons practitioners are required to consider the implications of entering into dual relationships with clients, to avoid entering into relationships that are likely to be detrimental to clients. Where such a situation cannot be avoided it is advisable that therapists discuss the implications of this with their clients, and be readily accountable to clients and colleagues for any dual relationships that occur.
- E. Practitioners are required to keep appropriate records of their work with clients. Records include client notes, emails, and transcripts of SMS communication. All records should be accurate, respectful of clients and colleagues and protected from unauthorised disclosure. Practitioners should take into account their responsibilities and their clients' rights under data protection legislation and any other legal requirements.
- F. Clients are entitled to competently delivered services that are periodically reviewed by the practitioner. These reviews may be conducted, when appropriate, in consultation with clients, supervisors, managers or other practitioners with relevant expertise.

### **4.1.2 Maintaining competent practice**

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

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

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

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

#### **4.1.3 Keeping trust**

A. The practice of Counselling and Psychotherapy depends on gaining and honouring the trust of clients. Keeping trust requires:

- attentiveness to the quality of listening and respect offered to clients
- culturally appropriate ways of communicating that are courteous and clear
- respect for privacy and dignity
- careful attention to client consent and confidentiality

B. Clients should be adequately informed about the nature of the services being offered. Practitioners should obtain adequately informed consent from their clients and respect a client's right to choose whether to continue or withdraw.

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

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

E. Working with young people requires specific training, ethical awareness and competence. The practitioner is required to consider and assess the balance between young people's dependence on adults and carers and their progressive development towards acting independently. Working with

children and young people requires careful consideration of issues concerning their capacity to give consent to receiving any service independently of someone with parental responsibilities and the management of confidences disclosed by clients.

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

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

H. Practitioners must not abuse their client's trust in order to gain emotional, financial or any other kind of personal advantage. Practitioners should think carefully about, and exercise considerable caution before, entering into personal or business relationships with former clients and should expect to be professionally accountable if the relationship becomes detrimental to the client or the standing of the profession.

I. (a) Sexual relations with clients are prohibited both during therapy and for a period of at least two years post therapy. 'Sexual relations' includes intercourse and/or any other type of sexual activity or sexualised behaviour.

(b) Practitioners do not engage in sexual relations with former clients even after a two-year interval except in the most unusual circumstances.

Practitioners who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

- the amount of time that has passed since therapy terminated;
- the nature, duration, and intensity of the therapy;
- the circumstances of termination;
- the client's personal history;
- the client's current mental status;
- the likelihood of adverse impact on the client;
- any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.

J. Practitioners should be aware of their personal values in relation to lifestyle, gender, age, disability, race, sexual orientation, beliefs or culture and be cognisant of the impact of these on the therapeutic process. If practitioners find themselves unavoidably and emotionally prejudiced towards a client they must refer the client on to another agency or practitioner.

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

#### **4.1.4 Fitness to practice**

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

#### **4.1.5 If things go wrong with own clients**

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

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

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

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

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

F. Clients should be informed about the existence of the Professional Conduct Procedure of the Member Association and PACFA, and any other applicable complaints or disciplinary procedures. If requested to do so, practitioners should inform their clients about how they may obtain further information concerning these procedures.

#### **4.1.6 Responsibilities to all clients**

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

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

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

D. All members of PACFA share a responsibility to take part in its professional conduct procedures whether as the person complained against or as the provider of relevant information.

## **4.2 Teaching and training**

Registrants or Member Associations who provide training in the fields of Counselling and Psychotherapy and related services, are required to do so within the ethical guidelines of PACFA, the Society of Counselling and Psychotherapy Educators (SCAPE) and other relevant organisational guidelines appropriate to their training.

It is acknowledged that training institutions have a responsibility to foster an ethical culture through the development of structures, processes, contracts and procedures with staff and students that meet current educational and management standards in the field. The institution's responsibilities in delivering ethical training practices can be reviewed through the standards for Member Associations (section 2 in this Code) and PACFA's Code of Good Governance. Separation of business and academic roles in the institution's operations is advised in order to reduce conflicts of interests.

- A. All practitioners are encouraged to share their professional knowledge and practice in order to benefit their clients and the public.
- B. Practitioners who provide education and training should acquire the skills, attitudes and knowledge required to be competent teachers and facilitators of learning, and to undertake activities to maintain training competence.
- C. Trainers shall ensure that the training programmes and the learning experiences offered are in accordance with the currently valid educational guidelines and those of other acknowledged associations.
- D. Trainers and learning supervisors shall only offer courses and provide supervision or coaching in areas in which they have the requisite competence and experience.
- E. It is acknowledged that dual relationships may be inevitable to some degree. However, the roles of trainer and therapist are seen as completely distinct and should be separated in absolute terms. Trainers who have other dual relationships with students shall, as far as possible, reduce conflicting role interests. In principle, these roles shall be distributed among different professionals. Different roles shall be separated in space and time. If, for any reason, the objectivity and capacity of the trainer to professionally evaluate is restricted, this must be declared and a resolution sought that protects the trainee's interests.
- F. Trainers must not exploit trainees in financial, sexual, emotional, academic or any other ways.
- G. Practitioners are required to be fair, accurate and honest in their assessments of their students.
- H. Prior consent is required from clients if they are to be observed, recorded or if their personally identifiable disclosures are to be used for training purposes.

### **4.3 Supervision, consultation and clinical line management**

Registrants and Member Association should consult with the PACFA Professional Standards documents and the guidelines of other relevant professional organisations in order to meet current practice responsibilities. This section of the Code is designed to attend to issues that may arise in a professional supervisory relationship which involves hierarchy and therefore issues of power. It is acknowledged that qualified and experienced practitioners may seek peer supervision rather than a more hierarchical supervision arrangement. Concerns that may arise within peer supervision arrangements are attended to under section 4.5.

The role of individual or group supervisor or consultant is considered to be of crucial importance in developing, maintaining and leading the professions. PACFA would see it as desirable that the role of supervisor be quite distinct from the role of line manager. Wherever dual relationships or responsibilities exist, these need to be transparently named and ethically managed.

In practice, the terms supervisor and consultant are often used interchangeably. In the supervision literature it is often conceptualised that trainees are *supervised* and experienced practitioners seek *consultation* on their work, signalling where the responsibility for the client work lies. Thus in this section all relevant terms are used.

The roles of supervisors, consultants, and clinical line managers include the following responsibilities:

- Monitoring the welfare of the supervisee
- Ensuring compliance with the relevant legal, ethical, and professional guidelines for professional practice
- Monitoring the contracted achievements and the professional development of the practitioner.

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

B. Supervision is considered a discrete professional activity within clinical practice and thus it is required that supervisors and consultants complete specialist training in the development of supervision competencies.

C. Supervisors and managers have a responsibility to maintain and enhance best practice by practitioners and to protect supervisees from poor practice. The evaluative aspects of supervision shall be contracted and transparent in any supervision arrangement.

D. Supervisors and consultants who advise their supervisees in more than one capacity (for example as trainer, individual coach or supervisor to a board) shall, as far as possible, reduce conflicting role interests. In principle, these roles shall be distributed among different professionals. If this is not possible, supervisors shall inform their supervisee what expectations and what responsibilities go with each role. Different roles shall be separated in space and time. Practitioners are responsible for clarifying who holds responsibility for the work with the supervisee.

E. Supervisors must not exploit supervisees in financial, sexual, emotional, academic or any other ways.

F. Supervisors shall have no sexual relationships with supervisees. They also avoid social contact with their supervisees if it could compromise the professional relationship. If, for any reason, the objectivity and capacity of the supervisor, coach or consultant to professionally evaluate is restricted, the professional relationship must be terminated.

G. It is acknowledged that personal matters will arise during supervision, such as in the context of fitness to practice (see 4.1.4), regarding personal development or other advancements of their work. Supervisors shall not offer Counselling or Psychotherapy as substitute for or as a supplement to their work as supervisors.

## **4.4 Researching**

Ethical principles for undertaking research should be informed by NHMRC ethical principles for human research (<http://www.nhmrc.gov.au/publications/synopses/e72syn.htm>); Federal Privacy Legislation; Research involving Indigenous people ([http://www.nhmrc.gov.au/health\\_ethics/health/dilemmas.htm](http://www.nhmrc.gov.au/health_ethics/health/dilemmas.htm)); principles of integrity in conducting and reporting on research ([http://www.nhmrc.gov.au/publications/synopses/r39syn\\_summary.htm](http://www.nhmrc.gov.au/publications/synopses/r39syn_summary.htm)) and other relevant legislation and public guidelines. Even if research has been approved by another organisation, such as a University, PACFA will undertake its own ethics assessment process.

A. PACFA is committed to fostering research that will inform and develop practice. All practitioners are encouraged to support research undertaken on behalf of the profession and to participate actively in research work.

B. All research should be undertaken with rigorous attentiveness to the quality and integrity both of the research itself and of the dissemination of the results of the research.

C. The rights of all research participants should be carefully considered and protected. The minimum rights include the right to freely given and informed consent, and the right to withdraw at any point.

D. The research methods used should comply with the standards of best practice in Counselling and Psychotherapy and must not adversely affect clients. Dissemination of research must include strategies for disseminating results to participants, practitioners, the wider community and other researchers.

## **4.5 Working with Colleagues**

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

### **4.5.1 Working in teams**

A. Professional relationships should be conducted in a spirit of mutual respect. Practitioners should endeavour to attain good working relationships and systems of communication that enhance services to clients at all times.

B. Practitioners should treat all colleagues fairly and foster equal opportunity.

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

D. Practitioners must not undermine a colleague's relationships with clients by making unjustified or unsustainable comments.

E. All communications between colleagues about clients should be on a professional basis and thus purposeful, respectful and consistent with the management of confidences as declared to clients.



#### **4.5.2 Awareness of context**

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

#### **4.5.3 Making and receiving referrals**

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

- the recipient of the referral is able to provide the required service;
- any confidential information disclosed during the referral process will be adequately protected;
- the referral will be likely to benefit the client.

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

- the appropriateness of the referral;
- the likelihood that the referral will be beneficial to the client;
- the adequacy of the client's consent for the referral.

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

### **4.6 Probity in professional practice**

Ensuring the probity of practice is important both to those who are directly affected but also to the standing of the profession as a whole.

#### **4.6.1 Providing clients with adequate information**

A. Practitioners are responsible for clarifying the terms on which their services are being offered in advance of the client incurring any financial obligation or other reasonably foreseeable costs or liabilities.

B. All information about services should be honest, accurate, avoid unjustifiable claims, and be consistent with maintaining the good standing of the profession.

C. Particular care should be taken over the integrity of presenting qualifications, accreditation and professional standing.

#### **4.6.2 Financial arrangements**

Practitioners are required to be honest, straightforward and accountable in all financial matters concerning their clients and other professional relationships.

#### **4.6.3 Conflicts of interest**

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

## **4.7 Care of self as a practitioner**

Attending to the practitioner's well-being is essential to sustaining best practice.

A. Practitioners have a responsibility to themselves to ensure that their work does not become detrimental to their health or well-being by ensuring that the way that they undertake their work is as safe as possible and that they seek appropriate professional support and services as the need arises.

B. Practitioners are entitled to be treated with proper consideration and respect that is consistent with this Guidance.

## **5. Professional Conduct Procedure**

It is the responsibility of all Registrants, Member Association and Complainants to ensure that they fully understand the Professional Conduct Procedure. This procedure forms an essential part of PACFA's commitment to the protection of the public. Registrants and Member Associations are required to inform any client who indicates that they have a complaint or grievance about the existence of this procedure and any other complaints procedure applicable to the service provided.

### **5.1 Introduction**

#### **5.1.1 Aim**

The aim of the Professional Conduct Procedure is to provide complainants with an open and transparent route of remedy where complaints are made against Registrants or Member Associations of PACFA. In processing such complaints, PACFA aims to protect members of the public, members of Member Associations, the name and reputation of PACFA and the professions of Counselling and Psychotherapy.

#### **5.1.2 Bringing a complaint**

A complaint can be brought by:

- anyone who has sought or received a service provided by a Registrant or Member Association of PACFA; or
- a current Registrant or Member Association
- anyone who has previously had a complaint heard by a Member Association and who is not satisfied that due process was followed and wants the decision appealed; or
- a person who has reason to ask PACFA to hear a complaint instead of lodging it with a Member Association, in which case the reasons for this application must be justified and clear; or
- a legal guardian or other appropriately authorised adult on behalf of a minor and/or an adult lacking legal capacity for services sought or received; or
- a third party who can demonstrate sufficient interest, or who speaks on behalf of another vulnerable person/people such as joint children, and who has been directly affected by the actions of the practitioner, and where there is corroborating evidence of unethical conduct as described under this Code.

#### **5.1.3 Complaints against non-members**

PACFA cannot deal with complaints against individuals or organisations that were not registrants/members of PACFA at the time of the alleged professional misconduct and/or are not current members of a Member Association or on the PACFA register.

#### **5.1.4 Complaints against members**

A complaint made against a Registrant or Member Association and brought within the timescale detailed below, may cover the entirety of the professional relationship in so far as the Registrant or Member Association concerned was a member of PACFA at the time of the alleged professional misconduct.

#### **5.1.5 Records**

All records will be kept for a period of seven years. PACFA reserves the right to reconsider complaints previously submitted when similar/other complaints subsequently arise that give good reason to suggest that the practitioner's continuing membership should be reviewed under Sections 9 and 10 of the Constitution.

Where the outcome of a complaint has resulted in termination of Registration or Member Association, all records will be kept unless and/or until such time as the person concerned has successfully re-applied for membership of PACFA. Such records will be considered in any re-application for membership of PACFA.

#### **5.1.6 Administration**

The administration of the Professional Conduct Procedure will follow the protocols laid down and as amended from time to time by PACFA. These will be administered by the Chair of Ethics.

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

#### **5.1.7 Expenses**

PACFA is not responsible for travel or any other expenses (e.g. mediation or conciliation) incurred either by the Complainant or the Registrant or Member Association complained against or any support person/representative in connection with any stage of the complaint.

PACFA cannot order one party in a complaint to pay another party's costs.

#### **5.1.8 Dual accountability**

Complaints about Registrants or Member Associations can be lodged either with the relevant Association or with PACFA. Member Associations may also request that PACFA be involved or manage complaints they receive. This may be due to their own assessed inability to provide a just and fair hearing, to allocate available resources, or where particular expertise is not available.

PACFA may decide to hear a complaint against a Registrant when another organisation (such as The Psychologist's Registration Board, Australian Association of Social Workers) is involved in a similar process arising out of the same substantive matters. Where information is received for consideration under the Professional Conduct Procedure and where it is known that the member concerned is also a member of another professional body, PACFA reserves the right to formally notify any other organisation of the issues being considered.

PACFA will also hear matters that are the subject of a legal process, given that matters of ethics and law can focus on different aspects of and considerations in professional practice.

PACFA will not investigate matters that are substantially the same as a complaint before the Health Care Complaints Commission (HCCC). This would be considered replication of the complaints process. In some cases, PACFA will refer matters to the HCCC.

### **5.1.9 Resolution**

Before submitting a complaint to PACFA, the Complainant is encouraged to attempt to resolve the issue with the Registrant or Member Association Complained Against and details of any attempt at resolution should be included with the complaint. If local resolution is not possible/feasible or is considered inappropriate in the particular circumstances of the case, the Complainant will be required to provide a written explanation as to why this is the case.

### **5.1.10 Complaints and findings**

PACFA reserves the right to notify other professional bodies and/or agencies about complaints and to distribute any findings upheld against a member, where it considers it right and just to do so.

In relation to publishing findings, refer to clause 5.5.2, 5.5.3 and 5.8.

## **5.2 Making a Complaint**

### **5.2.1 The complaint**

The complaint must satisfy the following conditions:

A. The complaint must be in writing, addressed to the Chair, Ethics Committee and be made on the official PACFA complaints form. The Complainant must provide a detailed account of the practice giving rise to the complaint, together with details of dates when the event(s) occurred and all other supporting evidence. Depending on the nature and type of complaint, reference should be made to the standards of practice in force at the time, as outlined by either the PACFA Code of Ethics and/or the relevant MA Codes of Ethics and Practice as appropriate to the complaint. Reference may also be made to the PACFA ethical guidelines for researching Counselling and psychotherapy, SCAPE Training standards documents and other guidelines as appropriate.

B. The Registrant or Member Association Complained Against is named and is a current member of PACFA and/or was a member of PACFA at the time the alleged breach occurred.

C. It is in writing, dated, signed and received by the PACFA office.

A complaint not satisfying the above conditions will not be accepted or processed under these procedures.

### **5.2.2 Notification**

The Member Association or Registrant Complained Against will be notified that a complaint has been received, given a copy of that complaint and details of the procedure to be followed including the Codes under which the complaint will be heard. The Member Association or Registrant Complained Against is not required to respond at this stage, but will be given an opportunity at a later stage if the complaint is accepted under the formal Professional Conduct Procedure (as set out in section 3).

### **5.2.3 Receipt of a complaint**

The complaint will be submitted to the Ethics Committee whereupon it will decide:

- A. whether to accept the complaint to be dealt with through the PACFA Complaints Process, refer it back for further information/clarification or reject it. The Ethics Committee has discretion to interview the Complainant and/or Registrant/ Association Member Complained Against if deemed appropriate;
- B. if further information/clarification is requested, upon receipt of same, the complaint will be re-submitted to the Ethics Committee which will decide whether to accept it or reject it;
- C. once the complaint is accepted, the Complainant and Registrant/Member Association Complained Against will be formally notified of this decision in writing. The Chair of Ethics or his/her delegate will then start the formal Professional Conduct Procedure (as set out in section 3);
- D. if the complaint is not accepted by the Ethics Committee the Complainant and Member Complained Against will be formally notified of this decision in writing.

### **5.2.4 Appeal following decision of the Pre-Hearing Assessment Panel**

The Complainant may appeal against the decision of the ethics committee. An appeal must be received by the Chair of Ethics within 14 days of notification of the Committee's decision. The Complainant can appeal on the following grounds:

- the decision was made against the weight of evidence;
- there is new evidence that was not available at the time of the initial assessment of the complaint (subject to the conditions laid down in the relevant protocol).

The intention to appeal must be accompanied by the evidence to support the submission.

The ground(s) of appeal, together with the original submissions and any new evidence considered by the ethics committee, will be considered by an independent Appeal Assessor. The Appeal Assessor's decision will be final.

## **5.3 The Formal Professional Conduct Procedure**

### **5.3.1 Acceptance of complaint**

The Complainant and Registrant/Member Association Complained Against will be notified in writing that the complaint will proceed to the Professional Conduct Panel.

### **5.3.2 Responding to a formal complaint**

The Registrant/Member Association Complained Against will be notified of the acceptance of the complaint and will have 28 days to respond to it, having previously been supplied with a copy of the complaint. In particular circumstances, a case officer may be assigned to assist with this process. Such circumstances may relate to the type of complaint, the geography or resources of the MA involved.

The Registrant/Association Member Complained Against will also be furnished with any further information submitted by the Complainant and considered by the Ethics Committee/Professional Conduct Panel. Any response to the complaint must be forwarded to the Professional Conduct Panel.

### **5.3.3 Evidence**

All evidence submitted for the purpose of the Professional Conduct Procedure, by either the Complainant or the Register/Member Association Complained Against, shall be available to the parties involved in the complaint. This includes a clear statement about the relevant Codes and specific clauses that will become the measure for the complaint, although in the initial scoping of the complaints process, this may not yet be an exhaustive list.

### **5.3.4 Conduct**

It is the duty of the parties taking part in the Professional Conduct Procedure to comply with the implementation of the Professional Conduct Procedure. Such persons shall comply with the relevant protocols as laid down by the PACFA Code of Ethics. Any failure to comply may result in the termination of the Professional Conduct Procedure or withdrawal of membership under Clause 10 of the PACFA Constitution.

### **5.3.5 Lapsed/resigned membership**

Failure to renew an application to the Register or Association membership by a Registrant/ Association Member Complained Against during the course of a complaint will not normally terminate the Professional Conduct Procedure.

A Registrant's resignation from membership of the Association will not normally terminate nor invalidate the processing and/or hearing of a complaint by the PACFA.

Where a Register or Member Association resigns and the complaint is unable to be pursued due to the respondent's withdrawal from the process, the PACFA records will note the lack of closure in the matter of the complaint and that this will have to be satisfactorily resolved for successful re-application for membership of PACFA to occur.

## **5.4 The Professional Conduct Hearing**

### **5.4.1 Venue**

Professional Conduct Hearings will be held at a neutral venue, other than in exceptional circumstances. Given that PACFA is a national organisation and members of the Professional Conduct

Panel may themselves reside in different states, it is expected that hearings and other meetings are likely to be carried out by teleconference or video conferencing. Any limitations caused by the use of such technology, including any bearing on a fair hearing, needs to be considered. In particular circumstances it may be that a case officer and even a separate complaints committee local to the matter may be assembled to act in de-facto of the Professional Conduct Panel. In such cases, the roles and terms of reference for this Panel should be made clear and in writing to all parties.

#### **5.4.2 Professional Conduct Panel**

The Professional Conduct Panel shall comprise a Chair and not less than three persons, one of whom is independent of the professions. The Panel may decide to invite other members relevant to individual matters for any given complaint hearing. Such members may include practitioners with specific expertise either within or outside the professions of Counselling and Psychotherapy.

#### **5.4.3 Declaration of interest**

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

#### **5.4.4 Purpose**

The purpose of the Professional Conduct Hearing is for the Professional Conduct Panel to examine all the written and oral evidence presented by both parties and decide whether the complaint is proven or not. If proven, the Panel will decide whether or not any sanction should be imposed.

#### **5.4.5 Presence of a representative/support person**

In some cases a hearing may occur, whereby individuals or associations attend to present their case. This could occur by teleconference, Skype, or involving a local committee established for this purpose. When appearing at the Professional Conduct Hearing, the Complainant and Registrant/Member Association Complained Against may each be accompanied by a representative who may support and/or speak on behalf of the party concerned. Such details of a representative/support person must be received by the Head of Professional Conduct not less than 28 days prior to the date fixed for the Professional Conduct Hearing.

#### **5.4.6 Written evidence**

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

#### **5.4.7 New evidence**

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

#### **5.4.8 Attendance by Witnesses**

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

#### **5.4.9 Failure to attend the Professional Conduct Hearing**

Where a Complainant or Registrant/ Member Association Complained Against fails or refuses to provide a response in the time periods without advisement, or to attend a Professional Conduct Hearing, the Chair of the Professional Conduct Panel has the power to decide to either:

- proceed with the Hearing in the absence of one or both of the parties; or
- adjourn the Hearing to a date not less than 28 days in advance; or
- terminate the proceedings; or
- refer the matter for consideration under the PACFA Constitution.

#### **5.4.10 Notification of findings**

The decision of the Professional Conduct Panel will be notified in writing to the parties within 28 days of the Professional Conduct Hearing.

### **5.5 Sanctions**

**5.5.1** The Professional Conduct Panel, having regard to the findings, may impose or recommend one or more of the sanctions detailed in this protocol (see section 6). This may occur in consultation with the Ethics Committee.

#### **5.5.2 Lifting of sanction**

The Professional Conduct Panel will decide if the requirements of the sanction have been fulfilled and thus, whether the sanction should be lifted.

The Registrant/ Member Association Complained Against will be notified in writing of any decision made. Where a sanction has been successfully complied with and, thus, lifted, a Sanction Compliance Notice will be published on the PACFA website and in its e-news.



### **5.5.3 Failure or refusal to comply with sanction**

Failure or refusal to comply with a sanction may result in the Registrant's immediate removal from the PACFA Register or the Association's membership being terminated immediately. The Registrant or Member Association Complained Against will be notified of any such decision in writing. In such circumstances, a Withdrawal of Registration or Association Membership Notice will be published on PACFA's website and in its journal.

## **5.6 Formal Appeal Procedure**

**5.6.1** The Registrant or Member Association Complained Against may appeal on the ground(s) detailed in the Constitution. An appeal against the decision of the Professional Conduct Panel must be submitted in writing by the deadline given (see paragraph 5.6.6), be accompanied by any supporting documentation and submitted to the PACFA office.

**5.6.2** The ground(s) for appeal will be considered by an independent Appeal Assessor who will decide whether the appeal should be accepted to go forward to an Appeal Hearing or not.

**5.6.3** If leave to appeal is accepted under paragraph 5.6.2, a notice to that effect shall be given to the Head of Professional Conduct and the case will proceed to an Appeal Hearing, where the appeal will be considered by an independent Appeal Panel, as set out in Section 5.7. The Appellant and the Complainant will be notified of this decision and given details of the procedure to be followed.

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

**5.6.5** An appeal will be considered on any of the following ground(s):

- the facts were found against the weight of evidence;
- the sanction is disproportionate to the findings and decision of the Professional Conduct Panel and is unjust in the circumstances;
- there is evidence to suggest that a procedural impropriety may have had a material effect on the findings and decision of the Professional Conduct Panel;
- there is new evidence which was not available at the time of the Professional Conduct Hearing, subject to the conditions laid down in the relevant protocol.

### **5.6.6 Timescale for appeal**

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

## **5.7 Appeal Hearing**

### **5.7.1 Venue**

Appeal hearings will be held at a neutral venue other than in exceptional circumstances. Given that PACFA is a national organisation and members of the Professional Conduct Committee may themselves reside in different states, it is expected that hearings and other meetings are likely to be carried out by teleconference or Skype. Any limitations caused by the use of such technology, including any bearing on a fair hearing, needs to be considered. In particular circumstances it may be that a case officer and even a separate complaints committee local to the matter may be assembled to act in de-facto of the Professional Conduct Committee. In such cases, the roles and terms of reference for this committee should be made clear and in writing to all parties.

### **5.7.2 Appeal Panel**

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

### **5.7.3 Declaration of interest**

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

### **5.7.4 Purpose**

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

### **5.7.5 Format of the Appeal Hearing**

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

### **5.7.6 Presence of a representative/support person**

When appearing at the Appeal Hearing, both parties may be accompanied by a representative who may support and/or speak on behalf of the party concerned. Such details of a representative/support person must be received by the Head of Professional Conduct not less than 28 days prior to the date fixed for the Appeal Hearing.

### **5.7.7 Written evidence**

Written evidence and/or submissions and witness statements must be submitted in advance by the Appellant and the Complainant. Such papers must be received by the Head of Professional Conduct not less than 28 days prior to the date fixed for the Appeal Hearing. Such papers will be circulated to the Appeal Panel, the Appellant and the Complainant, within a reasonable period prior to the Hearing. The Chair of the Appeal Panel may take advice on these papers and/or procedural matters from the Head of Professional Conduct, or such relevant person as may be deemed appropriate.

### **5.7.8 New evidence**

The Chair of the Appeal Panel will determine whether or not new evidence will be accepted on the day of the Appeal Hearing. The decision will be based on the conditions laid down in the relevant protocol.

The Chair of the Appeal Panel may take advice on such matters from the Head of Professional Conduct.

### **5.7.9 Attendance by witnesses**

A witness can only be called if the witness has supplied a written statement contained within the parties' submissions to PACFA. Parties wishing to call witnesses must notify the Head of Professional Conduct of the names and details of such witnesses not less than 28 days prior to the date fixed for the Hearing. The Chair of the Appeal Panel will only permit the attendance of a witness if the Panel considers that their written statement requires further clarification. The Appeal Panel, Appellant and Complainant may call witnesses to attend the Hearing. Attendance by a witness may occur via teleconference or Skype. The Chair of the Appeal Panel has discretion to refuse attendance by a witness if it is reasonably believed that such attendance is not relevant and/or will not add any weight to the issue(s) being considered. Witnesses may be questioned by the Panel and by either party connected with the case.

### **5.7.10 Failure to attend the Appeal Hearing**

Where an Appellant or Complainant fails or refuses to attend an Appeal Hearing, the Chair of the Appeal Panel has the power to decide to either:

- proceed with the Hearing in the absence of one or both of the parties; or
- adjourn the Hearing to a date not less 28 days in advance; or
- refer the matter for consideration under the Constitution.

### **5.7.11 Notification of decision**

The decision of the Appeal Panel will be notified to the parties in writing and normally within 14 days of the Appeal Hearing.

Where an Appeal has not been successful, the decision of the Appeal Panel, including details of any sanction, incorporating any amendment(s) made by the Appeal Panel, will be published on the PACFA website and in e-news.

If the decision is that the Appellant's status on the register or Association Membership of PACFA should be withdrawn, the Head of Professional Conduct will communicate this decision to the Chair of Ethics and the President of PACFA who, in turn, will formally notify the Appellant in writing and implement the Panel's decision, which will be final.

## **5.8 Publication**

5.8.1 The decision of the Professional Conduct and/or Appeal Panel, together with details of any sanction, will be published on the PACFA website and in e-news in such detail as deemed appropriate to the findings and at its discretion.

5.8.2 The withdrawal of membership under the Professional Conduct Procedure will be published on the PACFA website, in e-news and elsewhere as it considers appropriate and just to do so, and in the interests of public protection.

5.8.3 Under these procedures, any notification that PACFA is entitled to publish on its website and in e-news may be published elsewhere by PACFA at its discretion and in the interests of public protection.

## **5.9 Effective Date**

This Professional Conduct Procedure will apply to all complaints received by PACFA from August 29<sup>th</sup> 2010.

## **6. Heads of Complaint**

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

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

### **6.1 Professional Misconduct**

A finding of professional misconduct signifies that the practitioner has contravened the ethical and behavioural standards that should reasonably be expected of a member of this profession. Misconduct is defined as acting in contravention of the written and unwritten guidance of the profession.

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

### **6.2 Professional Malpractice**

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

- Incompetence
- Negligence
- Recklessness
- The provision of inadequate professional services

A finding of serious professional malpractice is appropriate if the malpractice is of sufficient seriousness to merit a period of suspension of rights of membership and/or the withdrawal of membership of the Association.

### **6.3 Bringing the Profession into Disrepute**

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

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

Conduct that is regarded as 'disgraceful' need not amount to moral turpitude or be restricted to acts of serious immorality.

The conduct must have had some connection with a professional role in order to be considered as failing 'in a professional respect'. It ought not to be concerned with matters that can reasonably be viewed as solely personal and private.

Conduct 'in a professional respect' is not confined to the pursuit of the profession in question.

What is not considered to be disgraceful to an ordinary person may be considered to be disgraceful to a professional person.

A finding of bringing the profession into disrepute will result in withdrawal of membership.

**Note: The document supercedes previous documents PACFA Ethical Framework; PACFA Code of Ethics for Member Associations. This document should be read in conjunction with the PACFA Code of Good Governance 2005.**