

Postal Address:
PO BOX 88
GRANGE QLD 4051

Street Address:
Cnr Carberry & Thomas St
GRANGE QLD 4051

Emails:

ACA (INC)
P Armstrong – CEO
[philip@theACA\(Inc\).net.au](mailto:philip@theACA(Inc).net.au)

Administration
Office Staff
[ACA\(Inc\)@theACA\(Inc\).net.au](mailto:ACA(Inc)@theACA(Inc).net.au)

The Complaints Tribunal
A Hellwig – Chair
aphellwig@gmail.com



**AUSTRALIAN
COUNSELLING
ASSOCIATION**

Australian Counselling Association Pty Ltd - ABN 500 855 35 628

COMPLAINTS POLICY And PROCEDURAL GUIDELINES



INDEX TO POLICY & PROCEDURAL GUIDELINES

<i>INDEX</i>	ii
<i>PREAMBLE</i>	iii
1. INTRODUCTION	01
1.1 Aim	01
1.2 Bringing a Complaint	01
1.3 Complaints against Non-members	01
1.4 Procedure	01
1.5 Procedural Requirements	01
1.6 Timescale	01
1.7 Record Keeping	01
1.8 Administration	01
1.9 Expenses	02
1.10 Preparatory Consultations	02
1.11 Dual Accountability	02
2. MAKING A COMPLAINT	02
2.1 The Complaint	02
2.2 Acceptance of a Complaint	03
3. THE COMPLAINTS TRIBUNAL	03
3.1 Composition of the Tribunal	03
3.2 Conduct	03
3.3 Evidence	03
3.4 Suspension of Rights of Membership	04
3.5 Lapsed Membership	04
4. THE FORMAL COMPLAINT – PROCEDURAL GUIDELINES	04
4.1 Initial Notification	04
4.2 Information Required from the Complainant	05
4.3 Notification to Respondent	05
4.4 Response to Formal Complaint	06
4.5 Brief of the Adjudication Meeting	06
4.6 The Adjudication Meeting	06
4.7 Declaration of Interest	06
4.8 Conduct of the Meeting	07
4.9 The Adjudication	07
4.10 Notification of Findings	07
4.11 Venue	07
5. SANCTIONS	08
5.1 Lifting of Sanctions	08
5.2 Failure to Comply with Sanctions	09
6. CRITERIA FOR APPEAL	09
6.1 Appeals to President of The Association	09
6.2 Criteria for Appeal	09
6.3 Action to be taken if Criteria are Satisfied	10
6.4 Failure to Satisfy Criteria	10
6.5 Decision to be Final	10
7. APPEAL – PROCEDURAL GUIDELINES	10
7.1 Timeframe	10
7.2 Criteria	10
7.3 Composition of the Appeal Panel	10
7.4 Brief of the Appeal Panel	10
7.5 Decision of the Appeal Panel	11
7.6 Notification of Decision	11
7.7 Publication	11
8. PUBLICATION	11
8.1 Right to Publish	11
8.2 Place of Publication	11
8.3 Termination of Membership to be Published	11
9. LEGAL ACTIONS RELATED TO COMPLAINTS	12
9.1 Requirement re Legal Action	12
9.2 If Legal Action is Undertaken During Complaint Procedure	12
9.3 If Stay of Action is Required	12
9.4 Continuation of Complaint after Legal Action	12
9.5 Account Taken of Result of Legal Action	12

10.	APPENDICES – DRAFT LETTERS	13
10.1	APPENDIX A LETTERS OF NOTIFICATION RE NON-CONTINUANCE	13
10.2	APPENDIX B LETTER OF SUSPENSION OF MEMBERSHIP	15
10.3	APPENDIX C LETTER OF RELEASE OF INFORMATION	16
10.4	APPENDIX D LETTER OF NOTIFICATION OF COMPLAINT	17
10.5	APPENDIX E LETTERS OF NOTIFICATION OF FINDINGS	20
10.6	APPENDIX F PROCEDURAL FLOWCHART	24

PREAMBLE

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

- a) The ACA will inform the Respondent of his/her right to object to a complaint or to appeal a decision;
- b) The ACA will make the Respondent aware of the case sought to be made against him / her and will give him/her a proper opportunity of replying to it; The Respondent will be given access to the material available to the ACA decision-makers (especially adverse material) in accord with **section 4.4** and the proper opportunity (including a reasonable timeframe) to respond to that material;
- c) ACA decision-making is not necessarily bound by the rules of evidence, but will not grossly depart from the rules of evidence. That is, it will proceed upon evidence that reasonably proves or helps to prove a fact or issue, e.g., credible witnesses, no reception of hearsay evidence;
- d) There will be no real or ostensible bias from the part of the ACA decision-makers. This means that the decision-makers will be, and will be seen to be, impartial. There will neither be a real possibility of bias on the available material nor will there be a reasonable apprehension that any decision-maker does not bring an objective mind to the assessment.

1. INTRODUCTION

1.1 Aim

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

1.1a In accord with this aim it is possible for the Association to act in the absence of a complaint in cases where it is deemed that not to act would be prejudicial to the good name and standing of the Association and/or the profession as a whole. In the same way, acts by individual members deemed to be prejudicial to the good name and standing of the Association and/or the profession as a whole are liable to action by the Association.

1.2 Bringing a Complaint

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

1.3 Complaints against Non-members

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

1.4 Procedure

In outline the complaints procedure provides that:

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

- a) to accept the complaint for further investigation and possibly adjudication
- OR
- b) to reject the complaint.

1.5 Procedural Requirements

The procedure requires that ideally a complaint should be correctly formulated (see **Section 2**) and that enough information is available for a decision to be made as to whether the complaint should go forward to be adjudicated or not. In cases where the information is considered insufficient for adjudication of the complaint, the Chair of the Complaints Tribunal may gain further information and then decide if the complaint should go forward for adjudication. The facts discovered at the preliminary investigation stage will inform the decision on whether the complaint should be accepted for adjudication or not.

1.6 Timescale

A complaint can be lodged without time limitation in regard to the occurrence of the event(s) which form(s) the substance of that complaint.

1.7 Record Keeping

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

1.8 Administration

The Administration of the Complaints Procedure will follow the protocols laid down from time to time by the Complaints Tribunal of the Association and these

will be administered by a member of the Complaints Tribunal or designated Head Office staff.

1.9 Expenses

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

1.10 Preparatory Consultations

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

1.11 Dual Accountability

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

1.12 Periodic Updates

This document and the Code of ethics and Practice and Practice are subject to periodic updates and it is the responsibility of the member to familiarise themselves with these updates as they occur. The Association's website will highlight the fact that a new update is available and the member's attention will also be drawn to this fact in the Association's E-Zine.

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

2. PROCESSING A COMPLAINT

2.1 The Complaint

The complaint must satisfy the following conditions:

- a) the allegation is about a breach of a specific clause of the Code of ethics and Practice or Membership guidelines as set out in the ACA (INC) Code of ethics and Practice and Practice.
- b) the complaint is brought either by a member of the public seeking or using a service provided by a member OR by a current member of the Association against another member of the Association. In cases involving minors parent(s) or Guardians may act on their behalf.

- c) attempts to resolve the matter between the two parties are shown to have been made, or if not, an explanation of why not is provided.
- d) legal proceedings have not been issued or pending regarding matters forming the subject matter of the complaint.
- e) the written and signed complaint is received by the Chair of the Complaints Tribunal.
- f) The Complaints Tribunal will decide whether to accept or reject the complaint in line with the criteria a-e of this section.

2.2 Acceptance of a Complaint

Once the complaint is accepted the Complaints Tribunal will be asked by the Chair of the Complaints Tribunal to start the formal Complaints Procedure. If the Complaints Tribunal rejects the complaint (in accord with “f” above), the Complaints Procedure will forthwith be terminated and the Complainant and the Respondent accordingly notified. Draft letters for this notification are to be found in **Appendix A**. In the event that the complaint is rejected the Complaints Tribunal still reserve the right to send the Respondent a letter of advice regarding the content of the complaint.

3. THE COMPLAINTS TRIBUNAL

3.1 Composition of the Tribunal

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

3.2 Conduct

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

3.3 Evidence

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

3.4 Suspension of Rights of Membership

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

EITHER:

- i. Physical or emotional harm has been caused

AND/OR

- ii. The exploitation of a member of the public is involved

AND/OR

- iii. where the complaint is of such a kind that it could result in the expulsion of the individual or organisational member from the Association if the complaint is upheld.

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

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

The President of the Association will notify the Respondent of the suspension of membership or of the suspension of any rights of membership. (See **Appendix B** for draft letter.)

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

3.5 Lapsed Membership

Failure to renew membership, or resignation, by a Respondent during the course of a complaint shall not normally terminate the Complaints Procedure, which will continue to its conclusion.

4. THE FORMAL COMPLAINT - PROCEDURAL GUIDELINES

4.1 Initial Notification

If the Tribunal accepts a complaint then the complainant is to be sent a letter (for draft see **Appendix C**) asking for permission for a copy of the complaint to be sent to the respondent (see section 4.2). If this permission is not forthcoming the complaints procedure is halted in accord with the principles laid down in section 3.3 and the complainant notified of same.

Upon receipt of the above permission the respondent will be notified in writing that a complaint against them has been received (see **Appendix D** for a draft letter) and a copy of the letter of release sent by the complainant. As per section 4.3 they will also be advised of where to find a copy of the latest version of the

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

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

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

4.2 Information Required from the Complainant

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

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

AND

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

If no confirmation is received from the Complainant within 21 working days then the complaint is rejected (in accord with the principles laid down in section 3.3) and the Respondent and the Complainant are notified of the decision.

4.3 Notification of Respondent

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

- ❖ the individual or Organisational Respondent.

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

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

The Respondent will also receive notification of those matters in the complaint of principle concern to the complaints tribunal. This notification will include a list of what sections of the code they are considered to be in violation of. The latest version of the Code of ethics and Practice and Practice and a copy of the complaint guidelines and

appeals procedure is available at the ACA (INC) website [www.theACA\(Inc\).net.au](http://www.theACA(Inc).net.au) and this will be pointed out to the respondent at this time.

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

- i. express post; or
- ii. courier; or
- iii. registered post and facsimile; or
- iv. registered post and e-mail;

4.4 Responding to a Formal Complaint

The Respondent will be invited to submit a written response to the formal complaint, based on the list of concerns and code breaches already sent to them, to the Complaints Tribunal to be received by the Association within 14 working days. This Response should include supporting documentation, evidence, or comments from those in a position to have observed the counsellor in a counselling context. In this regard, comments from a supervisor may also be helpful. ***IT SHOULD BE NOTED THAT THIS MAY BE THE COUNSELLOR'S ONLY CHANCE TO RESPOND TO THE COMPLAINT.***

4.4.1 If a response is not received within 14 working days then the complaint will be upheld and sanctions imposed and the complaint published in the Association's Journal.

4.4.2 If a response is received then this response is forwarded to the Complainant for comment. If a Complainant wants to respond then response must be received by the Association within 7 working days.

4.4.3 The Tribunal ***MAY***, (though this is not usual) at their discretion, seek to clarify points already presented, or, ask for more information from either party via letter, phone interview or face to face interview. ***Please Note*** that, should the Tribunal choose to do this, then both parties will be given the opportunity to provide additional information regarding that particular aspect of the complaint, and both will be interviewed via the same media.

4.5 Brief of Adjudication Meeting

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

4.6 The Adjudication Meeting

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

4.7 Declaration of Interest

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

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

4.8 Conduct of Meeting

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

4.9 The Adjudication

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

4.10 Notification of Findings

- a) Within 14 working days, the Complaints Tribunal will produce a report outlining the complaint, the Tribunal findings and the sanctions to be imposed, if for some reason this becomes impossible both parties and the President of the Association shall be notified.
- b) The Chair of the Complaints Tribunal will notify the decision of the Complaints Tribunal to the President of the Association.
- c) The Respondent will be notified of the sanctions imposed by the President of the Association (see draft letter **Appendix E**).
- d) The decision to uphold the complaint will be published, detailing the clauses held to have been breached and the expiry date of the sanctions that have been imposed, in the Association's Journal or elsewhere should this be deemed appropriate. Any sanctions imposed can be published in the Association's Journal. The publication of the decision and sanctions will be made only after the necessary time for notification of appeal has elapsed. (See Section 6) or, if appealed, the appeal has been unsuccessful.
- e) The Chair of the Complaints Tribunal will also notify any Complainant(s) of the decision and where applicable the sanctions imposed (see draft letter **Appendix E**).
- f) In a case where the individual Respondent is a member of or is known to be currently working for an Organisational Member of the Association, the Organisational Member will be informed of the outcome of the Complaints Procedure.

4.11 Venue

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

5. SANCTIONS

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

(I) A PROBATIONARY PERIOD FROM 1 – 5 YEARS WITH:

- a) a requirement to demonstrate (by, but not limited to; reflective paper/fully referenced paper/course completion) specified change/improvement by a specific date
- b) provision for a reporting supervisor, acceptable to the Association, but chosen by the member, to monitor the member's work
 - i) Where a supervisor is a requirement, the qualifications and experience of the nominated supervisor must be submitted to the Complaints Tribunal for approval.
 - ii) Upon acceptance as a supervisor the Respondent should forward the supervisor a copy of the Tribunal's findings which will outline and list the relevant concerns that need to be addressed in the supervisor's reports.
 - iii) The supervisor shall be notified by the respondent of the time frame in which reports are to be submitted.
 - iv) All correspondence is to be forwarded to the Australian Counselling Association marked: Attention Chair of the Complaints Tribunal, Australian Counselling Association, PO Box 88, Grange, Queensland 4051.
 - v) It is the responsibility of the member NOT of the Complaints Tribunal to ensure that reports are submitted within the allocated time frame.
 - vi) Upon receipt of a supervisor's report the Chair of the Complaints Tribunal is to call a meeting of the Tribunal within 14 working days.

Suspension of any professional status conferred by virtue of membership, such as Accreditation, Recognition (including the Registry and Referral Database), and rights of membership for the specified period following the fulfilment of conditions specified by the Association. ***In cases of suspension from the register or deregistration it is the responsibility of the counsellor to notify any providers with whom they are registered and their insurance company of this fact.***

(II) AN EDUCATIVE PROBATIONARY PERIOD FROM 1 – 18 MONTHS WITH:

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

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

(III) EXCLUSION FROM THE ASSOCIATION WITH:

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

5.1 Failure to Comply with Sanctions

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

6. CRITERIA FOR APPEAL AND ACTIONS TO BE TAKEN

6.1 Appeals to go to the President of the Association

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

6.2 Criteria for Appeal

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

- 1. There has been a material breach of procedure laid down in the Association's Protocols and Procedures.
- 2. There has been intimidation of any party involved in the Complaints Procedure by any person in a 'judiciary' capacity.
- 3. There is an actual or ostensible bias by any person involved in the Complaints Procedure in a 'judiciary' capacity.
- 4. There has been failure to disclose a relationship between the investigator or a member of the adjudication panel and a person involved in the Complaints Procedure.
- 5. In cases where the Complaints Tribunal has decided upon de-registration the respondent may ask for the case to be reconsidered by the Appeals Tribunal.

6.3 Action to be Taken if Criteria Satisfied

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

6.4 Failure to Satisfy Criteria

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

6.5 Decision to be Final

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

7. APPEALS - PROCEDURAL GUIDELINES

7.1 Timeframe

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

7.2 Criteria

The criteria for making an Appeal and for determining whether those criteria are satisfied will be made under the provisions of **Section 6.2** hereto. Only if the criteria are satisfied shall the remainder of the procedure take effect, as set out in this section.

7.3 Composition of the Appeal Panel

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

7.4 Brief of the Appeal Panel

The Appeal Panel will review the evidence on which the decision was made, the decision and the sanctions imposed. The Appeal Panel can, at its discretion, interview the Respondent and the Complainant. Please note that NO new or additional information will be sought at this stage – only points of clarification – and both parties must be interviewed via the same media means. The Appeal Panel is not bound by the rules of evidence, but may not grossly depart from them, i.e., it must take into account all relevant evidence and considerations submitted by the parties, it must proceed upon logically probative evidence, and it must not accept hearsay evidence or evidence from witnesses who are not credible. In order to uphold a complaint, the Appeal Panel must be reasonably satisfied on the evidence that the Counsellor committed a breach referred to in Section 2.1a).

7.5 Decision of the Appeal Panel

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

7.6 Notification of Decision

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

7.7 Publication

Where the appeal is not allowed the original decisions of the Tribunal and the sanctions imposed by the President of the Association and the date of their effect will be published in the Association's Journal or elsewhere in accord with section 4.10.

8. Publication

8.1 Right to Publish

Subject to **Section 4.10d** the Association reserves the right to publish such details of complaints as it considers appropriate. Normally details shall include the members name, date of effect of probation/termination and articles of the code under which membership has been placed under probation/terminated.

8.2 Place of Publication

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

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

Or

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

8.3 Termination of Membership to be Published

The Termination of membership under the Complaints Procedure will be reported in the Association's Journal and/or elsewhere in accord with 8.2. An example might be:

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

9. LEGAL ACTION RELATED TO COMPLAINTS

9.1 Requirements Re Legal Action

Complainants and Members Complained Against are required to notify the Tribunal if they learn of any type of legal action (civil or criminal) being filed related to the complaint.

9.2 If Legal Action is Undertaken During Complaint Procedure

In the event any type of legal action is filed regarding an accepted complaint, all actions related to the complaint will be stayed until the legal action has been concluded. The Tribunal will consult with legal counsel concerning whether the processing of the complaint will be stayed if the legal action does not involve the same complainant and the same facts complained of.

9.3 If Stay of Action is Required

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

9.4 Continuation of Complaint After Legal Action

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

9.5 Account to be Taken of Result of Legal Action

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

APPENDIX A LETTER TO COMPLAINANTS REGARDING NON-CONTINUANCE

Date

Dear Name,

Re: Complaint brought against XXX.

I am writing to inform you that after serious consideration the ACA (INC) complaints tribunal has found that it cannot proceed with the complaint that you have lodged with us.

Although the matter you have raised with us is of concern Section XXXXX of our Complaints Procedure, which reads as follows:

XX
XX
XX

means that the complaints procedure can go no further.

[The following is an optional paragraph depending on the complaint, for complaints may be rejected due to lack of substance.]

However we will be contacting XXXXXXXX to advise them that a complaint has been made (though no names will be given) and the nature of the complaint (ie what guidelines may have been breached) and ask them to consider their methodology, policies and procedures in this regard and the possibility that some adjustment may be needed.

Should you have any further questions please feel free to contact me.
Chair of the Complaints Tribunal
P.O.Box 88
Grange Qld 4051

All correspondence should be marked "Private and Confidential".

Yours faithfully,

XYZ
Chair, Australian Counselling Association Complaints Tribunal.

APPENDIX A LETTER TO MEMBER REGARDING NON-CONTINUANCE

Chair of the ACA (INC) Complaints Tribunal
P.O.Box 88
Grange Qld 4051
Date XXXXXX

Dear XXXXXXXXX

Re: Complaint brought against you.

I am writing to inform you that a letter of complaint has been received against you. However, after serious consideration the ACA (INC) complaints tribunal has found that it cannot proceed with the complaint that has been lodged with us.

Although the matter that has been raised with us is of concern, Section XXXXX of our Complaints Procedure, which read as follows:

XX
XX
XX

means that the complaints procedure can go no further.

Although this complaint may proceed no further we would like to advise you that the complaint dealt with a breach of the ACA (INC) Code of ethics and Practice section(s) as follows:

XX
XX
XX

we would therefore ask you to examine your methodology, policies and procedures in this regard and the possibility that some adjustment may be needed.

Should you have any further questions please feel free to contact me.

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

All correspondence should be marked "Private and Confidential".

Yours faithfully,

XXXXXXX
Chair, Australian Counselling Association Complaints Tribunal.

APPENDIX B LETTER TO MEMBER RE SUSPENSION OF MEMBERSHIP RIGHTS

Date

Dear Name,

Re: Complaint brought against you.

I wish to advise you that because of the serious nature of the complaint against you concerning the following section(s) of the ACA (INC) Code of ethics and Practice and Practice:

XX
XX

the Complaints Tribunal has decided to suspend your membership in accord with the following section of the ACA (INC) Complaints procedure:

3.4 Suspension of Rights of Membership

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

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

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

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

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

This suspension is immediate and shall apply until the completion of the complaints procedure.

Should you choose to avail yourself of an ACA provided support person to help you through this process please contact the ACA CEO at the ACA office.

Should you have any further questions please feel free to contact me.

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

All correspondence should be marked "Private and Confidential".

Yours faithfully,

XYZ
Chair, Australian Counselling Association Complaints Tribunal.

APPENDIX C LETTER OF RELEASE OF INFORMATION TO BE SIGNED & RETURNED

Date

Dear Name,

Re: Complaint.

In accord with the ACA (INC) Complaints Procedure sections 3.3 and 4.1 I hereby request that you sign the following and return it to:

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

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

CLIENT AUTHORISATION

I, _____ hereby give my consent for my
Counsellor: _____

Address: _____
_____ Postcode: _____

Telephone No: _____ E-mail: _____

to discuss and/or provide specific session information to ACA (INC) Complaints Tribunal to assist them in the investigation of my complaint.

I also provide authority to the ACA (INC) Complaints Tribunal to pass on any information I give to them to the respondent.

This authority is valid from the date of my signature.

All information given is to be treated as confidential.

Client's Name: _____

Client's Signature: _____ Date: / /

Yours faithfully,

XYZ
Chair, Australian Counselling Association Complaints Tribunal.

APPENDIX D LETTER OF NOTIFICATION TO COMPLAINANT(S) RE COMPLAINT

Dear Name,

Date

Re: Complaint brought against XXX.

I am writing to confirm receipt and acceptance of the above mentioned complaint brought against XXXXX, a member of the Australian Counselling Association and to inform you of the process for dealing with complaints.

All complaints brought against members of the Australian Counselling Association are dealt with by the Complaints Tribunal, a sub-committee of the ACA (INC) who purpose is specifically to deal with and respond to complaints brought against its members.

All members of the ACA (INC) are required to interact with their clients in an ethical and responsible way, as outlined in the ACA (INC) Code of ethics and Practice and Practitioner Standards. The Complaints Tribunal is responsible for administering the Code of ethics and Practice and Practitioner Standards.

The Complaints Tribunal acts to handle situations where the normal processes of mediation and conciliation have failed and to provide a forum where complaints brought against counsellors may be fairly defended and assessed. In processing complaints about alleged ethical misconduct, the Committee will compile an objective, factual account of the dispute in question and make the best possible recommendation for the resolution of the case. The Committee, in taking any action, shall do so only for cause, shall only take the degree of disciplinary action that is reasonable and shall utilise these procedures with objectivity and fairness.

Your complaint has been accepted the Complaints Tribunal and will be dealt with in accordance with procedural guidelines. In assessing the complaint the Tribunal members may ask you to clarify some points or provide further information prior to a final resolution of the case.

Your letter of Complaint will be forwarded to _____ (the respondent) for comment and they will be asked to respond. That response will then be sent to you for further comment should you so desire. Upon your response to (the respondent's) comments the Tribunal will be convened and sit on your case. The findings of the Tribunal will then be forwarded to both yourself and Respondent.

Thank you for communicating your concerns to the Association and we will keep you informed throughout the procedure.

Should you have any further questions please feel free to contact me.

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

All correspondence should be marked "Private and Confidential".

Yours faithfully,

XYZ

Chair, Australian Counselling Association Complaints Tribunal.

APPENDIX D LETTER OF NOTIFICATION TO MEMBER RE COMPLAINT

Date

Dear Name,

Re: Complaint brought against you by XXX.

I am writing to confirm receipt and acceptance of the above mentioned complaint brought against you as a member of the Australian Counselling Association by XXX and to inform you of the process for dealing with complaints.

All complaints brought against members of the Australian Counselling Association are dealt with by the Complaints Tribunal, a sub-committee of the ACA (INC) who purpose is specifically to deal with and respond to complaints brought against its members.

All members of the ACA (INC) are required to interact with their clients in an ethical and responsible way, as outlined in the ACA (INC) Code of ethics and Practice and Practitioner Standards. The Complaints Tribunal is responsible for administering the Code of ethics and Practice and Practitioner Standards.

The Complaints Tribunal acts to handle situations where the normal processes of mediation and conciliation have failed and to provide a forum where complaints brought against counsellors may be fairly defended and assessed. In processing complaints about alleged ethical misconduct, the Committee will compile an objective, factual account of the dispute in question and make the best possible recommendation for the resolution of the case. The Committee, in taking any action, shall do so only for cause, shall only take the degree of disciplinary action that is reasonable and shall utilise these procedures with objectivity and fairness.

The complaint against you has been accepted the Complaints Tribunal and will be dealt with in accordance with procedural guidelines. In assessing the complaint the Tribunal members may ask you to clarify some points or provide further information prior to a final resolution of the case.

In essence the complaint deals with an alleged breach of the following Section(s) of the ACA (INC) Code of ethics and Practice and Practice:

XX
XX
XX

These alleged breaches have generated the following concerns for the Complaints Tribunal:

XX
XX
XX

We ask you to carefully consider these matters and respond in writing to the Tribunal, addressing these sections of the Code of ethics and Practice and Practice and these concerns of the Tribunal, within fourteen (14) working days.

Should you choose to avail yourself of an ACA provided support person to help you through this process please contact the ACA CEO at the ACA office.

Your response to the Complaint will be forwarded to _____ (the complainant) for comment and they will be asked to respond. That response will then be sent to the Tribunal that will be convened to sit on your case. Therefore, though, at its discretion, the Tribunal may ask you for more information ***your response may be the only chance you have to state your case to the Tribunal.*** After The Tribunal has sat, its findings will then be forwarded to both yourself and Complainant.

Should you have any further questions please feel free to contact me.

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

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

Yours faithfully,

XYZ
Chair, Australian Counselling Association Complaints Tribunal.

APPENDIX E LETTER OF NOTIFICATION OF FINDINGS TO MEMBER

Date

Name

Dear XXX

Re: Finding Of Complaints Tribunal

The following is the finding of the ACA (INC) Complaints tribunal, which held a final meeting in relation to your case on [Date].

In accord with section 5 of the ACA (INC) Complaints procedure it has been determined that the following disciplinary actions be taken in regard to your case:

Findings of the ACA (INC) Complaints Tribunal

- 1) It was agreed by the committee that there were {insert #} main points of concern:

XX
 XX
 XX

- 2) The committee therefore has agreed implement the following sanctions:

Probationary membership for [insert timeframe] with the following conditions:

- a) Suspension of membership rights re-certification, membership of committees, use of the initials MACA (INC) or the word Clinical Member etc.
- b) Supervisor, acceptable to ACA (INC), to send in quarterly reports looking at issues of concern to the committee, details supplied on acceptance of sanctions.
- c) If similar substantiated complaints are received during the [insert timeframe] probation membership will be terminated
- d) Letter of agreement to abide by these conditions, signed and witnessed by a JP to be sent to the Clerk of the Complaints Tribunal
- e) At the end of this period, notification of the successful completion of the probation will be published in the same manner in which the sanctions were published.

Although these are the findings of the Tribunal I would like to inform you of your rights in accordance with the ACA (INC) Disciplinary Policy and Procedures in relation to Appeals. The following are the relevant paragraphs on appeals from the policy and procedure document.

6. CRITERIA FOR APPEAL

6.1 Appeals to go to the President of the Association

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

6.2 Criteria for Appeal

The President of the Association, or their delegate, who may take advice from the Association’s Solicitor, will consider the appeal. In deciding whether an Appeal shall proceed or not the

President of the Association, or their delegate, is empowered to investigate and interview witnesses in relation to any possible breach of the following criteria:

1. There has been a material breach of procedure laid down in the Association's Protocols and Procedures.
2. There has been intimidation of any party involved in the Complaints Procedure.
3. There is a bias by any person involved in the Complaints Procedure in a 'judiciary' capacity.
4. There has been failure to disclose a relationship between the investigator or a member of the adjudication panel and a person involved in the Complaints Procedure.
5. In cases where the Complaints Tribunal has decided upon de-registration the respondent may ask for the case to be reconsidered by the Appeals Tribunal.

6.3 Action to be Taken if Criteria Satisfied

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

6.4 Failure to Satisfy Criteria

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

6.5 Decision to be Final

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

7.0 APPEALS PROCEDURE

7.1 Timeframe

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

7.2 Criteria

The criteria for making an Appeal and for determining whether those criteria are satisfied will be made under the provisions of **Section 6.2** hereto. Only if the criteria are satisfied shall the remainder of the procedure take effect, as set out in this section.

7.3 Composition of the Appeal Panel

The President of the Association, or his delegate, will appoint up to three people not previously involved in the case (though there is provision to second extra members for their expertise), to decide the appeal (the Appeal Panel). The Chair of the panel should be at minimum an ACA (INC) level three qualified counsellor. In cases where the appeal has been made by a member of the public, one member must be from outside the counselling profession.

7.4 Brief of the Appeal Panel

The Appeal Panel will review the evidence on which the decision was made, the decision and the sanctions imposed. The Appeal Panel can, at its discretion, interview the Respondent and the Complainant. Please note that NO new or additional information will be sought at this stage – only points of clarification – and both parties must be interviewed via the same media means.

7.5 Decision of the Appeal Panel

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

7.6 Notification of Decision

The decision of the Appeal Panel will be notified to the appellant parties in writing, and also to the Complaints Tribunal within 7 working days. No reasons shall be required to be appended to that decision.

7.7 Publication

Where the appeal is not allowed the original decisions of the Tribunal and the sanctions imposed by the President of the Association and the date of their effect will be published in the Association's Journal or elsewhere in accord with section 4.10.

Should you have any further questions please feel free to contact me.

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

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

Yours faithfully,

XYZ

Chair, Australian Counselling Association Complaints Tribunal.

APPENDIX E LETTER OF NOTIFICATION OF FINDINGS TO COMPLAINANT(S)

Name

Date

Dear XXX

Re: Finding Of Complaints Tribunal

The following is the finding of the ACA (INC) Complaints tribunal, which held a final meeting in relation to your case on [Date].

In accord with section 5 of the ACA (INC) Complaints procedure it has been determined that the following disciplinary actions be taken in regard to your case:

Findings of the ACA (INC) Complaints Tribunal

- 1) It was agreed by the committee that there were [insert #] main points of concern:

XX
 XXX
 XXX

- 2) The committee therefore has agreed to implementation of the following sanctions:

Probationary membership for [insert timeframe] with the following conditions:

- a) Suspension of membership rights re-certification, membership of committees, use of the initials MACA (INC) or the word Clinical Member etc.
- b) Supervisor, acceptable to ACA (INC), to send in quarterly reports looking at issues of concern to the committee, details supplied on acceptance of sanctions.
- c) If similar substantiated complaints are received during the two probation membership will be terminated
- d) Letter of agreement to abide by these conditions, signed and witnessed by a JP to be sent to the Clerk of the Complaints Tribunal
- e) At the end of this period, notification of the successful completion of the probation will be published in the same manner in which the sanctions were published.

It should be noted that there is an avenue of appeal. This process, if instigated, would take a further 28 working days to complete. If the appeal is successful you will be notified and given reasons for the reversal of the decision. An unsuccessful appeal means that the decision and attendant sanctions will stand.

Should you have any further questions please feel free to contact me.

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

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

Yours faithfully,

XYZ
 Chair, Australian Counselling Association Complaints Tribunal.

APPENDIX F - PROCEDURAL FLOWCHART

