



Ethics Board Procedures

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1. Background

It is fundamental to the professional responsibilities of speech pathologists that the highest standards of integrity and ethical principles are observed. With this in mind, in 2000, The Speech Pathology Association of Australia Limited substantially revised its Code of Ethics, and established its Ethics Board to manage and, when necessary, to enforce the Code.

This document sets out the procedures which the Association and its Ethics Board will follow if it appears that a member has breached the Code of Ethics. The procedures reflect the policies agreed upon by the Council.

The Association's Ethics Review Task Group prepared these procedures. In doing so, it took account of the paper *Dealing with Alleged Violations of the Code of Ethics of the Australian Association of Speech and Hearing* and consultations with members and the broader community.

The Association acknowledges the assistance it received from:

- the members of the Ethics Review Task Group:
 - Teresa Anderson (Chairperson),
 - Louise Brown,
 - Meredith Kilminster, and
 - Lindy McAllister;
- Bill Tearle (Plain Language and Compliance Consultant, who drafted the original version of this document); and
- Phillips Fox, the Association's lawyers.

2. Dictionary

Association means The Speech Pathology Association of Australia Limited, trading as Speech Pathology Australia.

Censure means a formal reprimand or statement of disapproval.

Code of Ethics means the Code of Ethics of The Speech Pathology Association of Australia Limited.

Complainant means the person who calls to the notice of the Ethics Board a suspected breach of the Code of Ethics.

Council means the Council of The Speech Pathology Association of Australia Limited.

Council Management Group means the President, Vice President Communications, Vice President Operations and the Chief Executive Officer of The Speech Pathology Association of Australia Limited.

Respondent means the member of the Association who committed, or is said to have committed, a breach of the Code of Ethics.

The Senior Advisor Professional Issues means the staff member of the Association who has specific responsibility for Ethics and supporting the functions of the Ethics Board.

Vice President Communications means the position of Vice President Communications of the Speech Pathology Association of Australia Limited.

3. Ethics Board

3.1 Responsibility

The Ethics Board of the Association is responsible for receiving and investigating complaints and making recommendations on disciplinary action to Council in line with the Association's Code of Ethics. It received this responsibility by delegation from the Council of the Association.

In carrying out this responsibility, the Ethics Board must:

- implement the policies,
- follow the procedures, and
- adhere to the principles of procedural fairness as outlined in this document.

3.2 Membership

The Ethics Board has ten members. They are:

- The Chairperson of the Ethics Board who is a senior member of the profession (such as Past Presidents or Councillors, Fellows or Life Members of the Association; past senior members of the Ethics Board) who is not a current member of Council;
- Three senior members of the Association who are not current members of Council (such as Past Presidents or Councillors, Fellows or Life Members of the Association; past member-elected members of the Ethics Board)
- Three members of the Association who are elected by the membership and are not members of Council; and
- Three people (the community representatives) who are not members of the Association.

A reserve pool of members may be appointed. The reserve pool will comprise a senior member, a member-elected member and a consumer representative who have previously served on the Ethics Board and will have agreed to be contacted by the Chair of the Ethics Board in the event that a no current member of the Ethics Board is available when an Investigation Panel is being established.

3.3 Selection and term of office of members of the Ethics Board

- Council must select the Chairperson of the Ethics Board, who is appointed for three years, and three Council-elected members of the Association, who are appointed for three years to sit on the Ethics Board. A brief biography of nominees' professional history should be made available to inform Council members.
- Every two years, the Annual General Meeting must select by ballot the three members of the Association who will join the Ethics Board. These three people should collectively bring expertise in ethics, and knowledge of speech pathology practice.
- The President of the Association must appoint the community representatives, with the approval of the Council of the Association. The community representatives:
 - are appointed for a two year term;
 - must not be members of the Association;
 - must not be speech pathologists;

- must be capable of fairly representing the views of the community;
- wherever possible, will be nominations from consumer groups or from the Consumers Health Forum (CHF);
- are to be paid sitting fees of \$350 per day (to a maximum of 5 hours). Meetings/ teleconferences of less than 5 hours are to attract a proportion of this fee (as per the CHF Guidelines, 2007).

3.4 Education

- All members of the Ethics Board are required to undertake formal training in the Association's Ethics Board Policy and Procedures. Informal training may take place as the need arises.
- Given the potential for formal complaints to be heard by Council, the Vice President Communications will also be involved in the formal training.
- Formal training will be offered by the Association every 2 years in the form of a weekend training session held at National Office. All members of the Ethics Board and the Vice President Communications are required to attend this weekend.

3.5 Investigation panel

Three of the members of the Ethics Board will form the Investigation Panel for each complaint.

An Investigation Panel for the purposes of hearing a complaint shall comprise one senior member of the Association, one member-elected member of the Association and one community representative.

The Investigation Panel will:

- be allocated to a complaint by the Chairperson of the Ethics Board in consultation with the Senior Advisor Professional Issues, taking into account any perceived conflict of interest.
- be chaired by one of the senior members of the Association who will present its recommendations to the Chairperson of the Ethics Board, who will then present them to Council.
- include a community representative.
- investigate the complaint.
- seek support/advice from the Chairperson of the Ethics Board as required.
- in the event of a complaint being upheld, prepare a brief for the Chairperson of the Ethics Board to present to Council which will include:
 - its recommendations to Council.
 - all material relevant to the decision making process including written reasons for their recommendations, witness statements and transcripts of oral evidence if available.
- not discuss or disclose any information regarding the complaint with the other members of the Ethics Board (other than the Chairperson of the Ethics Board) not on the Investigation Panel for this complaint. This will enable the other members of the Ethics Board to participate in a review of the complaint if required.

There may be more than one complaint being investigated and therefore more than one Investigation Panel operational at any one time.

3.6 Meeting procedure

In person or by teleconference

The Ethics Board or its Investigation Panel may meet either face to face, or by teleconference, or by a combination of these.

Quorum

Five members constitute a quorum for a meeting of the Ethics Board. Three members constitute a quorum for a meeting of the Investigation Panel.

Voting

If six (6) or more members of the Ethics Board are present, the Ethics Board must reach its decisions by majority vote. However, if only five (5) members are present, the Ethics Board should decide upon a matter by unanimous vote. If a unanimous decision cannot be reached a majority decision can be made and the vote must be made known to Council.

The Investigation Panel of the Ethics Board must reach a decision unanimously. If a unanimous decision cannot be reached, the matter must be referred, with all relevant materials including the opinion of members of the Investigation Panel, but without recommendation, via the Chairperson of the Ethics Board to Council for determination.

Attendance

Only members of the Ethics Board may attend its meetings, unless the Ethics Board decides to allow other people to attend.

Criteria for decisions

The Ethics Board and its Investigation Panels must:

- consider each complaint individually, and on its merits; and
- reach its decisions by applying the Association's Code of Ethics.

Independent legal or expert advice

The Ethics Board and its Investigation Panels may seek independent legal or expert advice on a matter or a complaint via the Chairperson of the Ethics Board in liaison with the Association's Chief Executive Officer.

Advice from members

The Ethics Board and its Investigation Panels may seek advice from any member of the Association on a confidential basis if it considers that the advice is necessary to enable it to investigate an alleged breach of the Association's Code of Ethics, or to resolve a complaint. If such advice is sought neither the complainant nor respondent will be identified unless the complainant and/or respondent have given prior written permission.

Confidentiality

A person who holds or who has held a position with the Association, including all persons engaged or employed in or by the Association or who perform work for the Association, must not, except to the extent necessary to carry out official duties, powers or functions for the Association or otherwise as required by law, record, disclose, communicate or make use of confidential information. Confidential information means any information gained because of a person's position with the Association.

The Ethics Board, its Investigation Panels and Officers of the Association must maintain the confidentiality and privacy of complainants and respondents. On appointment, members of the Ethics Board must sign a 'Deed of Confidentiality' that signifies their agreement to meet the duties of confidentiality as outlined in the Deed. Specifically, they must not disclose information about complaints, complainants or respondents to anyone else, or to any entity, unless the law requires this or the following procedures authorise it.

However, if an Investigation Panel of the Ethics Board recommends that the Association takes action regarding any alleged breach of the Association's Code of Ethics, the Investigation Panel via the Chairperson of the Ethics Board may disclose whatever information it considers necessary to the Chief Executive Officer and the Council of the Association.

4. Procedures

4.1 Reporting a breach of the Association's Code of Ethics

Members of the public may make complaints about suspected breaches of the Association's Code of Ethics via the Association's National Office. These complaints will immediately be referred to the Senior Advisor Professional Issues or, in the event of the Senior Advisor Professional Issues being unavailable, to the Association's Chief Executive Officer.

If any member of the Association suspects that there may have been a breach of the Code of Ethics, that member must:

- report that potential breach to the Senior Advisor Professional Issues or to the Association's Chief Executive Officer; and
- seek advice from the Senior Advisor Professional Issues about the scope of the Code of Ethics, and any appropriate action.

The Senior Advisor Professional Issues must:

- inform the complainant about the scope of the Association's Code of Ethics;
- explain to the complainant the procedure for preparing, lodging and hearing formal complaints, including timelines for pursuing complaints;
- explain to the complainant that all details of the complaint, including the identity of the complainant will be provided to the respondent and reassure the complainant that the respondent has agreed not to contact them;
- explain to the complainant that if the complaint appears to be serious, it may be in the public interest to investigate the complaint even if the complainant does not wish to proceed with the complaint;
- offer to assist in preparation of the written complaint if required;
- refer all formal complaints about members to the Chair of the Ethics Board;
- where the complaint is about a non-member, refer the complainant to the Health Services Commissioner (or an equivalent or appropriate officer in the relevant State or Territory) with relevant contact details; and
- maintain and provide quarterly non-identifying statistical reports to Council and the Ethics Board regarding the types of issues raised but not formally pursued.

A 'Complaint Summary Sheet' must be sent to the respondent to record the details of the complaint. This form does not include contact details of the

complainant. This form includes a statement to be signed by the complainant acknowledging that the complaints process has been fully explained to them and that their consent is provided for the Investigation Panel to access their personal information (as considered relevant to the investigation) if required. This form will also disclose the nature of the complaint to the respondent.

When sending information about a complaint to a respondent the correspondence must be marked “private and confidential” and the respondent should be contacted prior to mailing the correspondence and asked to nominate the address to which a copy of the complaint should be sent.

If the complainant decides not to make a formal complaint, the Senior Advisor Professional Issues must:

- write to the complainant (if details are available) acknowledging this decision; and
- include reference to this complaint as part of the quarterly report to Council and the Ethics Board.

The Senior Advisor Professional Issues, in consultation with the Chairperson of the Ethics Board:

- has the discretion to refer any complaint which is of substance to the Ethics Board even if the complainant does not wish to pursue the matter through a formal complaint; however, the Senior Advisor Professional Issues must advise the complainant of this action and invite them to provide background information. In these circumstances, the CEO will be identified as the complainant in the case.
- has the discretion to refer any serious complaint to the Health Services Commissioner (or an equivalent or appropriate officer in the relevant State or Territory) even if the complainant does not wish to pursue the matter; the Senior Advisor Professional Issues must advise the complainant of this action.

4.2 Formal complaint

If the complainant wishes to make a formal complaint, the Senior Advisor Professional Issues must:

- give the complainant a written example of the format for a written complaint; and
- offer to assist in preparation of the written complaint.

The complainant must send the written complaint to the Association addressed to the Senior Advisor Professional Issues and marked “private and confidential”.

The Senior Advisor Professional Issues must:

- write to the complainant acknowledging receipt of the complaint and outlining the procedures which the Ethics Board will follow when investigating the complaint;
- formally refer the complaint to the Chairperson of the Ethics Board; and
- co-ordinate the administrative support to the Ethics Board.

The Chairperson of the Ethics Board must not accept a formal complaint if:

- the formal complaint is not a matter of concern under the Association's Code of Ethics; or
- the complaint is frivolous or vexatious; or
- the limitation period has expired.

The Chairperson of the Ethics Board may consult with senior members of the Ethics Board to determine whether a complaint is frivolous or vexatious.

If a formal complaint is not accepted, the Chairperson of the Ethics Board must advise the Senior Advisor Professional Issues of this decision in writing, stating the reason the complaint was not accepted.

The Senior Advisor Professional Issues must write to the complainant within 21 days of receiving notification from the Chairperson of the Ethics Board. The Senior Advisor Professional Issues must inform the complainant that the Association has not accepted the complaint, stating the reasons as outlined by the Ethics Board. The Senior Advisor Professional Issues must also counsel the complainant as required.

The recommendation not to accept a formal complaint will be incorporated into the quarterly report submitted to Council by the Senior Advisor Professional Issues.

4.3 Limitation period

A complaint will not be accepted after the limitation period. The limitation period is the later of:

- 12 months from the date the behaviour complained of occurred; or
- 12 months from the date that the complainant first became aware of the behaviour complained of; or
- 12 months after the complainant's 18th birthday, if the complainant is making a personal complaint and was under 18 at the time the behaviour complained about occurred.

4.4 Investigation of a formal complaint

If after reviewing a formal complaint, the Ethics Board considers that it merits further investigation, the Chairperson of the Ethics Board will allocate three of its members (a senior member (chair), member-elected member and community representative) to investigate the complaint. This Investigation Panel will not discuss or disclose any information regarding its investigation with the rest of the Ethics Board.

The Chair of the Investigation Panel of the Ethics Board must write to the respondent to inform them of the complaint no later than 21 days after the Ethics Board meeting that received the formal complaint. A copy of the signed complaint will be provided to the respondent. Contact details for the complainant will not be provided to the respondent.

Both the complainant and the respondent may give evidence in respect of a complaint.

The Investigation Panel of the Ethics Board may ask the complainant, the respondent and other sources for further written information. The Investigation Panel of the Board must allow the complainant, the respondent or the other sources 28 days to provide this information. However, the

Investigation Panel of the Ethics Board must not reveal the identity of the complainant or the respondent to those other sources, unless the complainant or the respondent permits this. Oral evidence may be taken.

Both the complainant and the respondent may be represented by another person who is not legally qualified. Council may give permission for legal representation if a serious breach of the Association's Code of Ethics is alleged. Where oral evidence is taken, written transcripts will be prepared and signed.

The respondent has a right to consider any submissions made on behalf of the complainant. The Investigation Panel of the Ethics Board must give the respondent 28 days to reply in writing to these submissions.

4.5 Independent conciliation

If both the complainant and the respondent agree, the Investigation Panel of the Ethics Board may refer a formal complaint to:

- the Health Services Commissioner (or an equivalent or appropriate officer in the relevant State or Territory);
- a Public Service Ombudsman; or
- an independent conciliator

for independent conciliation when such action is deemed appropriate. The nature of the independent conciliation will be determined based on the particular needs of the case under consideration.

4.6 Recommendation to Council

Where a formal complaint has been investigated but cannot be completed for procedural reasons, such as where a complainant fails to provide requested information which is required to adequately investigate the complaint, the Investigation Panel in consultation with the Chairperson of the Ethics Board and the Senior Advisor Professional Issues may terminate the investigation. In such situations the Senior Advisor Professional Issues will write to both the complainant and respondent.

Within 28 days of the completion of an investigation of a complaint, the Investigation Panel of the Ethics Board must prepare a brief for the Chairperson of the Ethics Board to present to Council which will include:

- its recommendations as to whether or not there has been a breach of the Association's Code of Ethics.
- its recommendation regarding the nature and severity of penalty (if any) if it has found that there was a breach of the Association's Code of Ethics.

In the case of a breach not being found but the Investigation Panel outlines recommendations for the respondent, the Senior Advisor Professional Issues must write to the respondent informing them of the Ethics Board decision and outlining any recommendations made.

In the case of a breach being found by the Investigation Panel, all material relevant to the decision making process, including procedural issues, investigations undertaken, written reasons for its recommendations, witness statements and transcripts of oral evidence (if available) will be made available to Council. The Council Management Group, led by the Vice President Communications, will present Council with adequate information

to support them as the decision making group. **All information will be de-identified so as to maintain confidentiality.**

4.7 Decision by Council

Where a breach to the Association's Code of Ethics is upheld by Council, all information previously provided to Council will be identified, including the names of the complainant and the respondent. Council will be responsible for making the final decision regarding the penalty to be imposed. This decision will be based upon the recommendations and other information provided by the Investigation Panel. Council must satisfy itself that the Investigation Panel of the Ethics Board has undertaken appropriate investigations, that the process has been correct and fair, and that the questions asked were appropriate.

Where a complaint is found by Council to be frivolous or vexatious, the Senior Advisor Professional Issues will inform the complainant in writing and counsel the complainant as appropriate.

If a complainant wishes to pursue the matter further, the Senior Advisor Professional Issues may refer the complainant to the Health Services Commissioner (or an equivalent or appropriate officer) in the relevant State or Territory.

Where there was an identified breach to the Association's Code of Ethics, the Chairperson of the Investigation Panel of the Ethics Board may present its recommendations to Council in person if requested.

Dependent on the seriousness or complexity of a complaint that has been upheld, Council may use its discretion with regard to the hearing of oral evidence by the complainant and respondent before making its decision.

If the complaint is of a serious nature both the complainant and the respondent may be represented by another person who is not legally qualified. At its discretion, Council may give permission for legal representation.

Council, through the Vice President Communications, must notify the Chairperson of the Ethics Board and the Senior Advisor Professional Issues of its findings and decision in writing. The Senior Advisor Professional Issues must then inform the complainant and the respondent in writing of the decision as soon as practicable, but no later than 28 days after Council makes its decision. In that letter, it must state Council's finding, and summarise the reasons for its finding.

Should the Investigation Panel have found a breach to the Association's Code of Ethics, the Senior Advisor Professional Issues must inform the complainant and the respondent about the procedure for reviewing Council's decision.

4.8 Findings and penalties

Where the Investigation Panel has found a breach to have occurred, Council may make the following findings:

- that the respondent has not breached the Association's Code of Ethics;

- that the respondent has engaged in conduct in breach of the Association's Code of Ethics but not warranting a penalty;
- that the respondent has engaged in conduct in breach of the Association's Code of Ethics warranting imposition of a censure, financial recompense to the complainant, a fine, suspension of the respondent's membership of the Association, expulsion of the respondent from the Association, specific directives as approved by Council or a combination of these.

The penalties imposed by Council for a breach of the Association's Code of Ethics are at its discretion and dependent on the nature and severity of the breach. In imposing a penalty Council may take into account previous breaches of the Association's Code of Ethics. Penalties are:

- censure (reprimand);
- financial recompense to the complainant;
- fine;
- suspension of the respondent's membership of the Association;
- expulsion of the respondent from the Association;
- specific directives as approved by Council; or
- a combination of these.

A member who has been found to have breached the Code of Ethics is not eligible to obtain a 'Letter of Good Standing'* from the Association for a period of at least 12 months, or after the expiry of a period of time determined by the Council in its absolute discretion. The relevant period is to apply from the date on which the Council notifies the member of the outcome of the decision. While the details of the relevant complaint and outcome of the hearing will remain recorded on the member's record, after the period of 12 months or the period prescribed by the Council has lapsed, such a member will be eligible to apply for a 'Letter of Good Standing'.

*Refer to Speech Pathology Australia Policy 3.5.1

4.09 Review

The respondent and/or the complainant may seek a review of Council's decision regarding the finding of a breach and/or imposed penalty. To seek a review of Council's decision, the respondent and/or the complainant must write to the Association no later than 28 days after he or she received notice of Council's decision.

The Association must establish a Review Panel to hear the review.

The members of the Review Panel will be:

- a practising barrister (chairperson);
- two members of the Ethics Board, not on the Investigation Panel for that complaint (one senior member of the profession and one community representative).

The Association will assume all costs associated with engaging the services of a barrister.

The Review Panel must:

- consider the review submission within 28 days of receiving it;
- consider submissions from relevant parties;

- determine whether the decision is within the power of Council in accordance with the Constitution of Speech Pathology Australia;
- determine whether the process of decision-making was in accordance with the principles of procedural fairness;
- ensure that there was procedural fairness to all parties;
- reach its decision on the review unanimously;
- notify Council of its decision in writing;
- give Council written reasons for its decision; and
- inform the Chairperson of the Ethics Board of its decision in writing.

The Review Panel has the discretion to hear new evidence if considered relevant.

On completion of the review, the Review Panel shall find, either that the decision was made in accordance with the principles of procedural fairness or is within the power of Council, or shall refer the decision to the Council for reconsideration in the light of the Review Panel's findings.

The Senior Advisor Professional Issues must inform the complainant and the respondent in writing as soon as practicable, but no later than 21 days after the Review Panel makes its decision.

The decision becomes final once any review procedures have been completed. If there is no review, Council's decision becomes final 29 days after the respondent has received notice of the Council's decision.

4.10 Publication of decision

If the penalty imposed on the respondent was:

- a fine; or
- suspension of membership of the Association; or
- expulsion from the Association,

the Association must publish the final decision in the *ACQ* or its equivalent publication stating the name of the respondent, the section of the Code of Ethics which has been breached and the penalty imposed.

If the penalty imposed on the respondent was a censure, specified directive(s) or financial recompense to the complainant, the Association must not publish the final decision. Instead, the Ethics Board must inform the complainant and the respondent in writing:

- of the decision; and
- that they must treat the decision as confidential to themselves.

In all cases where a breach has been upheld by Council, this will be recorded on the member's electronic membership file on iMis. SAPI will record the commencement and end date of the investigation, indicate that a breach occurred, and record any notes considered relevant. Should a period of censure or other penalty be imposed, SAPI will record the end date for this censure and/or penalty. SAPI will record the case to be closed once all penalties/censure have been met.

4.11 Payment of fine

If the penalty imposed on the respondent was a fine, the respondent must pay it to the Association no later than three (3) months after the Council's final decision on the complaint or the review, whichever is the later.

If the penalty is financial recompense to a client, the respondent must make payment to the client no later than two (2) months after the Council's final decision on the complaint or the review, whichever is the later.

4.12 Failure to meet Council Directives

Should a respondent fail to meet the directives of Council and/or the penalties imposed by Council within a previously communicated timeframe, SAPI will refer the matter back to Council for their consideration with regard to further penalties.

4.13 Storage of documentation

Members of the Investigation Panel must ensure all documentation related to an investigation remains strictly confidential and is stored in a secure location whilst an investigation is being undertaken.

Following completion of an investigation, all hard copies of documentation must be forwarded to Senior Advisor Professional Issues for storage at National Office. All documentation related to a formal complaint to the Ethics Board (whether upheld or otherwise) will be stored for 12 years in a secure location accessible to only the Senior Advisor Professional Issues and the Chief Executive Officer. SAPI will store all electronic records in a secure, password protected location; all electronic records in the possession of Ethics Board members must be deleted.