

# CHRISTIAN COUNSELLORS ASSOCIATION OF AUSTRALIA

## COMPLAINTS PROCEDURE

### *Procedure to follow for complaints against a Member*

#### **Ethics Sub Committee:**

- a) The State Committee shall through the President or his/her nominee, nominate members of the Association to comprise a panel of investigators for the purposes of complaint proceedings, and notify the State Committee of such appointments.
- b) In order to qualify as an investigator, the person needs to be a Full member of the Association, be of good standing in the profession and have seniority (at least seven years practice experience).
- c) Each panel of investigators will consist of at least three members and not more than five members. One member must not be a member of the State Committee.

#### **Steps to be taken prior to a formal complaint:**

- a) In the first instance any person (client, professional colleague, and member of the public), considering making a complaint against a member of the Association shall be referred to the State President or his/her nominee. If the State does not have a State Committee, or for any other reason, the matter will be referred to the President of the CCAA National Council.
- b) On receiving this referral, the President or his/her nominee or his/her nominee shall:
  - 1) explain the complaint process with a view to determining whether a formal complaint should be lodged.
  - 2) discuss the complaint with the complainant.
  - 3) explain the procedure for preparing, lodging and hearing of complaints.
  - 4) encourage a complainant to proceed with a formal complaint where the alleged conduct appears to be a breach of ethical behaviour.
  - 5) If the complainant decides not to make a formal complaint, take no further action apart from acknowledging the complainants decision in writing to both the complainant and, where applicable the respondent. The President or his/her nominee will notify the State Committee of the referral without revealing any identifying data.
  - 6) **The role of the PACFA in all complaints against CCAA Members will take place in connection with the respective CCAA State Ethics Committee. PACFA will receive written documentation from either the CCAA State Ethics Committee or directly from the complainant. PACFA will also have a role in assisting and supporting the process of resolution of complaints against practitioners who are CCAA Members.**

#### **Steps to Establish a Formal Complaint:**

- a) If after consultation with the President or his/her nominee, a person decides to make a formal complaint, it must be lodged with the President or his/her nominee of the State Committee. It must specify the alleged code violations and be in the written form prescribed. The complaint will be rejected if it is received in an inappropriate form or later than 12 months after the date of the initial discussion. The complainant and the respondent where applicable will be notified of the rejection.
- b) On receipt of a formal complaint, The president shall forward to the respondent a copy of the complaint and a copy of the Association's Code of Ethics, shall advise them of the procedure to be followed and shall invite them to provide a written response to the complaint within one calendar month.

- c) On receipt of reply from the respondent, the President or his/her nominee may decide a negotiated resolution is both desirable and possible in which case:
  - 1) The President or his/her nominee shall seek to achieve a negotiated resolution between the complainant and respondent.
  - 2) If the result is that the complainant decides not to proceed with the formal complaint, the President or his/her nominee shall acknowledge the complainant's decision in writing to both the complainant and the respondent.
  - 3) Within 6 weeks the Ethics Chair shall notify the State Committee with a consultation report, which contains no identifying data.
- d) Within one month after the time limit set for the respondent to reply, or receipt of reply (whichever is sooner), the President or his/her nominee shall convene a meeting of the State Committee to consider and decide whether or not to proceed to an investigation of the complaint.
- e) The State Committee may dismiss the complaint where the matter complained of:
  - 1) does not constitute a breach of the Code of Ethics, or
  - 2) is not sufficiently substantiated, or
  - 3) is not of sufficient consequence to proceed with the formal complaint.
- f) The President or his/her nominee shall within 21 days advise the complainant, respondent of its decision not to proceed with the complaint.
- g) Any member of the State Committee who has had an association with, or knowledge of the parties to the complaint or the subject matter of the complaint which would prevent them from acting, or appearing to act, objectively in this matter would disqualify themselves from any involvement in it. In the event that so many members have to disqualify themselves that the Committee is not able to function correctly, the matter should be referred to the National Council.
- h) In the event that the State Committee resolves to proceed with the complaint, the President or his/her nominee will advise the complainant and the respondent in writing; that one or more investigators will be appointed to investigate the complaint, that the complaint will be set down for hearing after the report of the investigation(s) is received, and that the timing of the investigation will pay due regard to any other relevant investigation or legal process under way.

### **Investigation of a Formal Complaint:**

#### Appointment and Role of Investigator(s)

- (a) Within 21 days of the State Committee resolving to proceed with the complaint, it shall appoint one or more persons from the panel of investigators.
- (b) An investigator may be appointed from outside the panel if for the particular case no panel member is available, or the case calls for special experience and knowledge not represented in the panel.
- (c) The complainant and the respondent shall be immediately, informed of the identity of the investigator(s). Either party may object to the appointment of a particular investigator. Any such objection must be lodged within 14 days in writing to the President or his/her nominee of the State Committee giving reasons for the objection.

- (d) On receipt of a written objection to an investigator appointment, the State Committee shall decide:
- 1) to make a different appointment, or
  - 2) to confirm the original appointment. This decision shall be conveyed immediately to the complainant and the respondent.
- (e) The State Committee shall consider only one objection to an investigator appointment from the complainant and from the respondent.
- (f) Each investigator will be appointed in writing and supplied with:
- A copy of the written complaint
  - A copy of the reply
  - A list of matters requiring particular investigation and a statement of time-lines, duties and responsibilities, limits of authority, and resources available.
- (g) The role of an investigator is to establish the facts of the case, seeking to obtain all available evidence (favourable and unfavourable to the complainant and the respondent) and to report in writing to the State Committee.
- (h) The report is to be submitted to the State Committee within 28 days of the engagement of the investigator(s) or such other time as:
- 1) the Committee determines and must contain a summary of the facts;
  - 2) details of the investigations undertaken and procedures followed including particulars of witnesses interviewed, documents examined and other matters;
  - 3) the sections of the Association's Code of Ethics considered. The report shall not include judgements about whether a case is substantiated or recommendations about penalties.
- (i) In performing her or his investigations, an investigator is empowered by the Association to:
- 1) require the complainant and/or the respondent to make documents available for examination and/or copying where necessary.
  - 2) require the complainant and/or the respondent to execute authorities necessary for the securing of relevant documents for the purpose of examination.
  - 3) require the release of documents for the purposes of examination from any other members of the Association.
  - 4) interview all persons whom the investigator deems likely to possess information relevant to the complaints;
  - 5) access legal or other professional services for the purposes of her or his investigations with the prior approval of the State Committee.
  - 6) Otherwise conduct all investigations necessary to fulfil her or his engagement as a duly authorised agent of the State Committee.
- j) At the conclusion of the work of the investigation all evidence collected will be submitted to the convenor along with the report of the investigator(s)
- k) Within 1 month of receipt of the report of the investigator(s) the President or his/her nominee will reconvene the State Committee to consider the report and will set a date for hearing of the complaint within one month of the Committee meeting. Both the complainant and respondent will be forthwith provided with the written notification of the date for the hearing together with copies of the report of the investigator(s) and the complainant will also receive a copy of the respondent's response to the complaint.

## Investigation of a Formal Complaint: The Hearing:

- a) The State Committee will appoint a Hearing Committee consisting of three members with one appointed as chairperson. The Hearing Committee will be provided with all the material gathered by the investigator(s) including the report of the investigator(s).
- b) The chairperson of the Hearing Committee shall set the procedures for the hearing guided by clauses 1.5c-j, and the circumstances of the case. The chairperson will communicate these procedures to all participants prior to the hearing.
- c) At the hearing, the chairperson will ensure that the process is reasonable and fair to each of the parties to the complaint.
- d) The hearing will be informal and neither party will be bound by the rules of evidence.
- e) Representation (legal or otherwise) will be allowed at the hearing with the approval of the Hearing Committee and such approval shall be granted in circumstances where the Hearing Committee resolves that one party would be unfairly prejudiced without representation.
- f) At the hearing both parties will be entitled to render written submissions in the form of Statutory Declarations and call witnesses who can be questioned by either party.
- g) The investigator(s) will be present at the hearing and may be invited to clarify aspects of her and/or his report by the Hearing Committee and is otherwise open to be questioned by either party.
- h) Unless otherwise determined by the chairperson, the Hearing takes the following form:
  - Tabling of Investigators report
  - open statement by the complainant
  - questions by the Committee
  - opening statement by the respondent
  - questions by the Committee
  - complainant's rebuttal of respondent's statements
  - respondent's rebuttal of complainant's statements
  - (in the rebuttal process, the parties to the complaint may ask questions through the Chairperson only at/or at his/her discretion.)
  - complainant's witness or witnesses
  - questions by the Committee and the respondent
  - respondent's witness or witnesses
  - questions by the committee and the complainant

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Brief recess for the Hearing Committee to review progress

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- final questions to the complainant by the Committee
  - final questions to the respondent by the Committee
  - final statements by the complainant
  - final statements by the respondent
- i) The powers of the Hearing Committee include the power to:
    - i) adjourn the hearing to a fixed date
    - ii) determine the matter in the absence of a party where no satisfactory explanation is provided by her or his absence.
    - iii) accept evidence in whatever form they consider appropriate; and
    - iv) call witnesses to provide evidence in relation to the complaint.
  - j) The hearing Committee will consider the question of both liability and action.

A respondent may make a submission to the Committee regarding any action that may be imposed.

## The Outcome of a Formal Complaint:

- a) After a hearing, the Hearing Committee shall provide a written report of findings to the State Committee. In this report the Hearing Committee shall:
- i) Recommend that the complaint should be dismissed. This is done when the Committee has found that the matter complained of did not constitute a breach of the Code of Ethics, or was not substantiated.
- OR
- ii) Make a recommendation for an appropriate action to be applied. This occurs when the Committee has judged that the complaint has been substantiated and the matter complained of did constitute a breach of the Code of Ethics.

- b) Within 21 days from receiving the Hearing Committee's report of findings and recommendations the State Committee shall decide:

- i) The complaint is dismissed, in which case the President or his/her nominee will notify within 14 days the complainant, the respondent, the State Management Committee, together with the reasons for the determination.

OR

- ii) The complaint is substantiated and one or more of the following courses of action is appropriate if the State Committee considers a penalty affecting membership should not be applied:

- to formally reprimand the respondent in writing
- to impose conditions of practice, and where appropriate, to offer interventions which would enable an offending member to develop more appropriate practice and any other course of action not affecting membership status that is deemed appropriate.

The President or his/her nominee shall within 14 days convey this decision in writing to the complainant, the respondent, the State Management Committee and any other person as required by the course of action chosen by the State Committee.

OR

- iii) The complaint is substantiated and the State Committee considers an action affecting membership status should be applied, in which case the matter with full supporting documentation shall be referred to the National Management Committee.

- c) Within 2 months of receiving the case referred by the Committee the National Management Committee shall decide on one or more of the following courses of action.

- i) to terminate membership of the State CCAA and preclude the member from eligibility for membership and any other course of action that may be appropriate.
- ii) to remove the member from any office held in State CCAA.

When membership status is involved, the Committee shall promptly inform the parties concerned.

- d) If the State Management Committee decides on an action affecting membership status and this decision stands at the expiration of the appeal process, the decision can be published in the CCAA Newsletter and the local and national public press, and the Management Committee may inform any other relevant parties.
- e) If the State Management Committee considers membership status should not be involved, the most appropriate action shall be determined after consultation with the State Committee which referred the case. The State Committee shall promptly convey the final decision to the concerned parties.

- f) In determining appropriate penalties, a Committee should examine previous decisions in similar cases and ensure where possible that the action is consistent with those earlier decisions.

**Confidentiality:**

- a) All members of the Association involved in the complaint procedure are obliged to maintain strict confidentiality with respect to information concerning a complaint, except a decision affecting membership status.
- b) All documents produced during the complaint procedure will be marked private and confidential.
- c) In order to preserve confidentiality the President or his/her nominee of the State Committee shall be responsible for the use of a code to refer to each consultation and complaint. The code reference will be assigned at the beginning of a formal complaint and at the end of a consultation and will indicate the process involved, the year, a case number for that year, - for example, complaint 1/93/QLD
- d) The only persons required to know the identity of the individuals involved in a complaint are Association members involved in the complaint procedure, except when a decision affecting membership status has been taken.

**Appeals for Reconsideration of Cases:**

- a) Either the complainant or the respondent may make an appeal for reconsideration of a case.
- b) Appeals may be made on the grounds of Improper procedure, the action imposed is inappropriate or new evidence
- c) A request for an appeal for reconsideration of a case, giving the grounds upon which the appeal is made, shall be lodged in writing within 28 days of receipt of the final decision, or by special permission of the State Management Committee.
- d) Upon receiving a notice of appeal the State Committee must within 1 month, consider the basis of the appeal and the documentation relevant to the case and:
  - i) resolve that there are no adequate or satisfactory grounds for reconsideration at which time they will notify the appellant in writing; or
  - ii) resolve that there are sufficient grounds for the case to be reconsidered at which time, the matter will be considered by the State Committee.
- e) A hearing date for reconsideration will be set within 28 days of notification of the parties.
- f) The reconsideration procedure shall be the same as the complaints procedure, except that - the Hearing committee shall usually accept submissions in writing only and received no later than four days prior to the hearing date or through telephone conference procedures, there shall be no further investigator's report prior to the hearing of the appeal; and in a particular reconsideration it may be considered desirable to include a member of an adjacent profession as an additional member of the Hearing Committee.
- g) The decision that is taken at the end of the reconsideration process is final and binding on both parties.

**Notices:**

Notices sent to any person, committee or corporation involved in the complaint procedure shall be deemed to have been received by that entity four days after such notices are forwarded by ordinary mail.

**Records Relating to Complaints:**

- a) The State Committee shall develop and maintain common formats to be used in recording consultations, the handling of complaints, goals and reconsiderations of cases.
- b) Significant consultations which did not eventuate in a formal complaint will be recorded in a permanent non-confidential record, made within six weeks, with the identities of the parties in the potential complaint not being able to be identified from the data recorded.

- c) The recording of the various stages of a formal complaint, including the appeal stage, shall take two forms, an active record and a permanent record:
- i) While the complaint procedures are in progress, the recording shall be a full and up-to-date record of the case. The active record shall be in the possession of the relevant decision making body at each stage of the processing of the complaint, and its contents shall be strictly confidential to the immediate parties involved. Multiple copies of this record shall not be made.
  - ii) At the conclusion of the case, the case record is held in confidence by the State Committee. Within twelve months, the Committee shall make a permanent case record in such a way that the identities of the parties to the complaint remain concealed, and the original record shall then be destroyed. Where a case has resulted in an action the name of the respondent and the action are placed in a permanent confidential file held by the President or his/her nominee of the State Committee.