



AUSTRALIAN SOMATIC PSYCHOTHERAPY ASSOCIATION

CODE OF ETHICS

1 July 2011

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1 PREAMBLE

The Code of Ethics of the Australian Somatic Psychotherapy Association (ASPA) reflects the values and principles that are integral to the practice of psychotherapy. This code outlines guidelines that establish minimum standards of ethical practice and conduct for trainees, psychotherapists and supervisors. In their professional capacity all members of ASPA are required to abide by this code. Members must make themselves aware of the contents of this Code and need to be aware that the ethical responsibilities set out in this Code are not exhaustive. If a member's behaviour or action is not outlined in this Code then the general intent and principles will apply. Upon becoming members and upon renewal of their membership, members of ASPA make a commitment to, and as required by this Code, are called upon to account for their practice in the event of complaints or investigation regarding unethical conduct. Failure to comply with this Code may result in a complaint being made under the ASPA Professional Conduct Procedure in Clause 5 of this Code.

This code of ethics was written in April 2011 and will be formally reviewed and revised as necessary for the ongoing development and growth of ASPA. This Code uses the PACFA Code of Ethics (29 Aug 2010), the Australian Social Workers Association's Code of Ethics (2010) and the ANZAP Code of Ethics as a foundation.

2 RESPONSIBILITIES OF THE AUSTRALIAN SOMATIC PSYCHOTHERAPY ASSOCIATION

2.1 RESPONSIBILITIES TO MEMBERS

The Australian Somatic Psychotherapy Association (**ASPA**) through its structures, processes, leaders and mechanisms, demonstrates a culture in which the following responsibilities are enacted:

- 1.1.1. ASPA takes all reasonable steps to avoid harm to its members and actively protects the integrity of its relationship with its members.
- 1.1.2. ASPA sets and maintains professional structures and boundaries within the organisation.
- 1.1.3. ASPA, faced with situations which exceed the boundary of its competence, experience or the internal resources available seeks qualified professional advice or assistance.
- 1.1.4. ASPA ensures that an effective complaints mechanism exists to attend to complaints against members or against ASPA. "Members" are defined as those who were paid up members at the time of the service provided and/or the complaint lodged.
- 1.1.5. In the event of harm resulting from organisational management or processes, ASPA takes responsibility for acknowledgment and reparation/restitution.
- 1.1.6. ASPA ensures that its members have Professional Indemnity Insurance as part of the process of protecting clients and members from harm by allowing for restitution.
- 1.1.7. ASPA promotes members' autonomy by informing them with regard to its membership process and encourages members to make responsible decisions on their own behalf.
- 1.1.8. ASPA has clear and transparent guidelines regarding conflicts of interest in relation to members. Any member in a hierarchical position such as trainer, supervisor, committee member and/or mentor will exclude themselves from other dual relationships in matters where the member could be disadvantaged or where objectivity cannot be provided. Such disadvantage could include decisions about membership status, marking/assessing members' work, taking part in complaints processes against members, or promotion of members' work.

- 1.1.9. ASPA has transparent processes for the election and departure of office bearers. Office bearers should be appropriately qualified to hold the positions of leadership and management.
- 1.1.10. ASPA's practices and processes provide due attention to the social context of their members and their connections to others who are also members of PACFA Member Associations and in the wider field of psychotherapy.
- 1.1.11. ASPA will support members in their work, including professional development, best practice, research and other benchmarking standards of practice.

2.2 EXPLOITATION

- 2.2.1 ASPA will not develop nor maintain a culture which exploits its members, past or present, in financial, sexual, emotional or any other way. Organisational processes including complaints mechanisms clearly reinforce that such practices are unacceptable.
- 2.2.2 ASPA will not accept or offer payments for privileges, or engage in any financial transactions, which are unlawful or against the constitution of ASPA.

2.3 CONFIDENTIALITY

- 2.3.1 ASPA treats in confidence any personal information about members, whether obtained directly or indirectly. This applies to all verbal, written, recorded or computer stored material pertaining to the professional and membership context. All records, whether in written or any other form, need to be protected with the strictest of confidence.
- 2.3.2 ASPA protects members' rights to privacy and confidentiality.
- 2.3.3 Exceptional circumstances may arise which give ASPA reasonable grounds for believing that a member may cause serious physical or other harm to others or themselves. In such circumstances, the breaking of confidentiality may be required, preferably with the member's permission, or after consultation with members of the Executive.
- 2.3.4 Any breaking of confidentiality should be minimised both by restricting the information-conveyed to that which is pertinent to the immediate situation and by limiting it to those persons who can provide the help required.

- 2.3.5 Member confidentiality continues after the member's death unless there are overriding legal considerations.
- 2.3.6 Special care is required when using specific situations for reports and publication. The author must have the member's informed consent should there be any possibility of identification of the member.

2.4 CONTRACTS

- 2.4.1 ASPA's activities are to be undertaken only with professional intent and not casually and/or in extra professional or personal relationships.
- 2.4.2 Contracts involving the members should be realistic and clear.
- 2.4.3 When a member is incapable of giving informed consent, ASPA must obtain consent from a legally authorised person.
- 2.4.4 ASPA publishes accurate information about the nature of the service offered, qualifications and experience of members.
- 2.4.5 ASPA communicates the terms on which membership is offered.
- 2.4.6 ASPA will disclose any conflict of interest which may arise in relation to a member and will seek assistance to resolve the situation.

2.5 RESPONSIBILITY FOR THE ASSOCIATION'S EFFECTIVENESS AND FUNCTIONING

- 2.5.1 ASPA has a responsibility to maintain its own effectiveness, and its ability to support and develop members in their professional work.
- 2.5.2 ASPA needs to monitor its organisational functioning, and seek help or suspend services when its resources are sufficiently depleted to require this.
- 2.5.3 ASPA regularly evaluates its organisational skills and performance and provides accountability for organisational practice.
- 2.5.4 ASPA, through its office bearers, members and community contacts, has an obligation to keep abreast of the current legal and quality and compliance requirements in delivering and supporting professional services. It also has a role in leading excellence in education and development of members through reference to research and best practice and other benchmarking standards in service delivery.

2.6 RESPONSIBILITIES TO OTHER PACFA MEMBER ASSOCIATIONS AND THE PROFESSIONS OF COUNSELLING AND PSYCHOTHERAPY.

- 2.6.1 ASPA does not conduct itself in ways which undermine public confidence in its operation, the services of its members or the professions of Counselling and Psychotherapy as a whole. ASPA does not undermine the work of other Associations established to provide services to Psychotherapy and Counselling and professionals.
- 2.6.2 As a member of PACFA, ASPA is bound by the constitution and codified requirements enshrined in that membership. ASPA is therefore aware that non-compliance with the PACFA Constitution may result in termination of its PACFA membership.
- 2.6.3 Should ASPA suspect misconduct by another PACFA Member Association which cannot be resolved or remedied after discussion with the Member Association concerned, it will consult PACFA.
- 2.6.4 ASPA does not solicit the members of other PACFA Member Associations or other professional associations.
- 2.6.5 ASPA respects the right of members to belong to more than one professional association.

2.7 RESPONSIBILITIES TO THE WIDER COMMUNITY

- 2.7.1 ASPA works within the law.
- 2.7.2 ASPA takes all reasonable steps to be aware of current legislation and regulations affecting its profession, its members and their work practices.
- 2.7.3 ASPA is committed to protecting the public against unlawful or unethical conduct by members.

3. ETHICS FOR PRACTITIONERS

- 3.1 In this statement Practitioner includes any member undertaking the role(s) of counsellor, psychotherapist, body-oriented psychotherapist, trainer, educator, supervisor, provider of counselling skills or manager of any of these services. The term 'client' is used to refer to the recipient of any of these services. The client may be an individual, couple, family, group, organisation or other specifiable social unit. Alternative names may be substituted for 'practitioner' and 'client' in the practice setting, according to custom and context.

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

3.2.1 Values of psychotherapy

3.2.2 Principles of psychotherapy

3.2.3 Personal moral qualities of psychotherapists

The provision of culturally sensitive and appropriate services is also a fundamental ethical concern. Cultural factors are often more easily understood and responded to in terms of values. Therefore, professional values are becoming an increasingly significant way of expressing ethical commitment.

3.3 VALUES OF PSYCHOTHERAPY

3.3.1 The fundamental values of psychotherapy include a commitment to:

3.3.1.1 respecting human rights and dignity; and

3.3.1.2 ensuring the integrity of practitioner-client relationships; and

3.3.1.3 enhancing the quality of professional knowledge and its application;
and

3.3.1.4 understanding and working with symptoms of personal distress and suffering; and

3.3.1.5 facilitating a sense of self that is meaningful to the person(s)
concerned within their personal and cultural context; and

3.3.1.6 increasing personal effectiveness; and

3.3.1.7 enhancing the quality of relationships between people; and

3.3.1.8 appreciating the variety of human experience and culture; and

3.3.1.9 Striving for the fair and adequate provision of Psychotherapy services.

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

3.4 ETHICAL PRINCIPLES OF PSYCHOTHERAPY

- 3.4.1 Principles direct attention to important ethical responsibilities. Each principle is described below and is followed by examples of best practice that have been developed in response to that principle.
- 3.4.2 Ethical decisions that are strongly supported by one or more of these principles without any contradiction from others may be regarded as reasonably well founded. However, practitioners will encounter circumstances in which it is impossible to reconcile all the applicable principles and choosing between principles may be required. A decision or course of action does not necessarily become unethical merely because it is contentious or other practitioners would have reached different conclusions in similar circumstances. A practitioner's obligation is to consider all the relevant circumstances with as much care as is reasonably possible and to be appropriately accountable for decisions made.
- 3.4.3 **Fidelity: honouring the trust placed in the practitioner**
Being trustworthy is regarded as fundamental to understanding and resolving ethical issues. Practitioners who adopt this principle: act in accordance with the trust placed in them; regard confidentiality as an obligation arising from the client's trust; restrict any disclosure of confidential information about clients to furthering the purposes for which it was originally disclosed.
- 3.4.4 **Autonomy: respect for the client's right to be self-governing**
This principle emphasises the importance of the client's commitment to participating in psychotherapy, usually on a voluntary basis. Practitioners who respect their clients' autonomy: ensure accuracy in any advertising or information given in advance of services offered; seek freely given and adequately informed consent; engage in explicit contracting in advance of any commitment by the client; protect privacy; protect confidentiality; normally make any disclosures of confidential information conditional on the consent of the person concerned; and inform the client in advance of foreseeable conflicts of interest or as soon as possible after such conflicts become apparent. The principle of autonomy opposes the manipulation of clients against their will, even for beneficial social ends.
- 3.4.5 **Beneficence: a commitment to promoting the client's well-being**
The principle of beneficence means acting in the best interests of the client based on professional assessment. It directs attention to working strictly within one's limits of competence and providing services on the basis of adequate

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

- 3.4.6 **Non-maleficence: a commitment to avoiding harm to the client**
 Non-maleficence involves: avoiding sexual, financial, emotional or any other form of client exploitation; avoiding incompetence or malpractice; not providing services when unfit to do so due to illness, personal circumstances or intoxication. The practitioner has an ethical responsibility to strive to mitigate any harm caused to a client even when the harm is unavoidable or unintended. Holding appropriate insurance may assist in restitution. Practitioners have a personal responsibility to challenge, where appropriate, the incompetence or malpractice of others; and to contribute to any investigation and/or adjudication concerning professional practice which falls below that of a reasonably competent practitioner and/or risks bringing discredit upon the profession.
- 3.4.7 **Justice: the fair and impartial treatment of all clients and the provision of adequate services**
 The principle of justice requires being just and fair to all clients and respecting their human rights and dignity. It directs attention to considering conscientiously any legal requirements and obligations, and remaining alert to potential conflicts between legal and ethical obligations. Justice in the distribution of services requires the ability to determine impartially the provision of services for clients and the allocation of services between clients. A commitment to fairness requires the ability to appreciate differences between people, to be committed to equality of opportunity, and to avoiding discrimination against people or groups contrary to their legitimate personal or social characteristics.
- 3.4.8 **Self-respect: fostering the practitioner's self-knowledge and care for self**
 The principle of self-respect means that the practitioner appropriately applies all the above principles as entitlements for self. This includes seeking therapy or counselling and other opportunities for personal development as required. There

is an ethical responsibility to use supervision for appropriate personal and professional support and development, and to seek training and other opportunities for continuing professional development. Guarding against financial liabilities arising from work undertaken usually requires obtaining appropriate insurance. The principle of self-respect encourages active engagement in life-enhancing activities and relationships that are independent of relationships in psychotherapy.

3.5 PERSONAL MORAL QUALITIES

- 3.5.1 The practitioner's personal moral qualities are of the utmost importance to clients.
- 3.5.2 Many of the personal qualities considered important in the provision of services have an ethical or moral component and are therefore considered as virtues or good personal qualities. These qualities are conveyed through the practitioner's clinical approach and practice. It is inappropriate to prescribe that all practitioners possess these qualities, since it is fundamental that these personal qualities are deeply rooted in the person concerned and developed out of personal commitment rather than the requirement of an external authority. However, it is the case that moral qualities and virtues, and their enactment through particular behaviours, can also be taught and should be part of training programs in the field.
- 3.5.3 Personal qualities to which psychotherapists are strongly encouraged to aspire are evident in the enactment of the following behaviours/skills.
- 3.5.4 They include:
- 3.5.4.1 *empathy*: the ability to communicate understanding of another person's experience from that person's perspective;
 - 3.5.4.2 *sincerity*: a personal commitment to consistency between what is professed and what is done;
 - 3.5.4.3 *integrity*: commitment to being moral in dealings with others, personal straightforwardness, honesty and coherence;
 - 3.5.4.4 *authenticity*: the capacity to be true to self and relating truthfully to others;

- 3.5.4.5 *resilience*: the capacity to work with the client's concerns without being personally diminished;
- 3.5.4.6 *respect*: showing appropriate esteem to others and their understanding of themselves;
- 3.5.4.7 *humility*: the ability to assess accurately and acknowledge one's own strengths and weaknesses;
- 3.5.4.8 *competence*: the effective deployment of the skills and knowledge needed to do what is required;
- 3.5.4.9 *fairness*: the consistent application of appropriate criteria to inform decisions and actions;
- 3.5.4.10 *wisdom*: possession of sound judgement that informs practice;
- 3.5.4.11 *courage*: the capacity to act in spite of known fears, risks and uncertainty;

3.6 CONCLUSION

3.6.1 The challenge of working ethically means that practitioners will inevitably encounter situations where there are competing obligations. These ethical principles are intended to be of assistance in such circumstances by directing attention to the variety of ethical factors that may need to be taken into consideration and to find alternative ways of approaching ethics that may prove more useful. No statement of ethics can totally alleviate the difficulty of making professional judgements in circumstances that may be constantly changing and full of uncertainties. By accepting this statement of ethics, all categories of members of ASPA are committing themselves to engaging with the challenge of striving to be ethical, even when doing so involves making difficult decisions or acting courageously.

4. GUIDANCE ON BEST PRACTICE FOR PRACTITIONERS

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

- 4.1.1 changes in the range of issues and levels of need presented by clients; and

- 4.1.2 the growth in levels of expertise available from practitioners with the expansion in the availability of training and consultative support/supervision; and
 - 4.1.3 the accumulated experience of the members of ASPA.
- 4.2 The diversity of settings within which psychotherapy services are delivered has also been carefully considered. These services may be provided by the independent practitioner working alone, by one or more practitioners working to provide a service within an agency or large organisation, by specialists working in multidisciplinary teams, and by specialist teams of psychotherapists.
- 4.3 Most work is undertaken face to face but there are also a growing number of telephone and online services. Some practitioners are moving between these different settings and modes of delivery during the course of their work and are therefore required to consider what constitutes best practice in different settings.
- 4.4 Practitioners considering moving into alternative modes of delivery, such as on-line or email counselling or psychotherapy, are advised to seek supervision and/or consultation about the implications. All practitioners encounter the challenge of responding to the diversity of their clients and finding ways of working effectively with them. This statement therefore responds to the complexity of delivering psychotherapy services in contemporary society by directing attention to essential issues that practitioners ought to consider and resolve in the specific circumstances of their work.
- ~~4.5~~ The crucial role supervision and training has in developing and maintaining psychotherapists is emphasised within these ethical guidelines. How people formulate their theoretical paradigm and their own best practice will be highly influenced by their role models.
- 4.6 PROVIDING A GOOD STANDARD OF PRACTICE AND CARE
 - 4.6.1 All clients are entitled to good standards of practice and care from their psychotherapists. Good standards of practice and care require professional competence; good relationships with clients and colleagues; and commitment to and observance of professional ethics.
 - 4.6.2 Good quality of practice and care
 - 4.6.2.1 Practitioners will be appropriately supported and accountable and are required to competently deliver services that meet the client's needs.

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

- 4.6.3.1 All counsellors, psychotherapists, trainers and supervisors are required to have regular and on-going formal supervision/consultative support for their work. In order to renew/maintain membership, all Members who are seeing clients must meet all requirements regarding ongoing professional development, supervision and any other professional requirements specified in the By-Laws.
 - 4.6.3.2 Regularly monitoring and reviewing one's work is essential to maintaining best practice. It is important to be open to, and conscientious in considering, feedback from colleagues, appraisals and assessments. Responding constructively to feedback helps to advance practice.
 - 4.6.3.3 A commitment to best practice requires practitioners to keep up to date with the latest knowledge and respond to changing circumstances. They should consider carefully their own need for continuing professional development. In order to renew/maintain membership, all Members who are seeing clients must meet all requirements regarding ongoing professional development, supervision and any other professional requirements specified in the By-Laws.
 - 4.6.3.4 Practitioners should be aware of and understand any legal requirements concerning their work, including mandatory reporting requirements, and consider these conscientiously and be legally accountable for their practice.
- 4.6.4 Keeping trust
- 4.6.4.1 The practice of Psychotherapy depends on gaining and honouring the trust of clients. Keeping trust requires:
 - 4.6.4.1.1 attentiveness to the quality of listening and respect offered to clients
 - 4.6.4.1.2 culturally appropriate ways of communicating that are courteous and clear
 - 4.6.4.1.3 respect for privacy and dignity

4.6.4.1.4 careful attention to client consent and confidentiality

- 4.6.4.2 Clients should be adequately informed about the nature of the services being offered. Practitioners should obtain adequately informed consent from their clients and respect a client's right to choose whether to continue or withdraw.
- 4.6.4.3 Practitioners should ensure that services are delivered on the basis of the client's explicit consent. As Somatic Psychotherapists, practitioners use direct touch and/or holding with the client's explicit permission. Reliance on implicit consent is more vulnerable to misunderstandings and is best avoided. A practitioner who uses actual direct touch at times in their work should discuss this mode of working with the client at the beginning of therapy. Overriding a client's known wishes or consent is a serious matter that requires commensurate justification. Practitioners should be prepared to be readily accountable to clients, colleagues and this Association if they override a client's known wishes.
- 4.6.4.4 Situations in which clients pose a risk of causing serious harm to themselves or others are particularly challenging for the practitioner. These are situations in which the practitioner should be alert to the possibility of conflicting responsibilities between those concerning their client, other people who may be significantly affected, and society generally. Resolving conflicting responsibilities may require due consideration of the context in which the service is being provided. Consultation with a supervisor or experienced practitioner is strongly recommended, whenever this would not cause undue delay. In all cases, the aim should be to ensure for the client a good quality of care that is as respectful of the client's capacity for self-determination and their trust as circumstances permit.
- 4.6.4.5 Working with young people requires specific training, ethical awareness and competence. The practitioner is required to consider and assess the balance between young people's dependence on adults and carers and their progressive development towards acting independently. Working with children and young people requires careful consideration of issues concerning their capacity to give consent to receiving any service independently of someone with

parental responsibilities and the management of confidences disclosed by clients.

- 4.6.4.6 Respecting client confidentiality is a fundamental requirement for keeping trust. The professional management of confidentiality concerns the protection of personally identifiable and sensitive information from unauthorised disclosure. Disclosure may be authorised by client consent or the law. Any disclosures should be undertaken in ways that best protect the client's trust. Practitioners should be willing to be accountable to their clients and to their profession for their management of confidentiality in general and particularly for any disclosures made without their client's consent.
 - 4.6.4.7 Practitioners should normally be willing to respond to their client's requests for information about the way that they are working and any assessment that they may have made. This professional requirement does not apply if it is considered that imparting this information would be detrimental to the client or inconsistent with the psychotherapeutic approach previously agreed with the client. An example of this may include restrictions of information shared between parents and children. Clients may also have legal rights to information and these need to be taken into account.
 - 4.6.4.8 Practitioners must not abuse their client's trust in order to gain emotional, financial, sexual or any other kind of personal advantage. Practitioners should think carefully about, and exercise considerable caution before, entering into personal or business relationships with former clients and should expect to be professionally accountable if the relationship becomes detrimental to the client or the standing of the profession.
- 4.6.5 Sexual Relationships
- 4.6.5.1 Sexual relations with clients are prohibited. 'Sexual relations' includes intercourse and/or any other type of sexual activity or sexualised behaviour. Practitioners who engage in such activity need to be aware that serious ethical charges may be brought against them even many years later.

- 4.6.5.2 The behaviour of the Somatic Psychotherapist should not be sexually seductive or create ambiguity or confusion about sexual boundaries. Physical touch is used by Somatic Psychotherapists for therapeutic purposes only. Physical contact, whether initiated by the client or Somatic Psychotherapist, which has as its purpose some form of sexual gratification, or could be reasonably construed by persons with a comprehensive understanding of the modality as having that purpose, is unethical.
- 4.6.5.3 Practitioners do not engage in sexual or close intimate relationships with former clients.
- 4.6.5.4 If in extraordinary circumstances, a practitioner finds themselves considering engaging in any such activity or relationship as in (4.6.5.2) or (4.6.5.3) they must seek immediate supervision or mentoring and they may bear the burden of demonstrating to ASPA that there has been no exploitation, in light of all relevant factors, including:
- 4.6.5.4.1 the amount of time that has passed since therapy terminated;
 - 4.6.5.4.2 the nature, duration, and intensity of the therapy;
 - 4.6.5.4.3 the circumstances of termination;
 - 4.6.5.4.4 the client's personal history;
 - 4.6.5.4.5 the client's current mental status;
 - 4.6.5.4.6 the likelihood of adverse impact on the client;
 - 4.6.5.4.7 any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.
 - 4.6.5.4.8 Practitioners should be aware of their personal values in relation to lifestyle, gender, age, disability, race, sexual orientation, beliefs, religion or culture and be cognisant of the impact of these on the therapeutic process. If

practitioners find themselves unavoidably and emotionally prejudiced towards a client they must refer the client on to another agency or practitioner.

- 4.6.5.5 Practitioners should be clear about any commitment to be available to clients and colleagues and honour these commitments.
- 4.6.6 Fitness to practice
 - 4.6.6.1 Practitioners have a responsibility to monitor and maintain their fitness to practice at a level that enables them to provide an effective service. If their effectiveness becomes impaired for any reason, including health or personal circumstances, they should seek the advice of a supervisor, experienced colleagues or line manager and, if necessary, withdraw from practice until their fitness to practice returns.
 - 4.6.6.2 Practitioners will maintain a current record of client names and contact details and maintain standing arrangements for clients to be contacted and supported in the event of the sudden incapacitation or death of the practitioner.
- 4.6.7 If things go wrong with clients
 - 4.6.7.1 Practitioners will respond promptly and appropriately to any complaint received from their clients. An appropriate response in agency-based services would take account of any agency policy and procedures.
 - 4.6.7.2 Practitioners should endeavour to remedy any harm they may have caused to their clients and to prevent any further harm. An apology may be the appropriate response.
 - 4.6.7.3 Practitioners should discuss, with their supervisor, manager or other experienced practitioner(s), the circumstances in which they may have harmed a client in order to ensure that the appropriate steps have been taken to mitigate any harm and to prevent any repetition.
 - 4.6.7.4 Practitioners are required to ensure that their work is adequately covered by insurance for professional indemnity and liability.

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

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

4.6.8 Responsibilities to all clients

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

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

4.6.8.3 If they are uncertain what to do, their concerns should be discussed with an experienced colleague, a supervisor or raised with an Executive Member of ASPA.

4.7 TEACHING AND TRAINING

4.7.1 Members of ASPA who provide training in the fields of psychotherapy and/or counselling and related services are required to do so within the ethical guidelines of ASPA, PACFA, the Society of Counselling and Psychotherapy Educators (SCAPE) and other relevant organisational guidelines appropriate to their training.

4.7.2 Training institutions have a responsibility to foster an ethical culture through the development of structures, processes, contracts and procedures with staff and students that meet current educational and management standards in the field.

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

4.8 SUPERVISION

- 4.8.1 This section of the Code is designed to attend to issues that may arise in a professional supervisory relationship which involves hierarchy and therefore issues of power. It is acknowledged that qualified and experienced practitioners may seek peer supervision for 50% of their supervision requirements, rather than a more hierarchical supervision arrangement. Concerns that may arise within peer supervision arrangements are attended to under section 4.10.
- 4.8.2 The role of individual or group supervisor is considered to be of crucial importance in developing, maintaining and leading the professions. Wherever dual relationships or responsibilities exist, these need to be transparently named and ethically managed.
- 4.8.3 In practice, the terms supervisor and consultant are often used interchangeably. In the supervision literature it is often conceptualised that trainees are *supervised* and experienced practitioners seek *consultation* on their work, signalling where the responsibility for the client work lies. Thus in this section all relevant terms are used.
- 4.8.4 The roles of supervisors, consultants, and clinical line managers include the following responsibilities:
- 4.8.4.1 monitoring the welfare of the supervisee; and
 - 4.8.4.2 ensuring compliance with the relevant legal, ethical, and professional guidelines for professional practice; and
 - 4.8.4.3 monitoring the contracted achievements and the professional development of the practitioner.
- 4.8.5 There is a general obligation for all counsellors, psychotherapists, supervisors and trainers to receive supervision/consultative support that is independent of any managerial relationships.
- 4.8.6 Supervision is considered a discrete professional activity within clinical practice and thus it is required that supervisors and consultants complete specialist training in the development of supervision competencies.
- 4.8.7 Supervisors and managers have a responsibility to maintain and enhance best practice by practitioners and to protect supervisees from poor practice. The

evaluative aspects of supervision shall be contracted and transparent in any supervision arrangement.

- 4.8.8 Supervisors and consultants who advise their supervisees in more than one capacity (for example as trainer, individual coach or supervisor to a board) shall, as far as possible, reduce conflicting role interests. In principle, these roles shall be distributed among different professionals. If this is not possible, supervisors shall inform their supervisee what expectations and what responsibilities go with each role. Different roles shall be separated in space and time. Practitioners are responsible for clarifying who holds responsibility for the work with the supervisee.
- 4.8.9 Supervisors must not exploit supervisees in financial, sexual, emotional, academic or any other ways.
- 4.8.10 Supervisors shall have no sexual relationships with supervisees. They also avoid social contact with their supervisees if it could compromise the professional relationship. If, for any reason, the objectivity and capacity of the supervisor, coach or consultant to professionally evaluate is restricted, the professional relationship must be terminated.
- 4.8.11 It is acknowledged that personal matters will arise during supervision, such as in the context of fitness to practice (see 4.6.6), regarding personal development or other advancements of their work. Supervisors shall not offer psychotherapy as a substitute for or as a supplement to their work as supervisors.

4.9 RESEARCHING

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

- 4.9.6 ASPA is committed to fostering research that will inform and develop practice.
- 4.9.7 All practitioners are encouraged to support research undertaken on behalf of the profession and to participate actively in research work.
- 4.9.8 All research should be undertaken with rigorous attentiveness to the quality and integrity both of the research itself and of the dissemination of the results of the research.
- 4.9.9 The rights of all research participants should be carefully considered and protected. The minimum rights include the right to freely given and informed consent, and the right to withdraw at any point.
- 4.9.10 The research methods used should comply with the standards of best practice in the field of psychotherapy and counselling and must not adversely affect clients. Dissemination of research must include strategies for disseminating results to participants, practitioners, the wider community and other researchers.

4.10 WORKING WITH COLLEAGUES

- 4.10.1 The increasing availability of psychotherapy means that most practitioners have other practitioners working in their locality, or may be working closely with colleagues. The behaviour of practitioners towards each other is testament to the success or otherwise of the process of psychotherapy and members must be aware that the quality of their relationships with colleagues will have an impact on their clients.
- 4.10.2 Working in teams
 - 4.10.2.1 Professional relationships should be conducted in a spirit of mutual respect. Practitioners should endeavour to attain good working relationships and systems of communication that enhance services to clients at all times.
 - 4.10.2.2 Practitioners should treat all colleagues fairly and foster equal opportunity.
 - 4.10.2.3 Practitioners should not allow their professional relationships with colleagues to be prejudiced by their own personal views about a colleague's lifestyle, gender, age, disability, race, sexual orientation, beliefs or culture. It is unacceptable and unethical to discriminate against colleagues on any of these grounds.

- 4.10.2.4 Practitioners must not undermine a colleague's relationships with clients by making unjustified or unsustainable comments.
- 4.10.2.5 All communications between colleagues about clients should be on a professional basis and thus purposeful, respectful and consistent with the management of confidences as declared to clients.
- 4.10.3 Awareness of context

The practitioner is responsible for learning about and taking account of the different protocols, conventions and customs that can pertain to different working contexts and cultures.
- 4.10.4 Making and receiving referrals
 - 4.10.4.1 All routine referrals to colleagues and other services should be discussed with the client in advance and the client's consent obtained both to making the referral and also to disclosing information to accompany the referral. Reasonable care should be taken to ensure that:
 - 4.10.4.1.1 the recipient of the referral is able to provide the required service; and
 - 4.10.4.1.2 any confidential information disclosed during the referral process will be adequately protected; and
 - 4.10.4.1.3 the referral will be likely to benefit the client.
 - 4.10.4.2 Prior to accepting a referral the practitioner should give careful consideration to:
 - 4.10.4.2.1 the appropriateness of the referral; and
 - 4.10.4.2.2 the likelihood that the referral will be beneficial to the client; and
 - 4.10.4.2.3 the adequacy of the client's consent for the referral.
 - 4.10.4.3 If the referrer is professionally required to retain overall responsibility for the work with the client, it is considered to be professionally appropriate to provide the referrer with brief progress

reports. Such reports should be made in consultation with clients and not normally against their explicit wishes.

4.11 PROBITY IN PROFESSIONAL PRACTICE

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

4.11.2 Providing clients with adequate information

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

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

4.11.2.3 Particular care should be taken in all communications to present qualifications, accreditation and professional standing accurately and honestly.

4.11.3 Financial arrangements

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

4.11.4 Conflicts of interest

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

4.12 CARE OF SELF AS A PRACTITIONER

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

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

- 4.12.1.2 Practitioners are entitled to be treated with proper consideration and respect that is consistent with this Guidance (see section 4).

5. PROFESSIONAL CONDUCT PROCEDURE

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

5.2 OVERVIEW

5.2.1 Aim

The aim of the Professional Conduct Procedure is to provide complainants with an open and transparent route of remedy where complaints are made against members of ASPA. In processing such complaints, ASPA aims to protect members of the public, the name and reputation of ASPA, the professions of psychotherapy and counselling and the members of ASPA.

5.2.2 Bringing a complaint

A complaint can be brought by:

- 5.2.2.1 anyone who has sought or received a service provided by a member of ASPA; or
- 5.2.2.2 anyone who has previously had a complaint heard by ASIA, AASP or ASPA and who is not satisfied that due process was followed and wants the decision appealed; or
- 5.2.2.3 a legal guardian or other appropriately authorised adult on behalf of a minor and/or an adult lacking legal capacity, for services sought or received; or
- 5.2.2.4 a third party who can demonstrate sufficient interest, or who speaks on behalf of another vulnerable person/people such as joint children, and who has been directly affected by the actions of the practitioner, and where there is corroborating evidence of unethical conduct as described under this Code.

~~5.2.3~~ 5.2.3 Complaints against non-members

ASPA cannot deal with complaints against individuals who were not members of AASP, ASIA or ASPA at the time of the alleged professional misconduct and/or are not current members of ASPA.

5.2.4 Complaints against members

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

5.2.5 Records

5.2.5.1 All records will be kept for a period of seven years. ASPA reserves the right to reconsider complaints previously submitted to ASPA, ASIA and/or AASP when similar/other complaints subsequently arise that give good reason to suggest that the practitioner's continuing membership should be reviewed under the ASPA Constitution; Sections 9 (Cessation of Membership) and 10 (Suspension or Expulsion of Members).

5.2.5.2 Where the outcome of a complaint has resulted in termination of membership, all records will be kept indefinitely unless and/or until such time as the person concerned has successfully re-applied for membership of ASPA. Such records will be considered in any re-application for membership of ASPA and will then be kept for a period of seven years.

5.2.6 Administration

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

5.2.7 Expenses

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

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

5.2.8 Dual accountability

5.2.8.1 Complaints about Members should be lodged with the Chair of the Ethics Committee of ASPA. ASPA may also request that PACFA be involved in responding to complaints they receive. This may be due to ASPA's assessed inability to provide a just and fair hearing, to allocate available resources, or where particular expertise is not available. ASPA may decide to hear a complaint against a member when another organisation (such as The Psychologist's Registration Board, Australian Association of Social Workers) is involved in a similar process arising out of the same substantive matters. Where information is received for consideration under the Professional Conduct Procedure and where it is known that the member concerned is also a member of another professional body, ASPA reserves the right to formally notify any other organisation of the issues being considered.

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

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

~~5.2.9~~ Resolution

Before submitting a complaint to ASPA, the Complainant and the Member are encouraged to attempt to resolve the issue. If local resolution is not possible/feasible or is considered inappropriate in the particular circumstances of the case, the Complainant should not hesitate to contact the Chair of the Ethics Committee of ASPA.

5.2.10 Complaints and findings

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

5.3 MAKING A COMPLAINT

5.3.1 The complaint

The complaint must satisfy the following conditions:

5.3.1.1 The complaint must be in writing, addressed to the Chair of the Ethics Committee and be made in the official form as advised by the Chair of the Ethics Committee. The Complainant must provide a detailed account of the practice giving rise to the complaint, together with details of dates when the event(s) occurred and all other supporting evidence. Depending on the nature and type of complaint, reference should be made to the standards of practice in force at the time, as outlined by the ASPA Code of Ethics.

5.3.1.2 Reference may also be made to the PACFA and/or ASPA ethical guidelines for researching psychotherapy and counselling, SCAPE training standards documents and other guidelines as appropriate.

5.3.1.3 The Member Complained Against is named and is a current member of ASPA and/or was a member of AASP, ASIA or ASPA at the time the alleged breach occurred.

5.3.1.4 The complaint is dated, signed and received by the ASPA office.

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

5.3.3 Notification

The Member Complained Against will be notified that a complaint has been received, given a copy of that complaint and details of the procedure to be followed including the Codes under which the complaint will be heard. The Member Complained Against is not required to respond at this stage, but will be given an opportunity at a later stage if the complaint is accepted under **THE FORMAL PROFESSIONAL CONDUCT PROCEDURE** (as set out in section 5.4).

5.3.4 Receipt of a complaint

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

5.3.4.1 Whether to accept the complaint to be dealt with through the ASPA Professional Conduct Procedure, refer it back for further

information/clarification or reject it. The Ethics Committee has discretion to interview the Complainant and/or Member Complained Against if deemed appropriate.

- 5.3.4.2 If further information/clarification is requested, upon receipt of same, the complaint will be re-submitted to the Ethics Committee which will decide whether to accept it or reject it.
 - 5.3.4.3 Once the complaint is accepted, the Complainant and Member Complained Against will be formally notified of this decision in writing.
 - 5.3.4.4 The Chair of the Ethics Committee or his/her delegate will then start The Formal Professional Conduct Procedure (as set out in section 5.4);
 - 5.3.4.5 if the complaint is not accepted by the Ethics Committee the Complainant and Member Complained Against will be formally notified of this decision in writing.
- 5.3.5 Appeal following decision of the Pre-Hearing Assessment Panel
- 5.3.5.1 The Complainant may appeal against the decision of the Ethics Committee. An appeal must be received in writing by the Chair of the Ethics Committee within 14 days of notification of the Committee's decision. The Complainant can appeal on the following grounds:
 - 5.3.5.1.1 the decision was made against the weight of evidence;
 - 5.3.5.1.2 there is new evidence that was not available at the time of the initial assessment of the complaint (subject to the conditions laid down in the relevant protocol).
 - 5.3.5.2 An appeal must be accompanied by the evidence to support the submission.
 - 5.3.5.3 The ground(s) of appeal, together with the original submissions and any new evidence considered by the Ethics Committee, will be considered by the Executive or person appointed by the Executive as an independent assessor, whose decision will be final.

5.4 THE FORMAL PROFESSIONAL CONDUCT PROCEDURE

5.4.1 Acceptance of complaint

The Complainant and Member Complained Against will be notified in writing that the complaint will proceed to the Professional Conduct Panel, as set out in Section 5.5.2. In particular circumstances, a case officer may be assigned to assist with this process. Such circumstances may relate, for example, to the type of complaint, the geographic locations of the Complainant and the Member Complained Against, or the resources of ASPA.

5.4.2 Responding to a formal complaint

5.4.2.1 The Member Complained Against will be notified of the acceptance of the complaint and will have 28 days to respond to it, having previously been supplied with a copy of the complaint.

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

5.4.3 Evidence

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

5.4.4 Conduct

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

5.4.5 Lapsed/resigned membership

- 5.4.5.1 Failure to renew membership of ASPA by a Member Complained Against during the course of a complaint will not normally terminate the Professional Conduct Procedure.
- 5.4.5.2 A Member's resignation from membership of ASPA will not normally terminate nor invalidate the processing and/or hearing of a complaint by ASPA.
- 5.4.5.3 Where a Member resigns and the complaint is unable to be pursued due to the Member's withdrawal from the process, the ASPA records will note the lack of closure in the matter of the complaint and that this will have to be satisfactorily resolved for successful re-application for membership of ASPA to occur. ASPA will inform PACFA and/or other relevant associations or parties of the status of the complaint as it considers appropriate and just to do so.

5.5 THE PROFESSIONAL CONDUCT HEARING

5.5.1 Venue

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

5.5.2 Professional Conduct Panel

The Professional Conduct Panel shall be convened by the Chair of the Ethics Committee, in consultation with the Executive, and comprise a Chair and not less than three persons, one of whom is not a member of ASPA. The Panel may decide to invite other members relevant to individual matters for any given complaint hearing. Such members may include practitioners with specific expertise either within or outside the professions of psychotherapy and counselling.

5.5.3 Declaration of interest

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

5.5.4 The purpose of the Professional Conduct Panel

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

5.5.5 Presence of a representative/support person

In some cases a hearing may be held at which individuals attend to present their case. This could occur by teleconference, Skype, or involving a local committee established for this purpose. When appearing at the Professional Conduct Hearing, the Complainant and the Member Complained Against may each be accompanied by a representative, who may support and/or speak on behalf of the party concerned. Details of any such representative/support person must be received by the Chair of the Professional Conduct Panel not less than 14 days prior to the date fixed for the Professional Conduct Hearing.

5.5.6 Written evidence

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

5.5.7 New evidence

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

5.5.8 Attendance by Witnesses

The Professional Conduct Panel, Complainant and Member Complained Against may call witnesses to attend the Hearing. A witness can only be called if the witness has supplied a written statement contained within the parties' submissions to the Professional Conduct Chair. Parties wishing to call witnesses must notify the Chair of the Professional Conduct Panel of the names and details of such witnesses not less than 14 days prior to the date fixed for the Hearing. Such papers will be circulated to the Professional Conduct Panel, the Complainant and the Member Complained Against, within a reasonable period prior to the Hearing. The Chair of the Panel will only permit the attendance of a witness if the Panel considers their written statement requires further clarification. The Chair of the Panel has discretion to refuse attendance by a witness if it is reasonably believed that such attendance is not relevant and/or will not add any weight to the issue(s) being considered. Attendance by a witness may occur via teleconference or Skype.

5.5.9 Failure to attend the Professional Conduct Hearing

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

5.5.9.1 proceed with the Hearing in the absence of one or both of the parties; or

5.5.9.2 adjourn the Hearing to a date not less than 28 days in advance; or

5.5.9.3 terminate the proceedings; or

5.5.9.4 refer the matter for consideration as detailed in the ASPA constitution

5.5.10 Notification of findings

The decision and report of the Professional Conduct Panel will be notified in writing to the Chair of the Ethics Committee. The Ethics Committee will then notify the Executive of the decision of the Professional Conduct Panel and the Executive will ensure that all parties are notified, in writing, of the decision within 28 days of the Professional Conduct Hearing.

5.6 SANCTIONS

5.6.1 Imposing Sanctions

5.6.1.1 The Professional Conduct Panel, having regard to the findings, may impose or recommend to the Ethics Committee that one or more of the sanctions below and detailed in Section 6 of this protocol, be imposed.

5.6.1.2 Depending on the nature of the ethical breach and the assessment of the Panel regarding all other relevant information, possible sanctions may include:

5.6.1.2.1 a warning in such form as the Panel considers appropriate; and/or

5.6.1.2.2 a requirement for such further supervision and/or training as the Panel considers appropriate; and/or

5.6.1.2.3 suspension of rights of membership for such period as the Panel considers appropriate, with specific requirements to be met during this period; and/or

5.6.1.2.4 withdrawal of membership of ASPA.

5.6.2 Monitoring of Sanction

If the sanction(s) recommended by the Professional Conduct Panel include requirements for monitoring, the Ethics Committee will undertake this task or will appoint a senior member of ASPA to undertake the monitoring and report to the Ethics Committee.

5.6.3 Lifting of sanction

5.6.3.1 The Ethics Committee will decide if the requirements of a sanction have been fulfilled and thus, whether the sanction should be lifted.

5.6.3.2 The Member Complained Against will be notified in writing of any decision made.

~~5.6.4~~ Failure or refusal to comply with sanction

Failure or refusal to comply with a sanction may result in membership of ASPA being terminated immediately. The Member Complained Against will be notified

of any such decision in writing. A withdrawal of membership shall also be notified to PACFA and/or other relevant organisations.

5.7 FORMAL APPEAL PROCEDURE

- ~~5.7.1~~ The Member Complained Against may appeal on the grounds applicable under the ASPA Constitution. An appeal against the decision of the Professional Conduct Panel must be submitted in writing by the deadline given (see paragraph 5.7.6), be accompanied by any supporting documentation and submitted to ASPA.
- 5.7.2 **Consideration of the Appeal**
The ground(s) for appeal will be considered by an independent Appeal Assessor appointed by the Executive who will decide whether the appeal should be accepted to go forward to an Appeal Hearing or not.
- 5.7.3 **Acceptance of the Appeal**
If leave to appeal is accepted under paragraph 5.7.2, a notice to that effect shall be given to the Chair of the Ethics Committee and the case will proceed to an Appeal Hearing, where the appeal will be considered by an independent Appeal Panel, as set out in Section 5.8. Both parties will be notified of this decision and given details of the procedure to be followed.
- 5.7.4 **Insufficient Evidence**
If there is insufficient evidence to satisfy any of the ground(s) for appeal, the leave to appeal will be rejected. Both parties will be notified in writing of this decision which will be final.
- 5.7.5 **Grounds for Appeal**
An appeal will be considered on any of the following ground(s):
- 5.7.5.1 the facts were found against the weight of evidence; and/or
 - 5.7.5.2 the sanction is disproportionate to the findings and decision of the Professional Conduct Panel and is unjust in the circumstances; and/or
 - 5.7.5.3 there is evidence to suggest that a procedural impropriety may have had a material effect on the findings and decision of the Professional Conduct Panel; and/or

5.7.5.4 there is new evidence which was not available at the time of the Professional Conduct Hearing, subject to the conditions laid down in the relevant protocol.

5.7.6 Timescale for appeal

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

5.8 APPEAL HEARING

5.8.1 Venue

Appeal hearings will be held at a neutral venue other than in exceptional circumstances. Given that ASPA is a national organisation and members of the Appeal Panel may themselves reside in different states, it is possible that hearings and other meetings may be carried out by teleconference or Skype. Any limitations caused by the use of such technology, including any bearing on a fair hearing, need to be considered.

5.8.2 Appeal Panel

The Chair of the Ethics Committee will appoint an independently constituted panel of not less than three persons, including lay representation, to decide the appeal.

5.8.3 Declaration of interest

Members of an Appeal Panel have a duty to declare any interest that may be considered by the Chair of the Ethics Committee to affect their impartiality, or is likely to be thought so to do.

5.8.4 Purpose

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

5.8.5 Format of the Appeal Hearing

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

- 5.8.6 Presence of a representative/support person
- 5.8.6.1 When appearing at the Appeal Hearing, both parties may be accompanied by a representative who may support and/or speak on behalf of the party concerned.
- 5.8.6.2 Details of any such representative/support person must be received by the Chair of the Ethics Committee not less than 14 days prior to the date fixed for the Appeal Hearing.
- 5.8.7 Written evidence
- Written evidence and/or submissions and witness statements must be submitted in advance by both parties. Such papers must be received by the Chair of the Ethics Committee not less than 28 days prior to the date fixed for the Appeal Hearing. Such papers will be circulated to the Appeal Panel, the Complainant and Member Complained Against, within a reasonable period prior to the Hearing. The Chair of the Appeal Panel may take advice on these papers and/or procedural matters from the Chair of the Ethics Committee, or such relevant person as may be deemed appropriate.
- 5.8.8 New evidence
- The Chair of the Appeal Panel will determine whether or not new evidence will be accepted on the day of the Appeal Hearing. The decision will be based on the conditions laid down in the relevant protocol. The Chair of the Appeal Panel may take advice on such matters from the Chair of the Ethics Committee.
- 5.8.9 Attendance by witnesses
- A witness can only be called if the witness has supplied a written statement contained within the parties' submissions to ASPA. Parties wishing to call witnesses must notify the Chair of the Appeal Panel of the names and details of such witnesses not less than 14 days prior to the date fixed for the Hearing. The Chair of the Appeal Panel will only permit the attendance of a witness if the Panel considers that their written statement requires further clarification. The Appeal Panel, the Complainant and Member Complained Against may call witnesses to attend the Hearing. Attendance by a witness may occur via teleconference or Skype. The Chair of the Appeal Panel has discretion to refuse attendance by a witness if it is reasonably believed that such attendance is not relevant and/or will not add any weight to the issue(s) being considered.

5.8.10 Failure to attend the Appeal Hearing

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

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

5.8.11 Notification of decision

- 5.8.11.1 The decision of the Appeal Panel will be notified to the parties in writing and normally within 14 days of the Appeal Hearing.
- 5.8.11.2 If the decision is that the ASPA membership of the Member Complained Against should be withdrawn, the Chair of the Appeal Panel will communicate this decision to the Chair of the Ethics Committee and the President of ASPA who, in turn, will formally notify the Member in writing and implement the Panel's decision, which will be final.

5.9 PUBLICATION

5.9.1 At the discretion of the Executive

The Executive reserves the right to publish the decision of the Professional Conduct and/or Appeal Panel, together with details of any sanction, to such parties and/or associations in such detail as deemed appropriate to the findings and at its discretion.

5.9.2 Notification of withdrawal of membership

The withdrawal of membership under the Professional Conduct Procedure will be published as the Executive considers appropriate and just to do so, and in the interests of public protection.

5.10 EFFECTIVE DATE

This Professional Conduct Procedure will apply to all complaints received by ASPA from 1 July 2011

6. HEADS OF COMPLAINT

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

- 6.1.1 Professional Misconduct
- 6.1.2 Professional Malpractice
- 6.1.3 Bringing the Profession into Disrepute

6.2 PROFESSIONAL MISCONDUCT

- 6.2.1 A finding of professional misconduct signifies that the practitioner has contravened the ethical and behavioural standards that should reasonably be expected of a member of this profession. Misconduct is defined as acting in contravention of the written and unwritten guidance of the profession.
- 6.2.2 A finding of serious professional misconduct is appropriate if the misconduct is of sufficient seriousness to merit a period of suspension of rights of membership and/or the withdrawal of membership of ASPA.

6.3 PROFESSIONAL MALPRACTICE

- 6.3.1 A finding of professional malpractice signifies that the service(s) for which the practitioner is responsible have fallen below the standards that would reasonably be expected of a practitioner exercising reasonable care and skill. Examples of malpractice include, but are not restricted to:
 - 6.3.1.1 Incompetence
 - 6.3.1.2 Negligence
 - 6.3.1.3 Recklessness
 - 6.3.1.4 The provision of inadequate professional services

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

6.4 BRINGING THE PROFESSION INTO DISREPUTE

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

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

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

6.4.2.2 The conduct must have had some connection with a professional role in order to be considered as failing 'in a professional respect'. It ought not to be concerned with matters that can reasonably be viewed as solely personal and private. Conduct 'in a professional respect' is not confined to the pursuit of the profession in question.

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

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