

PSYCHOLOGISTS BOARD OF WA

COMPLAINTS PROCEDURE GUIDELINE NOTES

(These notes are for guidance only, please refer to the Psychologists Act 2005 and obtain your own advice with regard to your specific situation)

TERMS OF REFERENCE

In accordance with Section 49(1) of the Psychologists Act 2005, a Complaints Assessment Committee of the Psychologists Registration Board of Western Australia (the Board) is a Committee appointed by the Board. Its function is:

- ◆ To receive and administer complaints
- ◆ To investigate and gather information about the complaint
- ◆ To present a report regarding the complaint to the Board
- ◆ To monitor trends in complaints and to report to the Board

The Complaints Assessment Committee uses the Psychologist Act (the Act) and accompanying Regulations (the Regulations), the Register of Psychologists in Western Australia (the Register), the APS Code of Ethics (the Code) and any such other Codes as may apply or as determined by the Board.

- ◆ To determine whether complaints received are within the Board's jurisdiction
- ◆ To determine areas of the Act and/or the Regulations and/or the Code and/or other regulations which may apply
- ◆ To make recommendations to the Board for consideration
- ◆ The Complaints Assessment Committee will generally meet monthly
- ◆ To investigate, determine, reject or refer complaints to the Board

COMPOSITION OF THE COMPLAINTS ASSESSMENT COMMITTEE

The Complaints Assessment Committee consists of 4 persons appointed by the Board comprising:

- 2 psychologists (who may be members of the Board)
- A person who is not a psychologist and is not qualified to be registered as a psychologist
- Such other person (including a psychologist or member of the Board) as the Board considers appropriate

The Board will appoint a member of the Complaints Assessment Committee to be the Chairman.

The Registrar may attend the Complaints Assessment Committee meeting in an ex officio administrative capacity only and does not participate in the determination of professional complaint matters. A quorum will be three, with at least one being a psychologist and one a non-psychologist.

STATE ADMINISTRATIVE TRIBUNAL (SAT)

With effect from January 2005 the State Administrative took over some of the disciplinary functions of the Psychologists Board of Western Australia.

The SAT deal with the determination of Inquiries, the appeal process, dispute resolution and handling of professional disciplinary matters.

If the Board decides there is a serious case to answer or where there are serious factual disputes to be resolved the matter will be referred to the SAT.

In the case of less serious matters the Complaints Assessment Committee may refer the complaint **with the consent of the psychologist**. The Complaints Assessment Committee will make recommendations to the Board.

This action will be taken where the Board deems the case for disciplinary action exists but the matter is not serious enough to warrant a referral to the SAT.

COMPLAINT LODGEMENT & FORMAT (Section 51, Regulation 15)

1. A complaint against a registered psychologist shall be submitted, in writing, by any person or organisation being the psychologist's client, client relative or guardian, a fellow professional or other significant third party with full identity and contact details disclosed. Anonymous complaints generally will not be accepted, however, the CAC or the Board Board may exercise discretion to investigate an anonymous complaint if sufficient information is provided and the complaint allegations are of a serious nature.
2. The complaint will only be considered by the Board if within the Board's jurisdiction.
3. The complaint must be in writing by letter either typed or in legible handwriting, signed by the complainant. A complaint transmitted by fax or e-mail must be supported by a signed confirmation soon after.
4. The complaint document must:
 - 4.1 Identify the psychologist clearly.
 - 4.2 Identify the complainant and provide contact details.
 - 4.3 Be clear as to the exact allegations.
 - 4.4 Provide supporting evidence or documents or declarations from other parties, where possible.
 - 4.5 The complaint, where possible, should specify the sections of the Psychologists Act 2005 or APS Code of Ethics that are considered to be breached.
 - 4.6 Advise if the complaint matter is currently before a Court or subject to appeal before a Court, ie Family Law Court.

5. The complainant is advised that the written complaint document will eventually be sent to the psychologist. Therefore, the complainant's identity will be disclosed to the psychologist.
6. The complaint can be submitted on the pro forma at Appendix I, but is not mandatory.
7. Any information provided to or obtained by the Board is potentially subject to Freedom of Information access and parties to the complaint may be given access.
8. The Registrar will administer the complaint as directed by the CAC and the Board only but will not participate in the determination.
9. The Board can instigate complaints of its own accord should it deem necessary.
10. The Board has powers of investigation under the Psychologists Act 2005.

PROCEDURES

1. Complaint Received

The complaint is received in writing. Within approximately 14 days of receipt of a complaint the Registrar notifies the complainant of receipt of the complaint and advises that the matter will be considered by the Complaints Assessment Committee and, after all information is collected, will be determined by either the CAC or the Board.

The Board encourages genuine complaints.

The Board notes that there is no statutory limit on the time within which a complaint must be lodged or disciplinary action can be taken. However, it is obviously preferable that complaints are made in a timely fashion. Indeed a substantial delay between the conduct complained of and the complaint may well prejudice the outcome for a number of reasons.

2. Clarification of the Complaint

2.1 If the Complaints Assessment Committee considers that the complaint is unclear or too general, it instructs the Registrar to write to the complainant seeking written clarification of the complaint.

2.2 If the Complaints Assessment Committee considers that further information needs to be gathered, it instructs the Registrar to write seeking further information from the complainant, psychologist or other sources or may appoint an investigator under Section 70 if warranted.

3. Clarification of the Section of the Act or Regulations or Code to which the Complaint Refers

The Complaints Assessment Committee will attempt to clarify the Section of the Act or Regulations or Code, where possible, to which the complaint refers.

4. Complaints Assessment Committee to determine action required (Section 52)

4.1 The Complaints Assessment Committee is to decide in respect of a complaint:

- (a) if the Committee is of the opinion that the complaint requires action under Division 4 (Interim Orders), to refer it to the Board for action under that Division;
- (b) to reject the complaint under Section 53 if it is of the opinion that the complaint is frivolous, vexatious or without substance;
- (c) in the case of a complaint relating to a disciplinary matter, to deal with the complaint under 4.3 or Section 57; or
- (d) in the case of a complaint relating to an impairment matter, to refer the complaint to the Impairment Review Committee.

4.2 To enable the Complaints Assessment Committee to make a decision under 4.1 the committee may make such inquiries and investigations as it considers appropriate.

4.3 If the complaint relates to a disciplinary matter referred to in Section 47(b)(v), ie failed to comply with an undertaking given to the Board under the Act, the Complaints Assessment Committee may recommend to the Board that it make an allegation to the State Administrative Tribunal based on the complaint that gave rise to the undertaking.

5. The Complaints Assessment Committee may reject certain complaints (Section 53)

5.1 If the Complaints Assessment Committee determines that the complaint is not within the Board's jurisdiction or is being dealt with fully by another statutory body, the Complaints Assessment Committee makes a report and recommendation to the next meeting of the Board. If the Board confirms the Complaints Assessment Committee's determination, the complainant is advised that the complaint is not within the Board's jurisdiction or is being dealt with elsewhere and therefore the Board cannot proceed further.

5.2 Where the complaint is the subject of current Court actions or appeal processes, it is highly likely that dealing with complaint will be deferred until such time as the Court decision is made and advised to the Complaints Assessment Committee or such other time as the Complaints Assessment Committee determined, depending on the case circumstances.

5.3 The Complaints Assessment Committee may at any time before deciding to:

- (a) refer a complaint to the impairment review committee under 4.1(d) above; or

(b) make a recommendation to the Board in accordance with 4.3;

reject a complaint if it is of the opinion that the complaint is frivolous, vexatious or without substance.

5.4 Within 7 days of making a decision under 5.3, the Complaints Assessment Committee is to give written notice to the complainant if any, that the complaint is rejected and in the notice is to give short particulars of the reasons for the decision.

6. The Complaint is submitted to the Person who is the subject of the Complaint

Details of the complaint are submitted to the person who is the subject of the complaint and their response is requested generally within 30 days, or other time as determined by the Complaints Assessment Committee. The person is advised that their response report may very likely be sent to the complainant and will be available should the complainant apply under the Freedom of Information Act.

7. Response Received and Complaint Assessed

The Complaints Assessment Committee assesses the complaint and the reply and any other material received under investigation in the light of the Section of the Act, Regulations, Code which apply and the procedures set down in the Act. The assessment looks at the following:

7.1 Is the complaint vexatious or fictitious or frivolous?

7.2 Does the evidence suggest that the psychologist:

- a) has obtained registration by fraud or misrepresentation;
- b) has been convicted of an offence which, in the opinion of the Board, renders the psychologist unfit to practice as a psychologist;
- c) has been disqualified previously from carrying on the professional practice of psychology;
- d) is addicted to alcohol or any deleterious drug or suffers from any mental or physical disorder to a degree that renders him unfit to carry on the professional practice of psychology;
- e) has been guilty of improper conduct in a professional respect by reason of carelessness, incompetence, impropriety, infamous behaviour, a breach of the provisions of the Act or failed to comply with an undertaking given to the Board;
- f) has breached the APS Code of Ethics or other relevant codes;
- g) the seriousness of the above;

- h) the level of factual dispute between the parties;
- i) whether the penalties available to the Board are adequate or does the conduct complained of, if proven, warrant the invocation of higher penalties available to the State Administrative Tribunal.

8. Natural Justice

Has the process of natural justice been applied in this case procedurally and substantively? The rules of natural justice require impartial adjudicators and fair hearings. Impartiality and fairness must not only be done, but must be seen to be done.

The purpose of the rules of natural justice is to ensure that the decision making process includes:

- ◆ the collection of information
- ◆ balancing of interests
- ◆ an objective appraisal of the facts

The Complaints Assessment Committee members must listen to both sides, avoid bias, act promptly, act within their powers and exercise their powers fairly and independently.

Any Complaints Assessment Committee member who considers they may have a conflict of interest must disclose the position to the Complaints Assessment Committee and not participate in the matter.

9. Referral of the Complaint to the Board for Determination (Section 57)

The Complaints Assessment Committee refers the complaint, with full information, with or without recommendations, to the Board.

10. Determination of the Complaint by the Board (Section 57)

10.1 The Board may determine that there is no case to answer and no further action is warranted. Both parties are informed by the Registrar, together with the reasons behind the Board's decision.

10.2 Where the Board deems that a case is found but that proceeding before the State Administrative Tribunal is not warranted by the nature of the allegations, the Board, after affording to the person concerned the opportunity of giving an explanation to the Board either in person or in writing and the option thereafter of the matter proceedings before the Tribunal, may:

10.2.1 order that particulars entered in the Register in relation to that person be amended;

10.2.2 caution or reprimand that person;

10.2.3 require that person to give an undertaking, either with or without

security, for such a period as the Board thinks necessary:

- (i) in relation to future conduct in a professional respect;
- (ii) to comply with conditions which the Board imposes in relation to his practice;

10.2.4 order the psychologist to pay to the Board a penalty not exceeding \$2,500;

10.2.5 order the psychologist to pay costs and expenses incidental to the proceedings.

10.3 The Board decides the matter should be referred to the State Administrative Tribunal for determination.

10.3.1 Where the State Administrative Tribunal is of the opinion that proper cause exists for disciplinary action, the Tribunal may (Section 78):

- (a) decline to make an order or a requirement under this subsection;
- (b) order the registrar to amend the particulars entered in the register in respect of the person;
- (c) caution or reprimand the person;
- (d) require the person —
 - (i) if the patient agrees, to provide further services to a patient at no cost or at an amount determined by the Tribunal;
 - (ii) to pay, wholly or in part, for further services to be provided to a patient by another psychologist; or
 - (iii) to reduce or refund the amount of any fees paid in respect of services provided to a patient, to such an extent as is determined by the Tribunal;
- (e) order that the person comply with such conditions as the Tribunal may impose on the registration of that person;
- (f) require the person to complete educational or clinical courses, or both, as specified in the order or to practice under supervision as specified in the order for a period specified in the order;
- (g) require the person to seek and implement, within a period specified in the order, advice from a person or persons specified in the order in relation to the management and conduct of the person's practice of psychology, or the specific part or aspect of the practice specified in the

order;

- (h) order the person to pay a penalty not exceeding \$25 000;
- (i) order that the person's registration be cancelled and name be removed from the Register;
- (j) order that the person be suspended from the practice of psychology, either generally or in relation to any specified circumstances or service, for a period, not exceeding 2 years, specified in the order.

11. Failure to comply with disciplinary action (Section 86)

A person must not contravene or fail to comply with an order of the Board given to that person under section 54 or 59.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

12. Powers of Investigation (Sections 69-75)

Following the introduction of the SAT legislation, the Board now has considerable powers of investigation under Sections 69-75 of the Psychologists Act 2005

Full details of the Board's powers can be found in Appendix II attached or the Psychologists Act 2005.

These powers include, but are not limited to:

- Making any inquiries which it considers necessary for the purposes of investigating any matter before the Board.
- Appointing an investigator to carry out inquiries on behalf of the Board (which may include summoning documents, interviewing potential witnesses or requiring a person to answer written questions or the execution of a search warrant).

The powers conferred upon the Board are comprehensive and failure to comply with an investigation can result in a penalty of:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

13. Conciliation Process

- (1) if an attempt is to be made to settle a complaint by conciliation, the Board is to refer the complaint to the Complaints Assessment Committee.
- (2) The complaints assessment committee is to commence conciliation

procedures within 14 days of the complaint being referred to it and may for that purpose —

- (a) cause conferences of the complainant or person affected by the conduct of the respondent and the respondent, or their representatives, to be arranged and to be presided over by a person appointed in accordance with the regulations;
- (b) give advice and make recommendations to assist in the reaching of an agreement; and
- (c) cause the persons concerned, or any of them, either separately or together, to appear before the complaints assessment committee.

The Board may, with the consent of each of the parties to that agreement, by order give effect to an agreement negotiated during conciliation.

If the Board makes an order under conciliation —

- (a) the terms of the agreement reached between the parties referred to in the order are final and binding on those parties; and
- (b) the order may include any action that might have been taken by the State Administrative Tribunal under section 78(1) or 79(1) of the Act.

Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of the conciliation process is not to be used in any subsequent consideration of the complaint by the Board nor, unless that person waives the right to object, is it admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.

Action if conciliation fails

If —

- (a) the conciliation process fails to result in an agreement between the complainant or other person affected by the conduct of the respondent and the respondent;
- (b) the Board is satisfied that the parties are not cooperating with the conciliation process; or
- (c) the Board is not satisfied with the result of the conciliation process,

the Board is to —

- (d) make a summary order under Division 4 of the Act;
- (e) investigate the complaint; or

- (f) make an allegation about the complaint to the State Administrative Tribunal.

APPLICATION FOR REVIEW (Section 100)

A person who is aggrieved by:

- (a) an order under Section 54 or 59; or,
- (b) a decision referred to in Section 99(1) of the Act,

may apply to the State Administrative Tribunal for a review of the order or decision.

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APPENDIX I

PSYCHOLOGISTS BOARD OF WESTERN AUSTRALIA

COMPLAINT PRO FORMA

Complainant Identity

Name: _____

Address: _____

Contact details – Telephone: _____

- Fax: _____

- E-mail: _____

Complaint concerning registered Psychologist

Name: _____

Address: _____

Contact details – Telephone: _____

- Fax: _____

- E-mail: _____

Court Proceedings

Are the matters involved with the complaint currently subject to Court proceedings or appeals, ie Family Court or other? YES/NO

Possible Breaches

Please identify, if possible, specific:

Psychologists Act 2005 - Section(s): _____

Psychologists Act 2005 - Regulation(s): _____

APS Code of Ethics - Section(s): _____

Dates

When did the matters relating to the complaint allegations occur? _____

Details of Complaint

(If insufficient space, attach with any other documents considered relevant.)

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Complainant Signature: _____

Date: _____

Witness: Name: _____

Signature: _____

Date: _____

Powers of Investigation

- (1) The Board may make any inquiry that the Board considers necessary or expedient for the purposes of:—
 - (a) determining any application or any other matter before the Board;
 - (b) determining whether or not a registered psychologist is or has been acting in conformity with the conditions, if any, of his licence and is or has been complying with the requirements of this Act;
 - (c) determining whether any other cause exists that might be considered by the Board a proper cause for disciplinary action;
 - (d) detecting offences against this Act.
- (2) The Board may appoint an investigator to carry out an inquiry and report to the Board.

Investigator's role and powers (Sections 69-75 of the Act)**69 Interpretation**

“appointing body”, in relation to an investigator, means the Board or the complaints assessment committee which appointed the investigator.

70 Investigator

- (1) The Board or the complaints assessment committee may appoint a person to investigate a complaint and report to the Board or committee.
- (2) An appointing body is to issue to each investigator it appoints a certificate of appointment in an approved form.
- (3) A certificate purporting to have been issued under this section is evidence in any court of the appointment to which the certificate purports to relate.

71. Report of investigator

- (1) An investigator is to —
 - (a) within such period as the appointing body requires prepare a report on the investigation, and make recommendations as to the manner in which the complaint should be dealt with; and
 - (b) immediately after preparing the report, provide the appointing body with a copy of the report.
- (2) The investigator is to return his or her certificate of appointment at the time the appointing body is provided with a copy of the report.

72. Powers of investigator

- (1) An investigator may for the purposes of an investigation —
 - (a) enter and inspect the premises named in a warrant issued under section 74(1), and exercise the powers authorized under section 74(2)(b) and (c);
 - (b) require a person to produce to the investigator any document or other thing concerning the investigation that is in the possession or under the control of the person;
 - (c) inspect any document or other thing produced to the investigator and retain it for such reasonable period as the investigator thinks fit, and make copies of a document or any of its contents;
 - (d) require a person —
 - (i) to give the investigator such information as the investigator requires; and
 - (ii) to answer any question put to that person, in relation to the matter the subject of the investigation; and
 - (e) exercise other powers conferred on an investigator by the regulations.
- (2) A requirement made under subsection (1)(b) —
 - (a) must be made by notice in writing given to the person required to produce the document or other thing;
 - (b) must specify the time at or within which the document or other thing is to be produced;
 - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and
 - (d) where the document required is not in a readable format, is to be treated as a requirement to produce —
 - (i) the document itself; and
 - (ii) the contents of the document in a readable format.
- (3) A requirement made under subsection (1)(d) —

- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
- (b) must specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
- (c) may, by its terms, require that the information or answer required—
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to a place specified in the requirement;
 - (iii) in the case of written information or answers be sent or delivered by means specified in the requirement; or
 - (iv) be verified by statutory declaration.
- (4) If under subsection (1)(b) an investigator requires a person to produce any document or other thing concerning the investigation that is in the possession or under the control of the person, the investigator is to inform that person that the person is required under this Act to produce the document or thing.
- (5) If under subsection (1)(d) an investigator requires a person to give information or answer a question, the investigator is to inform that person that the person is required under this Act to give the information or answer the question.
- (6) An investigator is to produce his or her certificate of appointment if requested to do so by a person in respect of whom the investigator has exercised, or is about to exercise, a power under this section.

73. Warrant to enter premises

- (1) If the Board has determined in a particular case that an investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating a complaint that may involve a threat to the physical or mental health of a person the investigator may apply to a magistrate for a warrant to be issued in respect of those premises.
- (2) An application for a warrant must —
 - (a) be in writing;
 - (b) be accompanied by a notice in writing from the Board stating that it has determined in the particular case that the investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating a complaint that may involve a threat to the physical or mental health of a person;

- (c) set out the grounds for seeking the warrant; and
 - (d) describe the premises that are to be entered.
- (3) A magistrate to whom an application is made under this section is to refuse it if —
- (a) the application does not comply with the requirements of this Act; or
 - (b) when required to do so by the magistrate, the investigator does not give to the magistrate more information about the application.
- (4) The information in an application or given to a magistrate under this section must be verified before the magistrate on oath or affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit.

74. Issue of warrant

- (1) A magistrate to whom an application is made under section 73 may issue a warrant, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary for the purpose referred to in that section.
- (2) A warrant under subsection (1) authorises the investigator —
- (a) to enter and inspect the premises named in the warrant;
 - (b) to require a person on the premises to answer questions or produce documents or other things concerning the investigation that are in the possession or under the control of the person; and
 - (c) to inspect documents and other things, and take copies of or extracts from documents, produced in compliance with a requirement made under paragraph (b).
- (3) There must be stated in a warrant —
- (a) the purpose for which the warrant is issued;
 - (b) the name of the person to whom the warrant is issued; and
 - (c) a description of the premises that may be entered.
- (4) A magistrate who issues a warrant is to cause a record to be made of particulars of the grounds that the magistrate has relied on to justify the issue of the warrant.

75. Execution of warrant

- (1) If asked by an occupier, or a person in charge, of premises, the person executing a warrant at those premises is to produce it for inspection.

- (2) A warrant ceases to have effect —
- (a) at the end of the period of one month after its issue;
 - (b) if it is withdrawn by the magistrate who issued it; or
 - (c) when it is executed,

whichever occurs first.

Failure to comply with investigation (Section 88)

- (1) Where under section 72 a person is required to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on him) -

- (a) fails to give that information or answer that question at or within the time specified in the requirement;
- (b) gives any information or answer that is false in any particular; or
- (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the defendant to show –

- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 72, the investigator did not, when making the requirement, inform the defendant that he was required under this Act to give the information or answer the question, as the case may be;
- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 72, the notice did not state that he was required under this Act to give the information, answer the question, or produce the document, as the case may be;
- (c) that the time specified in the requirement did not afford the defendant sufficient notice to enable him to comply with the requirement; or
- (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the inquiry being carried out.

Obstruction of investigator (Section 89)

A person shall not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his powers under section 72.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

Assistance to execute warrant (Section 90)

A psychologist, and any person —

- (a) who engages or employs the psychologist to practice psychology;
- (b) who is engaged or employed by the psychologist in the psychologist's practice; or
- (c) with whom the psychologist practises psychology in partnership, at the premises named in the warrant is to provide all reasonable assistance to an investigator executing the warrant issued under section 74.

Penalty:

- (a) in the case of an individual, \$2 500;
- (b) in any other case, \$10 000.

Incriminating information, questions, or documents (Section 92)

An individual is not excused from complying with a requirement under section 72 on the ground that the answer to a question or the production of a document or other thing might incriminate the individual or render the individual liable to a penalty, but neither—

- (a) an answer given by the individual that was given to comply with the requirement; nor
- (b) the fact that a document or other thing produced by the individual to comply with the requirement was produced, is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for an offence against section 88(1)(b).

Legal professional privilege (Section 93)

Nothing in Part 5 (Disciplinary and Impairment Matters) or Part 6 (offences) of the Act prevents a person from refusing to answer a question, provide information or produce a document or other thing because the answer or information would relate to, or the document or thing contains, information in respect of which the person claims legal professional privilege.