



BY- LAWS ON ETHICS

[revised 2007]

ETHICS

ACKNOWLEDGEMENTS

The Board of Directors wishes to thank the AASW Ethics Implementation Group for reviewing and rewriting the Association's By-Laws on Ethics (2007).

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AASW By-laws on Ethics [Revised 2007]

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1. INTRODUCTION

The AASW is the professional association for qualified social workers in Australia. It has a role in the professional education of social workers, the accreditation of social work education programs and establishing, monitoring and improving practice standards of social workers.

The AASW is committed to ensuring that its members adhere to the highest standards of ethics and professional conduct.

Ethical conduct for social workers means:

- Respect for human dignity and worth;
- Commitment to social justice;
- Competent and humane social work service;
- Professional integrity;
- Practice competence; and
- Responsibility to clients, colleagues, the workplace and the profession.

Ethical misconduct occurs when a member social worker acts outside those principles.

The ethical standards that the AASW expects of its member social workers are enshrined in the AASW's Constitution and are set out in detail in a number of key documents, including:

- (A) the AASW's Code of Ethics which sets out the values, principles and ethical practice responsibilities of the social work profession;
- (B) these By-Laws which set out:
 - how the Ethics Complaints Management Process works. That process is the way that the AASW manages and responds to complaints about unethical practice or conduct of its members (Section 3); and
 - the establishment of the Ethics Education and Policy Development Process (Section 4);
- (C) the Ethics Framework, which is a manual as to how the Code of Ethics and these By-Laws are applied to maintain high ethical standards in the social work profession. It provides more detail on the procedures which are set out in these By-Laws;
- (D) the Practice Standards which set out the standard of practice expected of social workers; and
- (E) the Competency Documents which set out the level of skill and knowledge expected of graduate social workers.

2. MEANING OF TERMS

The terms which are used in these By-Laws are defined below:

'AASW' means the Australian Association of Social Workers.

'Appeal Panel' means a panel of at least 2 members, one of which is designated as the Chair, which hears and determines appeals from a decision of a Hearing Panel. The role and duties of the Appeal Panel is set out in the Ethics Framework.

'BEG' means the Branch Ethics Group which is a group of members who have responsibility in a particular branch for providing initial consultation on matters of ethical conduct and overseeing the Ethics Education and Policy Development Process. The role and duties of the BEG is set out in the Ethics Framework.

'Board' means the national Board of Directors of the AASW.

'Complainant' means a person who makes a complaint against a Social Worker who is a member of the AASW under clauses 3.2(a) or 3.2(b).

'Constitution' means the constitution of the AASW which enshrines the AASW's ethical standards.

'Ethics Complaints Management Process' means the process which the AASW uses to receive and respond to complaints about the unethical practice or behaviour of its members.

'Ethics Education and Policy Development Process' means the process by which the AASW develops policies in relation to ethics and educates its members and the public about professional ethics of social workers.

'Ethics Framework' means the manual which contains the detailed procedures relating to the Code of Ethics and these By-Laws.

'Ethics Officer' means an employee of the AASW who holds the position of Ethics Officer and who is responsible for receiving and managing complaints under the Ethics Complaints Management Process. The role and duties of the Ethics Officer is set out in the Ethics Framework.

'Ethics Panel' means the panel which is appointed by the Board in accordance with the Constitution. The role and duties of the Ethics Panel is set out in the Ethics Framework.

'Ethics Pool' means the group of members which can be called upon by the Ethics Panel to constitute a Hearing Panel or an Appeals Panel. The role and duties of the Ethics Pool is set out in the Ethics Framework.

'Hearing Panel' means a panel of at least 3 members, one of which is designated as the Chair, which hears and determines formal complaints about the practice or conduct of Social Workers who are members of the AASW. The role and duties of the Hearing Panel are set out in the Ethics Framework.

'Member' means a member of the AASW and includes student members of the AASW.

'NEG' means the National Ethics Group which is a group of members who have responsibility nationally for overseeing the Ethics Education and Policy Development Process. The role and duties of the NEG is set out in the Ethics Framework.

'Respondent' means a member of the AASW about whom a complaint has been made to the AASW in relation to their conduct as a Social Worker.

'Social Worker' means a person who is eligible for membership of the AASW.

3. ETHICS COMPLAINTS MANAGEMENT PROCESS

3.1 What is the Ethics Complaints Management Process for?

- (A) The purpose of the Ethics Complaints Management Process is to receive and effectively respond to complaints about alleged unethical practice of members of the AASW.
- (B) The AASW can only respond to complaints about social workers who are members of the AASW. Not all Social Workers are members of the AASW. If a person has a complaint about the unethical practice of a Social Worker who is not a member of the AASW, the AASW can suggest alternative ways of dealing with the complaint.

3.2 Who can make a complaint?

- (A) A person may make a complaint to the AASW about the conduct of a Social Worker who is a member of the AASW if:
 - (i) the person has personal knowledge of the alleged unethical behaviour (**Complainant**); or
 - (ii) the person is a close relative or guardian of a Complainant and:
 - (a) the Complainant does not have capacity to make the complaint (because, for example, they are a minor or due to mental illness); and
 - (b) the chair of the Ethics Panel is reasonably satisfied that the Complainant has agreed to the complaint being made.
- (B) Another member of the AASW (the **AASW Complainant**) may make a complaint to the AASW about the conduct of a Social Worker who is a member of the AASW if:
 - (i) the AASW Complainant becomes aware of the alleged unethical behaviour; and
 - (ii) the AASW Complainant is not a member of the Hearing Panel, Ethics Panel or Appeal Panel.
- (C) The chair of the Ethics Panel or the chair's delegated representative has absolute discretion to determine whether or not a complaint should be accepted from a person who is not the Complainant.

3.3 When can people make a complaint?

- (A) A person may make a complaint in relation to the ethical behaviour of a member of the AASW within 2 calendar years after the date on which the event which is the subject of the complaint occurred.
- (B) The chair of the Ethics Panel or the chair's delegated representative has absolute discretion to determine whether or not a complaint should be accepted after the 2 year period has expired. In making that determination, the chair of the Ethics Panel or the chair's delegated representative may take into account extenuating circumstances including whether the potential Complainant has been unable to make the complaint due to serious illness.

3.4 What are the responsibilities of complainants?

- (A) Complainants must co-operate with the members of the AASW who oversee and administer the Ethics Complaints Management Process.
- (B) Complainants must provide the AASW with complete and honest information in relation to the complaint and should comply with the time limits and procedural requirements set out in these By-Laws.

3.5 What are the responsibilities of social workers/respondents?

- (A) Respondents must co-operate with the members of the AASW who oversee and administer the Ethics Complaints Management Process. The Code of Ethics requires that the AASW members co-operate with the AASW in relation to both investigations about themselves or other members.
- (B) Respondents must comply with any penalty which is imposed as a result of the Ethics Complaints Management Process and should comply with the time limits and procedural requirements set out in these By-Laws.

3.6 How does the AASW ensure the integrity of the Ethics Complaints Management Process?

The AASW is committed to ensuring that the Ethics Complaints Management Process provides an effective response to complaints about unethical behaviour while ensuring that both Complainants and Respondents are dealt with honestly and fairly.

There are a number of ways in which the AASW ensures the integrity of the Ethics Complaints Management Process:

(A) *Natural Justice*

The Ethics Complaints Management Process is not a legal procedure however the rules of natural justice apply to the process to ensure that the decision making procedure is fair.

Procedural fairness in the Ethics Complaints Management Process is ensured by:

- (i) giving both the Complainant and the Respondent Social Worker a fair hearing and an opportunity to present their side of the issue;
- (ii) ensuring that the Hearing Panel, Appeal Panel and others who have a role in the decision making process are free of an interest in the outcome or a biased mind; and
- (iii) requiring that the decision be based on evidence and facts.

(B) *Confidentiality and Privacy*

The AASW adheres to the National Privacy Principles and is committed to ensuring that both Complainant's and Respondent's rights to privacy are protected.

All Complainants, Respondents and the AASW members involved in the Ethics Complaints Management Process should:

- (i) keep the personal information of Complainants and Respondents confidential. Personal information can only be used for purposes directly related to the Ethics Management Complaints Process; and
- (ii) sign a confidentiality agreement before beginning the Ethics Complaints Management Process or before becoming a member of one of the panels. Under that confidentiality agreement those people agree to keep confidential all information about persons involved in the Ethics Complaints Management Process.

(C) *Conflicts of Interest*

The AASW staff and members who have any role in the administration or implementation of the Ethics Complaint Management Process should:

- (i) declare any relationship or association that they have had with either of the parties involved with a complaint;
- (ii) declare if they have any personal knowledge of the complaint; and
- (iii) declare any other interest that they may have in the outcome of the Ethics Complaint Management Process.

The AASW may ensure that conflicts of interest are minimised by undertaking measures such as performing background checks on individuals or asking individuals to give a declaration of private interests.

(D) *Record Keeping*

To ensure the privacy of all people who participate in the Ethics Complaints Management Process, the AASW will use a coding system to record personal details. That coding system will be used on all documents that are used during the Process.

All documents, files and records to do with the Ethics Complaints Management Process will be stored securely and retained for six years.

(E) *Notices*

Notices, documents and information in relation to the Ethics Complaints Management Process will be sent to both the Complainant and the Respondent by ordinary pre-paid post. The AASW may send certain notices by certified mail.

3.7 The process of making and hearing a complaint against a social worker

(A) *Stage One – Making a complaint*

- (i) Who do you make a complaint to?

A person who wishes to make a complaint to the AASW about the ethical conduct of a member of the AASW can make a complaint to either:

- (a) the Ethics Officer; or
- (b) a member of the Ethics Panel.

The procedures for making a complaint and the rights and obligations of the Complainant are set out in more detail in the Ethics Framework.

(ii) Format of Complaints

All complaints under the Ethics Complaints Management Process should be made by completing the Ethics Complaints Management Process Complaints Form which is available in the Ethics Framework.

The chair of the Ethics Panel or the chair's delegated representative has absolute discretion to determine whether or not a complaint should be accepted if it is not in the format of the Ethics Complaints Management Process Form.

(iii) Withdrawing a complaint

A Complainant may withdraw a complaint at any time by giving a written notice to the Ethics Officer.

The chair of the Ethics Panel or its delegated representative will consider the request to withdraw the complaint and will determine, in its absolute discretion, whether or not the complaint should proceed for determination through the Ethics Complaints Management Process. Matters that the chair of the Ethics Panel or its delegated representative may consider in making such a determination include how far the complaint has progressed through the process and whether the Respondent has requested that the determination of the complaint proceed.

(B) *Stage Two – The AASW receives and reviews the complaint*

(i) The Ethics Officer receives and reviews complaints made to the AASW in relation to the conduct of member Social Workers. The chair of the Ethics Panel has absolute discretion to determine whether or not the matter raised in the complaint is one which can be effectively responded to through the Ethics Complaints Management Process.

(ii) If the chair of the Ethics Panel determines that a complaint will not proceed through the Ethics Complaints Management Process, a Complainant may apply to the Ethics Panel to have that decision reviewed.

(iii) If the matter which is the subject of the complaint is being investigated by the police or another agency or is the subject of a proceeding in any court, the Ethics Officer may determine that the Ethics Complaints Management Process be deferred until the completion of that other investigation or proceeding.

(iv) Within 15 working days of receiving the complaint, the Ethics Officer should:

- (a) inform the Complainant whether the complaint can proceed through the Ethics Complaints Management Process; and
- (b) inform the Respondent of the complaint.

(v) The Respondent may respond to the complaint. That response should be provided to the Ethics Officer within 20 working days of receiving information of the complaint from the Ethics Officer.

(vi) If the AASW determines that the complaint can proceed through the Ethics Complaints Management Process, the Ethics Officer will consult with the Ethics Panel to determine whether the complaint will be:

- (a) dismissed, if the Ethics Panel determine (in its absolute discretion) that the complaint has no merit; or

- (b) heard before a Hearing Panel (Stage Three),

and will advise the parties of that decision.

(C) *Stage Three – Hearing*

(i) The Ethics Officer may determine that the complaint should be heard before a Hearing Panel. The purpose of a hearing is to:

- (a) if appropriate, investigate the facts and circumstances in relation to the complaint;
- (b) allow the Complainant and the Respondent to present their position;
- (c) seek further information from the parties and to assess that information; and
- (d) reach a determination in relation to the complaint.

(ii) If it is necessary or helpful to do so, the Hearing Panel may determine that the facts and circumstances surrounding the complaint be investigated. If so, the complaint will be referred to an investigator who is to investigate the complaint and report back to the Hearing Panel with his or her findings.

(iii) Investigators will be drawn from the Ethics Pool and will be those people who have experience in conducting investigations. Investigators will be appointed in accordance with the procedure set out in the Ethics Framework.

- (iv) Both the Complainant and the Respondent may attend the hearing in person and may have a support person attend the hearing with them. The support person cannot be a legal representative and must not act as an advocate for the Complainant or Respondent, unless the Hearing Panel (in its absolute discretion) decides otherwise. The Hearing Panel may determine in its absolute discretion whether a support person can attend a hearing and what role the support person may have in the hearing process.
 - (v) Submissions to the Hearing Panel should be made in person during the hearing. The Hearing Panel may determine (in its absolute discretion) whether to accept any written submissions. The hearing is informal and the parties are not bound by the rules of evidence. The proceedings of the hearing will be recorded.
 - (vi) The Hearing Panel will hear and determine the complaint. The Chair of the Hearing Panel is able to make determination of the procedure in relation to the Hearing. If the Hearing Panel determines that the Respondent has failed to act in accordance with the Code of Ethics, it may impose a penalty on the Respondent.
 - (vii) Both the Complainant and the Respondent will be informed in writing of the outcome of the hearing within 28 working days of the conclusion of the hearing.
 - (viii) The Hearing Panel procedures and the rights and obligations of the Complainant and the Respondent are set out in more detail in the Ethics Framework.
- (D) *Stage Four – Appeal*
- (i) The Complainant or the Respondent may appeal the decision of the Hearing Panel but only on grounds set out in paragraph 3.7(d)(ii) below. That appeal must be made in writing to the Ethics Officer within 20 working days of receiving the determination of the Hearing Panel.
 - (ii) The determination of the Hearing Panel may be appealed on the grounds that:
 - (a) the hearing was not conducted in accordance with the procedures in the Ethics Framework;
 - (b) the Hearing Panel did not afford a party natural justice; or
 - (c) the penalty is inappropriate.
 - (iii) The Appeal Panel will hear and determine the appeal.
 - (iv) The Appeal Panel procedures and the rights and obligations of the Complainant and the Respondent are set out in more detail in the Ethics Framework.
- (E) *Stage Five – Outcome*
- (i) The Complainant and the Respondent will be informed in writing of the final determination from the Ethics Complaints Management Process and the reasons for the determination.
 - (ii) The final determination will either be the outcome of the Hearing Panel’s determination or the Appeal Panel’s determination, whichever is applicable. The Hearing Panel or the Appeal Panel may determine that:
 - (a) the complaint has not been substantiated and that the complaint is dismissed;
 - (b) the complaint has been substantiated but the Respondent’s membership of the AASW is not affected. In that circumstance, the Hearing Panel or the Appeal Panel may determine any penalty which is appropriate. Such other penalties may include:
 - (I) imposing a fine;
 - (II) imposing conditions of practice; or
 - (III) issuing a formal reprimand or warning; or
 - (c) the complaint has been substantiated and the Respondent’s membership of the AASW is affected. In that circumstance, the Hearing Panel or the Appeal Panel may determine that a penalty be imposed including that the Respondent’s membership be suspended or terminated.
 - (iii) The Ethics Officer and the Chair of the Ethics Panel will be informed of the outcome of the final determination.

3.8 Who in the AASW is responsible for the Ethics Complaints Management Process?

- (A) The Board of the AASW has ultimate responsibility for ensuring appropriate standards of ethical behaviour of members of the AASW and for ensuring that the Ethics Complaints Management Process effectively responds to complaints about unethical behaviour.



- (B) The Ethics Complaints Management Process is administered by members who are appointed by the Board to carry out various roles and duties including the:
- (i) Ethics Panel, which oversees the Ethics Complaints Management Process and the Ethics Pool from which members are drawn to form the Hearing Panels and the Appeal Panels, and to conduct investigations; and
 - (ii) Ethics Officer, who receives, reviews and administers complaints during the Ethics Complaints Management Process.
- (C) Those bodies and all members of the AASW carry out their functions in accordance with the procedures and requirements of the Ethics Framework.

4. ETHICS EDUCATION AND POLICY DEVELOPMENT PROCESS

4.1 Policies

- (A) The AASW is committed to educating its members, students, employers, other professions and the community about ethical standards of social work practice.
- (B) Through the NEG's and the BEG's, the AASW drives the ongoing process of developing ethical standards and developing policies to ensure that those standards are:
 - (i) implemented in social work practice; and
 - (ii) disseminated to the community through education and publication.

4.2 National Ethics Group (NEG)

- (A) The Ethics Education and Policy Development Process is overseen at a national level by the National Ethics Group (NEG).
- (B) The role of the NEG, its function and membership are set out in detail in the Ethics Framework.

4.3 Branch Ethics Group (BEG)

- (A) The Ethics Education and Policy Development Process is overseen at a branch level by the Branch Ethics Groups (BEG).
- (B) The role of the BEGs, their function and membership are set out in detail in the Ethics Framework.

ETHICS