

# Australian Psychoanalytical Society Incorporated

## Code of Ethics

### DEFINITIONS AND CONTENTS

#### 1. Definitions

- (1) In the constitution and these bylaws “Code of Ethics and Professional Standards for Psychoanalysts” means the bylaws in this Part.
- (2) Unless the contrary intention appears:
  - (a) “psychoanalyst” includes any member of the Society whether acting as a psychoanalyst or in any other capacity
  - (b) “candidate” means a candidate in the training programme of the Society;
  - (c) “this Code” means the Code of Ethics and Professional Standards for Psychoanalysts; and
  - (d) the Code of Ethics and Professional Standards for Psychoanalysts applies in all respects to psychoanalysts and candidates in training.

#### 2. Contents

The contents of these bylaws are:

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## **PART 1 - ETHICS AND PROFESSIONAL STANDARDS FOR PSYCHOANALYSTS**

### ***Division 1 – Preliminary***

#### **1. Authorising Provision of Constitution**

This Code is made under clause 36 of the constitution.

### ***Division 2 – Ethical Principles***

#### **2. Preamble**

Throughout his writings, Freud speaks of the extent to which the technical imperatives that arise from an understanding of the transference coincide with and support a commitment to certain ethical imperatives. Particularly by virtue of the psychoanalyst's understanding of the transference and counter-transference, he is both technically and ethically obliged not to derive any personal advantage from it, nor must he exploit these feelings in any way. This involves a profound respect for the patient's individuality and separateness: the patient must not be thought the analyst's personal property; the analyst does not decide his fate for the patient; the analyst does not force his ideals upon the patient; it is not the analyst's job to re-mould the patient in accordance with any personal ideals; it is the analyst's job is to seek to arouse in the patient his own powers of initiative. Accordingly, the analyst is ethically obliged to be mindful of the forces in his own mind – his unconscious impulses and longings - which seek to pull him away from his analytic obligations. (See, for example, his comments in "Lines of Advance in Psychoanalytic Therapy" S.E. Vol. 17)

### ***Division 3 – Ethical Responsibilities***

#### **3. Responsibilities to the Patient**

- (1) Psychoanalysts must at all times act in a way they reasonably believe to be in the best interests of their patients.
- (2) Patients must always be treated with respect.
- (3) Psychoanalysts are responsible for setting and maintaining professional

boundaries within the psychoanalytic relationship.

- (4) Psychoanalysts must not wilfully use deceit, threats, verbal cruelty or undue influence for personal gratification or gain.
- (5) Psychoanalysts must not exploit patients, past or present, in a financial, sexual, emotional or any other way.
- (6) Psychoanalysts must not accept or offer payments for referrals, or engage in any financial transactions, apart from negotiating the ordinary fee charged for analysis.
- (7) Sexual relations between the psychoanalyst and the patient can never be acceptable, both during the treatment and afterwards. This includes any form of physical contact, whether initiated by the patient or the psychoanalyst, which has as its purpose some form of sexual gratification, or which may be reasonably construed as having that purpose.
- (8) During the period of treatment and afterwards, psychoanalysts must not propose or enter into any sexual relationship – physical, gestural or verbal – with any member of the patient's family or with others close to the patient.
- (9) Restraint must be exercised with regard to all social contact with the patient during and after treatment.
- (10) Psychoanalysts should, in conjunction with a colleague or colleagues, develop a "psychoanalytic will" (regarding patient contact details, appropriate intervention, and appropriate disbursement of patient records) to be acted upon in the event of the sudden illness, incapacitating event, or death of the psychoanalyst. Notification of the person/s in receipt of these arrangements should be provided by members and candidates to the

Branch and up-dated on an annual basis.

(11) Psychoanalysts must have professional indemnity insurance.

### Confidentiality

(12) Psychoanalysts must treat as confidential all information and records, whether in written or any other form, obtained or kept in the course of their work with patients.

(13) All records should be kept in a secure location.

(14) Psychoanalysts are obliged to be aware of all state and federal privacy regulations regarding the keeping of notes and records.

(15) Patients must not be observed by anyone other than their psychoanalyst without having given informed consent. This applies both to direct observation and to any form of audio or visual transmission or recording.

(16) Psychoanalysts and candidates are responsible for protecting the patient's rights of confidentiality in the training context by ensuring that shared information is disguised appropriately.

(17) Exceptional circumstances may arise that give the psychoanalyst good grounds for believing that the patient will cause serious physical harm to others or themselves. In such circumstances, the breaking of confidentiality may be required, preferably with the patient's permission, or after consultation with other professionals.

(18) Any necessary 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 by the patient.

(19) Agreements about confidentiality continue after the patient's death, unless there are overriding legal considerations.

(20) Special care is required when using specific psychoanalytic situations for reports and publication. The author must have the patient's informed consent should there be any possibility of identification of the patient.

(21) Special care is also required with the use of 'new technologies' such as e-mail contact, Skype consultations etc., whether for patient contact, supervision, or communication between Committee members, or for communication with the Society Executive and the membership.

### Agreements Regarding Treatment

(22) Psychoanalysts are responsible for communicating clearly the terms on which analysis is being offered.

(23) Treatment plans, including suggestions regarding other treatment possibilities as appropriate, will be made jointly with the patient.

(24) When a patient is incapable of giving informed consent, the psychoanalyst must obtain consent from a legally authorised person.

(25) Any publicity material and all written and oral information should reflect accurately the nature of the service offered, and the training, qualifications and relevant experience of the psychoanalyst.

(26) Psychoanalysts must, on becoming aware of any conflict of interest that may arise in relation to a patient, take appropriate action, which may include referral.

### 4. Responsibilities to Candidates

(1) While bylaw 3 relates specifically to patients, psychoanalysts must also be aware they are at all times in a professional relationship with candidates, and must therefore exercise restraint as detailed therein.

(2) Reports and other personal communications about candidates must be treated as strictly confidential and only for the use of those immediately responsible in the training programme.

## 5. Professional Responsibilities

- (1) Psychoanalysts are expected to maintain and develop their competence throughout their professional lives.
- (2) Psychoanalysts are expected to have regular consultation with colleagues, and to use such consultation to develop psychoanalytic skills, monitor functioning and provide accountability for practice.
- (3) Psychoanalysts are expected to monitor their own personal functioning, and seek help, or refrain from conducting analysis, when their personal resources are sufficiently depleted to require this.
- (4) Psychoanalysts must not undertake analysis when their functioning is significantly impaired by personal or emotional difficulties, illness, alcohol, drugs, or any other cause.
- (5) All members and candidates are obliged to abide by the Ethics Code of the Society, and to co-operate with the work of the Ethics Committee.

## 6. Responsibilities to Other Psychoanalysts

- (1) Psychoanalysts must not conduct themselves in their psychoanalysis-related activities in ways that undermine public confidence in either their role as psychoanalysts or in the work of other psychoanalysts.
- (2) Psychoanalysts must not solicit the patients of other psychoanalysts. They have an obligation not to impair the work of their colleagues. Nevertheless, psychoanalysts need to be aware of the patient's right to seek a second opinion.
- (3) Psychoanalysts are also expected, if they become aware of colleagues experiencing personal difficulties that potentially affect their health or practice, to offer support or consultation as appropriate.
- (4) Psychoanalysts who suspect misconduct by another psychoanalyst that cannot be resolved or remedied after discussion

with the psychoanalyst concerned, or where no discussion is possible, should approach the Ethics Committee in accordance with bylaw 15.

## 7. Responsibilities to Other Professionals

- (1) In this subclause, "other professionals" include candidates, supervisees, psychotherapists and students.
- (2) In their relationships with other professionals, psychoanalysts must comply with the ethical principles and responsibilities in this Part (including those to patients and candidates) as appropriate in the circumstances of the relationship.

## 8. Responsibilities to the Wider Community

- (1) Psychoanalysts must take all reasonable steps to be aware of current legislation affecting their work.
- (2) Psychoanalysts must protect the public against incompetent and dishonourable practices, and be prepared to challenge these practices.

## PART 2 – OPERATION OF CODE OF ETHICS AND PROFESSIONAL STANDARDS COMMITTEE

### Division 1 – Preliminary

## 9. Interpretation

In this Part:

- (1) "the Code" means the Code of Ethics and Professional Standards for Psychoanalysts;
- (2) "the Committee" means the Ethics and Professional Standards Committee; and
- (3) in the case of a complaint about the President, any reference in the following bylaws to the President is to be taken to be a reference to the Deputy President.

## 10. Authorising Provisions of Constitution

The bylaws in this Part are made under clauses 56(1) and 36 of the constitution.

### ***Division 2 – Ethics and Professional Standards Committee***

## 11. Functions

- (1) The functions of the Committee are:
  - (a) to offer discussion and advice about matters of ethics and professional conduct to members,
  - (b) to periodically bring forward general ethical issues for consideration by members; and
  - (c) to receive and adjudicate upon complaints concerning the professional conduct of members.
- (2) In paragraph (1)(c) above, the phrase “professional conduct” includes conduct that may affect patients, colleagues, the Society, the Branches or the Institutes, other professionals, members of the public, or the good name of psychoanalysis as a discipline.
- (3) The Committee is guided by the Code, which is the Committee’s responsibility to keep under review.
- (4) Regarding maintenance and handling of all records:
  - (i) The Secretary will keep hard copies of all Records and any material that may be helpful to later Committees and that may assist the future management of ethics matters in the Society.
  - (ii) The Secretary will maintain all records of the Ethics Committee in securely locked storage. Records include minutes, correspondence, working papers, reports, reference material such as academic papers.
  - (iii) All records of the work of the Ethics Committee will be kept in perpetuity via transmission from Secretary to Secretary of the Committee. At the completion of their term of office the Ethics

Secretary will transfer all records and materials to the incoming Ethics Secretary.

(iv) Email and electronic record protocol

Committee members will destroy electronic records of all concluded matters, after ensuring that the Secretary has a complete set of records. At the end of their term of office, Committee members will ensure removal from their computers of all electronic records of Ethics matters, including minutes of meetings.

(v) Printed materials protocol

Committee members will destroy printed records of all concluded matters, after ensuring that the Secretary has a complete set of records. At the end of their term of office Committee members will destroy all printed copies of minutes and other records of the Ethics Committee, after ensuring that the Secretary has a complete set of records.

(5) The Committee will maintain a Manual of complaints investigations, removing all identifying data, detailing procedures and outcome, and noting any areas of the Code which need clarification or review as a result. The Manual is to be stored in a secure location and is for the use of the Ethics Committee at its discretion – with due regard for conflicts of interest, confidentiality, and purpose.

## 12. Composition

- (1) The Committee is a Standing Committee elected each year at the Annual General Meeting of the Society consisting of members of at least five years standing, with long experience of psychoanalytical practice and of the Society.
- (2) No member who has been found guilty of a breach of the Code is eligible to be a member of the Committee.
- (3) Members of the Executive Committee are not eligible to be members of the Committee.

- (4) At least one member of the Committee must be psychiatrically-qualified.
- (5) The Committee consists of:
  - (a) a Chair,
  - (b) a Deputy-Chair
  - (c) a Secretary
- (d) and one ordinary member elected from each Branch (in the event the Branch is unable to provide a representative, an appointment will take place in discussion with the Society Executive)
- (e) the membership of the Committee will be ratified at the Society AGM
- (f) at the discretion of the Committee, one appropriately qualified expert adviser or consultant may be co-opted, and
- (g) at the discretion of the Committee, other members may be invited to join the Committee in order to assist its work.
- (6) The Chair is eligible for re-election annually for a maximum continuous period of five years, and the ordinary members are eligible for re-election annually for a maximum continuous period of four years.
- (7) No member whose term of office has ended can serve in any position on the Committee for at least one year.
- (8) The quorum for a meeting of the Committee is three members.
- (9) All members should ensure that they are in a position to respect the confidentiality of the Committee. For example, this will be impossible if a member goes into analysis, and the member would be obliged to stand down from the Committee. Members of the Committee should consult the Chair when they have doubts in this respect.
- (10) Any member of the Ethics Committee or the Society Executive who considers there may be personal circumstances which potentially interfere with any deliberation should discuss this with the Chair

with a view to stepping aside while the deliberation proceeds.

### **Division 3 – Complaints Investigations and Procedures**

#### **13. Informal Discussion**

Members may approach the Chair or members of the Committee for informal discussion about any situation that involves, or seems likely to involve, questions of ethics or professional conduct. Members are encouraged to consult either the Chair of the Ethics Committee or local Branch representative on the Committee at any time.

#### **14. Complaints**

- (1) Any person or organisation wishing to make a complaint should write to the Chair of the Committee, who will take the matter to the members of the Committee for discussion. The Chair may also proceed to consultation with the President, regarding whether to proceed further in investigating the complaint.
- (2) If the complainant wishes to take the complaint further, he or she must understand that the member who is the subject of the complaint will then be informed of it.

#### **15. Formal Investigation**

- (1) The Committee will appoint two members of the Committee to interview the complainant together. The findings will then be recorded and reported to a meeting of the Committee.
- (2) If the Committee decides that there has been a *prima facie* breach of the Code, the psychoanalyst concerned will be so notified in writing, and furnished with a copy of the complaint. The member will then be invited to a meeting with two or more members of the Committee to respond to the complaint, having first being given the right of veto regarding the Committee's choice of members to interview him or her.
- (3) The Committee is empowered to decide upon another method of investigation to that given in

subclauses (1) and (2) if it considers it appropriate in the circumstances. It may decide to consider written statements by the complainant and by the member who is the subject of the complaint.

- (4) If the complaint is of a sufficiently serious nature, it would be expected that the member who is the subject of the complaint would stand aside from all official positions in the Society (including Branch/Institute positions) while the matter is being considered. Such a decision should be made in consultation with the Chairman of the Committee or the President of the Society, or their representatives.
- (5) A member who is the subject of a complaint is expected to co-operate with the work of the Ethics Committee at its request, and to assist the process of investigating the complaint (in accordance with By-law 5(5) of the Ethics Code).

## **A. Principles of Adjudication**

When the committee meets to consider the initial or subsequent investigations, it must have regard to the following principles:

- (a) the need to maintain the good repute and ethical standards of the Society, and of psychoanalysis as a professional discipline;
- (b) that the complainant should, if possible, be satisfied that a complaint has been adequately dealt with; and
- (c) the need to assist any member against whom a complaint has been upheld to reflect on what has happened, and improve his or her practice in the future, including a recommendation for ongoing supervision of clinical work and any other appropriate professional support.

## **B. Initial Adjudication**

The Committee may after initial consideration:

- (a) dismiss the case, if not satisfied that there has been a breach of the Code;
- (b) if satisfied that there has been a breach of the Code, recommend admonishment, reprimand or censure by the President (in consultation with the Chair of Ethics Committee); or

© invite the subject and complainant to appear before a Special Meeting of the Committee, if it is of the opinion that there may have been a serious breach of the Code which requires further investigation.

## **C. Special Meeting for Hearing and Adjudication**

- (1) Prior to sending notice of the Special Meeting, the Committee will determine the appropriate procedures and time limits for the hearing of the complaint, depending on the circumstances of the case. It will then give at least 14 days notice of the Special Meeting and of the procedures decided upon to the subject of the complaint and to the complainant. Both may be accompanied by one other person, if they wish.
- (2) The Special Meeting will normally proceed as follows:

- (a) the complainant will be invited, and the subject of the complaint will be expected, to appear in person, and may be accompanied by a support person if desired;
- (b) each is entitled to make oral and written statements, to produce documents, and to call witnesses in defence or mitigation;

© each is entitled, subject to the discretion of the Committee, to question the other and any witnesses about the complaint; and

(d) copies of all documents to be produced, either in support of the complaint or in defence, must be supplied not less than ten days prior to the Special Meeting to the Secretary of the Committee, who will forward copies to the Committee, to the complainant and to the subject of the complaint.

(3) At the Special Meeting the Committee will decide how the complaint should be dealt with according to the principles stated in bylaw 15(A).

(4) If the Committee finds that the member who is the subject of the complaint has committed a serious breach of the Code, it may recommend to the Executive Committee one or more of the following:

- (a) admonishment, reprimand or censure by the President
- (b) suspension, requesting the member's resignation or removal from any office of the Society, or from membership of any committee or other body of the Society, or
- (c) suspension, requesting the resignation of the member concerned, or their expulsion from the Society.

(5) The Committee must promptly notify the subject and the complainant in writing of its findings and any recommendations under subclause (4).

(6) The Committee will report in writing to the President and, if appropriate, to the Executive Committee on all complaints that it has investigated.

(7) The Chair will also discuss with the President and Society Executive any other obligations in reporting findings as required by IPA or other professional associations.

## 16. Further Complaints Procedures and Indemnity

(1) Once it has been determined by the Committee that there is a *prima facie* breach of the Code under bylaw 15 or otherwise, the Committee may recommend to the Executive Committee, and the Executive Committee is so empowered, that pending the final

determination of the complaint or until such earlier time as the Executive Committee determines:

- (a) the member who is the subject of the complaint be temporarily suspended from membership by the Executive Committee on behalf of the Society; or
- (b) if the member who is the subject of the complaint has not already voluntarily stepped aside from office, that he or she be temporarily suspended from any office of the Society or from membership of any committee or other body of the Society by the Executive Committee on behalf of the Society.

(2) The fact that the member who is the subject of the complaint has either:

- (a) voluntarily stepped down from an official position pending investigation of a complaint;
- (b) has been formally suspended pending investigation of a complaint; or
- (c) is facing a period of suspension or expulsion from the membership following an adverse determination of the Committee which has been ratified by the Executive Committee,

may be reported with identification of the member to the appropriate Branch Chair and/or to the Society membership on a confidential basis without disclosure of any further details.

(3) The final outcome of a decision by the Executive Committee as to suspension or expulsion of a member will ordinarily be disclosed to the Society membership. Each member agrees to treat this information as confidential and to refrain from disclosing this information to any non-member other than as required by law, or if the information is in the public domain other than by reason of a breach of this bylaw.

(4) Without derogating from the powers of the Ethics and Professional Standards Committee ("Committee") under this Part 3 of the bylaws, at any time after a complaint has been referred to the Committee, the Committee may in its absolute discretion refer the complaint

for investigation and adjudication to the complaints body of any other professional association of which the subject of the complaint is also a member (“External Professional Body”). For example, if the member who is the subject of the complaint is a registered psychologist the Committee may refer the complaint to the Psychologist’s Board. If the member who is the subject of the complaint is a medical doctor, the Committee may refer the complaint to the Office of the Health Commissioner or the Medical Registration Board. Following a determination by an External Professional Body of a referral under this bylaw, the Committee may make a determination under bylaw 16(5).

(5) Pending, as well as after, the determination of an External Professional Body, the Committee must continue to follow the procedures set out in bylaws 15, 16, 17, and 18 and may have regard to but is not bound by the findings of the External Professional Body.

(6) As a condition of membership in the Society, each member agrees to:

release, hold harmless and indemnify now and in the future, the Society, its officers, agents, members and members of the Committee and Executive Committee jointly and severally from any and all claims, liability, costs and expenses whether arising in contract, tort, statute or otherwise. This includes without limitation any legal costs incurred by the indemnified parties in respect of such claims on a full indemnity basis (“Claim”) arising out of:

(i) the institution of, processes relating to, or findings in respect of, investigations of the conduct of the member; any complaint against that member; any referrals of such matters in respect of that member to External Professional Bodies; and the imposition and disclosure of sanctions as a result of such matters;

(ii) the suspension or expulsion of the member by the Executive Committee; and

(iii) any third party action or proceeding relating to any complaint or its subject matter involving such a member, except that this indemnity and release shall not apply to a particular indemnified party to the extent that the Claim is incurred by it because it has acted with gross negligence in carrying out its duties under the Constitution and By-Laws, or it has acted with wilful misconduct. This bylaw 16 (6) is intended to have prospective effect only and does not apply to any complaint notified to the Chair of the Committee before this bylaw came into effect (August 2008).

(7) An offer of resignation by a member who is the subject of a complaint, whether or not it is accepted by the Society, will not require the termination of an investigation of unethical conduct, nor prevent the rendering or disclosure of a decision on such a complaint.

## 17. Right of Appeal

- (1) In this bylaw “appeal” means an appeal on a question of law and not by way of rehearing.
- (2) The complainant may request the President to grant a right of appeal against:
  - (a) a finding by the Committee at a Special Meeting that the subject has not committed a serious breach of the Code; and
  - (b) any recommendation, or failure to make a recommendation, by the Committee following a finding at a Special Meeting that the subject has committed a serious breach of the Code.
- (3) The member who is the subject of a complaint may request the President to grant a right of appeal against:

- (a) a finding by the Committee at a Special Meeting that he or she has committed a serious breach of the Code; and
- (b) any recommendation by the Committee following such a finding.
- (4) Any such request must be made in writing to the President within 21 days of notification of the decision of the Committee. The President, with the advice of two senior members of the Society, will decide whether an appeal should proceed.
- (5) If the President decides not to grant a right of appeal, he or she shall notify the relevant party forthwith.
- (6) If the President decides to grant a right of appeal, he or she shall forthwith notify the parties concerned, and appoint an ad hoc Appeal Committee consisting of two senior members of the Society who have not participated in earlier proceedings relating to the complaint and who have no prejudicial connection with the matters that are the subject of the complaint that would render their involvement inappropriate, together with a third person who is not a member of the Society but someone who is deemed to have professional experience with appeals procedures, who will chair the Appeal Committee.
- (7) The Appeal Committee will determine the procedures to govern the appeal depending on the circumstances of the case, and will give notice of those procedures to the complainant and the subject.
- (8) The Appeal Committee has power to make the findings and recommendations referred to in bylaw 15C(4). Any such findings and recommendations are to be substituted for those of the Committee. Alternatively, the Appeal Committee may remit the complaint for further consideration by the Committee.

## **18. Executive Committee Action on Recommendations**

- (1) The Executive Committee must as soon as practicable by resolution accept and give effect to all recommendations of the Committee under bylaw 15C(4).
- (2) As soon as practicable after the later of:
  - (a) 21 days after the subject and the complainant have been notified of the decision of the Committee in accordance with bylaw 15C(5); and
  - (b) the finalisation of any appeal under bylaw 17;

the Executive Committee must by resolution accept and give effect to all recommendations of the Committee under bylaw 15(4) (not overturned on appeal) or the Appeal Committee under bylaw 17.