



RANZCO

The Royal Australian
and New Zealand
College of Ophthalmologists

Code of Conduct Committee Procedure Policy

Approved by: Board

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A. GENERAL

1. POLICY ADOPTION

- 1.1 This Policy should be read in conjunction with the *Complaints Resolution Policy* and the *Code of Conduct* (“**Code**”).
- 1.2 The Board have adopted this Policy to govern the procedure of the Code of Conduct Committee (“**Committee**”) when determining Complaints referred to it pursuant to the Complaints Resolution Policy (“**Matters**”).
- 1.3 This Policy is a Bylaw for the purpose of the Constitution.

2. POLICY PURPOSE

- 2.1 The purpose of this Policy is to establish:
 - 2.1.1 a timely, fair and transparent mechanism for determining Matters; and
 - 2.1.2 a reporting mechanism to assist the ongoing development of policy, procedure and conduct within the College.
- 2.2 This Policy does not prevent the College from seeking to resolve alleged breaches of the Code informally or pursuant to other approved college Policy and procedures.

3. RESPONSIBILITIES

- 3.1 The CEO:
 - 3.1.1 is responsible for the implementation of this Policy;
 - 3.1.2 will ensure that the Committee receives any and all necessary secretarial support; and
 - 3.1.3 may, at the request of the Committee and when reasonably required, engage legal advisors to provide legal advice and assistance to the Committee in connection with the implementation of this Policy.
- 3.2 The Committee is responsible for:
 - 3.2.1 all actions conducted by them pursuant to this Policy;
 - 3.2.2 making any request to the CEO for legal advice and assistance pursuant to **paragraph 3.1.3**.
- 3.3 The responsibilities of the CEO and the Committee as specified in **paragraph 3.1 and 3.2** shall not be delegated unless otherwise specified under this Policy or approved by the Board.
- 3.4 Any advice received by the Committee from a legal advisor engaged pursuant to **paragraph 3.1.3** shall remain at all times confidential and privileged and shall not be disclosed to any person by the Committee or the College except under compulsion of Law or as otherwise directed by the Board.
- 3.5 The College may engage external assistance as and when considered necessary to assist with implementation of this Policy.

4. COMMITTEE JURISDICTION, STATUS OF REFERRING BODY AND THE ONUS OF PROOF

- 4.1 The Committee shall, pursuant to this Policy, determine Matters concerning:
- 4.1.1 alleged breaches of the Code as specified in a Complaint; and
 - 4.1.2 views expressed by the Referring Body as to possible breaches of the Code.
- (“Code Allegations”)
- 4.2 Where a Matter contains a mixture of allegations, the Committee shall only determine the Code Allegations.
- 4.3 In Matters where a Code Allegation arises under **paragraph 4.1.2**, the Referring Body shall be the Complainant for the purpose of this Policy.
- 4.4 In Matters where Code Allegations arise under both **paragraphs 4.1.1 and 4.1.2**, there will be two Complainants namely; the Complainant named in the Matter and the Referring Body.
- 4.5 The Complainant bears the onus of proof when establishing a breach of the Code by the Respondent.
- 4.6 Given the seriousness of a breach of the Code, the standard of proof shall be proof beyond Reasonable Doubt.
- 4.7 Notwithstanding **paragraphs 4.1.2 and 4.3**, any views expressed by the Referring Body shall not be taken to be a settled or final view. Any decision to refer any Complainant to the Code of Conduct Committee shall be taken to have occurred due to a lack of relevant jurisdiction on the Referring Bodies part, not an acknowledgment or statement concerning the veracity of the relevant view as to any possible breach.

5. THE COMMITTEE

- 5.1 The Committee is a standing Committee of the College with Members appointed by the Board.
- 5.2 The Committee comprises between six (6) and nine (9) Members including the Chair.
- 5.3 The Committee quorum shall be half the Members.
- 5.4 Decisions by the Committee concerning Matters and Code Allegations shall be by a clear majority of Members.
- 5.5 The Chair will not have the deciding vote in a tied decision, so discussion must continue until a clear majority decision is reached.
- 5.6 The Committee may meet in person or by telephone to conduct meetings.
- 5.7 All Committee meetings dealing with Matters shall be minuted. Those minutes shall not be disclosed except in accordance with this Policy and the Law.
- 5.8 The appointment of a Member pursuant to **paragraphs 5.1 and 10.6.2.2** shall be final and not subject to Reassessment of any form.

- 5.9 Each Committee member must treat all information received in connection with this Policy in the strictest confidence and must not disclose such information except in accordance with this Policy or as otherwise compelled by Law. A breach of confidence shall be a breach of this Policy and may constitute a breach of the Law.

6. PROCEDURAL OVERVIEW

- 6.1 This Policy provides an approved mechanism for determining Matters.
- 6.2 The Chair will accept referrals of Complaints from a Referring Body concerning Matters on behalf of the Committee.
- 6.3 The Committee shall determine Matters in accordance with this Policy.
- 6.4 The Committee shall endeavour to deliver any Code Determination and Recommendation within six (6) months of the referral. Where, in the reasonable opinion of the Committee, the Code Determination requires further time, the Committee shall advise the CEO and the CEO shall advise the Complainant and Respondent in writing as soon as practicable.
- 6.5 The Committee process can be stopped at any stage by written notice from:
- 6.5.1 the Complainant to the CEO confirming that the Complainant withdraws the Matter; or
 - 6.5.2 the Referring Body confirming that a Code Determination is no longer required.
- 6.6 Notwithstanding notice pursuant to **paragraph 6.5.1 or 6.5.2**, the Committee may investigate the Matter where the Board resolves, it is in the College's best interest for the Committee to do so.
- 6.7 All Committee procedures concerning the determination of Matters and Code Allegations shall be conducted always with procedural fairness and natural justice.
- 6.8 The Committee may only depart from this Policy to ensure procedural fairness and natural justice. This discretion is constrained and may only be exercised in consultation with and having regard to the opinion of the CEO in any given case.
- 6.9 The Committee shall act independently but always in compliance with this Policy.
- 6.10 The Committee does not possess any power in respect of the determination of Matters and Code Allegations other than that expressly specified in this Policy.
- 6.11 Committee directions made pursuant to this Policy are final and not subject to adjustment or Reassessment of any form.
- 6.12 The rules of evidence shall not apply.

7. RECEIPT OF REFERRAL

- 7.1 Within seven (7) days of acceptance of a referral pursuant to **paragraph 6.2**, the Chair shall:
- 7.1.1 by written notice to the Referring Body, acknowledge receipt of the referral;
 - 7.1.2 by written notice through the CEO:

- 7.1.2.1 notify the Complainant and the Respondent that the Committee has assumed conduct of the Matter and that the Matter shall be dealt with in accordance with the Policy;
- 7.1.2.2 provide the Complainant and the Respondent with a copy of documents comprising the referral as specified in **paragraphs 18.5.1.1 to 18.5.1.4** of the Complaints Resolution Policy (the “Referral Material”)
- 7.1.2.3 direct that Respondent submit the Respondent’s Initial Response to the CEO in accordance with **paragraph 8** within twenty-eight (28) days of the date of the notice.

8. RESPONDENT’S INITIAL RESPONSE

- 8.1 The Respondent’s Initial Response must in respect of each and every Code Allegation:
 - 8.1.1 admit the alleged breach; or
 - 8.1.2 deny the alleged breach.
- 8.2 Where the Respondent denies an alleged breach of the Code in the Respondent’s Initial Response, the Committee Procedure will proceed on the basis that the denied allegation must be determined by the Committee in accordance with this Policy.
- 8.3 A Code Allegation shall be deemed admitted by the Respondent where the Respondent:
 - 8.3.1 fails to deny a Code Allegation in the Respondent’s Initial Response; or
 - 8.3.2 fails to lodge the Respondent’s Initial Response in accordance with **paragraph 7.1.2.3**.
- 8.4 Where a breach is admitted by the Respondent in the Respondent’s Initial Response or where there is a deemed admission pursuant to **paragraph 8.3**, no submission shall be required to be made by the Respondent in relation to the admitted breach except as provided for pursuant to **paragraph 26.2.3.2**.
- 8.5 The Code Determination shall detail all relevant Code Allegation admitted by the Respondent.

9. THE FIRST MEETING

- 9.1 The Committee shall convene as soon as practicable after the date for the lodgement of the Respondent’s Initial Response has elapsed but in any event, not later than forty-two 42 days of the notice given in accordance with **paragraph 7.12 (the First Meeting)**
- 9.2 The First Meeting may occur in tandem with other meetings of the Committee.
- 9.3 During the First Meeting the Committee shall:
 - 9.3.1 manage any relevant conflict of interest in accordance with **paragraph 10**; and
 - 9.3.2 subject to relevant management of any conflict of interest, determine the Initial Direction.

10. CONFLICT OF INTEREST

- 10.1 Not less than seven (7) days prior to the First Meeting, the CEO shall by written notice to the Complainant and the Respondent:
 - 10.1.1 confirm the identity of the Members;
 - 10.1.2 confirm that if the Complainant or Respondent have a reasonable belief that a Member may be in breach of the Conflict of Interest Policy, they must immediately serve a Concerns Notice and the Concerns Information on the College in accordance with the Conflict of Interest Policy.
- 10.2 Subject to receipt of a Concerns Notice, which shall be dealt with in accordance with the Conflict of Interest Policy, at the First Meeting the Committee shall identify any real, potential or perceived conflict of interest associated with the Committee's determination of the Matter.
- 10.3 When determining the existence of and managing any relevant conflict of interest, the Committee must have regard to the definitions, substance and intent of the Conflict of Interest Policy.
- 10.4 Any Member with a relevant conflict of interest will stand down and shall have no further involvement with the Matter.
- 10.5 Notwithstanding a conflict of interest of a given Member, the balance of the Committee shall proceed with its consideration and determination of a Matter unless it fails to achieve quorum in accordance with **paragraph 5.3**.
- 10.6 If at any time prior to the determination of the Matter:
 - 10.6.1 a Member stands down from the Committee due to any reason, including, but not limited to, a relevant conflict of interest; and
 - 10.6.2 quorum of the Committee is unsatisfied in accordance with **paragraph 5.3**:
 - 10.6.2.1 the Matter is immediately stayed;
 - 10.6.2.2 within fourteen (14) days of the stay pursuant to **paragraph 10.6.2.1**, the Board shall appoint a replacement Member;
 - 10.6.2.3 the replacement Member appointed pursuant to **paragraph 10.6.2.2** shall take the place of the departing Member and shall on and from the date of appointment be taken to be a Member for the purpose of this Policy; and
 - 10.6.2.4 the Matter shall continue on and from the date of the appointment of the replacement Member in accordance with this Policy subject to any resulting and commensurate adjustment to specified timeframes as reasonably determined by the Committee or the Board.
- 10.7 For the purpose of the Conflict of Interest Policy, all work of the Committee is College Business.
- 10.8 The Chair shall not be deemed to be relevantly conflicted simply by virtue of their involvement, if any, in any deliberations of the Referring Body. Should the Chair be

subject to an alleged conflict of interest on another basis, that basis shall be determined by reference to the Conflict of Interest Policy.

11. INITIAL DIRECTION

- 11.1 Subject to any delay occasioned by the management of a conflict of interest in accordance with **paragraph 10**, at the First Meeting, the Committee shall, subject to **paragraph 21.2**, consider the Referral Material and the substance of the Respondent's Initial Response and determine the date fixed for the following Matter steps:
- 11.1.1 lodgement of the Complainant's Submissions in accordance with **paragraphs 12 and 13** within thirty-two (32) days of the First Meeting; and
- 11.1.2 the date for the Second Meeting (which shall be not more than fourteen (14) days after the date for lodgement of the Complainant's Submissions).
- ("Initial Directions")
- 11.2 Within five (5) days of the making of the Initial Direction, the Committee shall by written notice through the CEO, inform the Complainant and Respondent of the Initial Directions.

12. WRITTEN SUBMISSIONS (GENERAL)

- 12.1 All written submissions must be lodged with the CEO strictly in accordance with dates specified in any Committee direction made pursuant to this Policy.
- 12.2 Within five (5) days of receipt of a submission lodged in accordance with a Committee direction, the CEO shall by written notice:
- 12.2.1 provide the lodging Party with confirmation of receipt of the submission; and
- 12.2.2 provide a copy of the submission to:
- 12.2.2.1 each Committee Member; and
- 12.2.2.2 the other Party;
- 12.3 Any submission received by the CEO after the required date for lodgement, as specified in a relevant Committee direction, shall not be accepted by the CEO and shall not be considered by the Committee during the determination of the Matter.
- 12.4 Any dispute concerning the date of lodgement of any submission shall be determined by the CEO having regard to all information in their possession at the time of the alleged lodgement and the CEO's decision shall be final and not subject to Reassessment of any form.
- 12.5 The Party asserting the lodgement of any submission bears the onus of proof when establishing the successful lodgement of the submission in accordance with this Policy.
- 12.6 The CEO shall have regard to **paragraph 35** when determining any dispute as to the date of lodgement of submissions.
- 12.7 Any determination pursuant to **paragraph 12.4** shall be notified by the CEO to the Complainant and the Respondent, within five (5) days of the determination.

13. COMPLAINANT'S SUBMISSIONS

- 13.1 The Complainant's Submissions shall:
- 13.1.1 detail all arguments of the Complainant in support of each and all of the Code Allegations.
 - 13.1.2 identify any and all evidence relied upon within the Referral Material; and
 - 13.1.3 include any evidence not included within the Referral Material that the Complainant sights in support of the Code Allegations.
- 13.2 The Complainant shall not be entitled to make further, other or additional submissions other than those specified in **paragraph 13.1**.

14. THE SECOND MEETING

- 14.1 The Committee shall at the Second Meeting consider the following only with a view to determining any Code Allegations to be dismissed:
- 14.1.1 the Code;
 - 14.1.2 subject to **Paragraph 21.2** the Referral Material;
 - 14.1.3 the Respondent's Initial Response; and
 - 14.1.4 the Complainant's Submissions.
- 14.2 If the Committee determine that some or all of the Code Allegations have not been established, the Committee shall make a direction dismissing on that basis:
- 14.2.1 the relevant Code Allegations; and
 - 14.2.2 where none of the Code Allegations have been made out, the Matter.
- 14.3 Where the Matter is not dismissed in accordance with paragraph 14.2.2, the Committee shall direct:
- 14.3.1 that the Respondent lodge the Respondent's Submissions in accordance with **paragraphs 12 and 15** within thirty-two (32) days after the Second Meeting; and
 - 14.3.2 the date for the Third Meeting (which shall be not more than fourteen (14) days after the date for lodgement of the Respondent's Submissions).
- (“**Further Directions**”)
- 14.4 Within five (5) days of the making of the Further Directions, the Committee shall by written notice through the CEO, inform the Complainant and the Respondent of the Further Directions.

15. RESPONDENT'S SUBMISSION

- 15.1 The Respondent's Submission shall:
- 15.1.1 detail all arguments of the Respondent in support of each and all denials of the surviving Code Allegations;

- 15.1.2 identify any and all evidence relied upon within the Referral Material and the Complainant's Submission;
 - 15.1.3 include any evidence not included within the Referral Material and the Complainant's Submission that the Respondent relies upon in its denial of the surviving Code Allegations.
- 15.2 Subject to **paragraph 16.4.3**, the Respondent shall not be entitled to make any further, other or additional submissions.

16. THE THIRD MEETING

- 16.1 Subject to **paragraph 16.4**, the Committee shall at the Third Meeting consider the following only and determine all surviving Code Allegations:
- 16.1.1 the Code;
 - 16.1.2 subject to **paragraph 21.2** the Referral Material;
 - 16.1.3 the Respondent's Initial Response;
 - 16.1.4 the Complainant's Submissions; and
 - 16.1.5 the Respondent's Submission.
- 16.2 Subject to **paragraph 16.5**, if the Committee determines that a breach of the Code has occurred, it shall within five (5) days, by written notice through the CEO, provide its Recommendation and Code Determination to the Board.
- 16.3 If the Committee determine that some or all of the Code Allegations have not been established, the Committee shall make a direction dismissing on that basis:
- 16.3.1 the relevant Code Allegations;
 - 16.3.2 and where none of the Code Allegations have been made out, the Matter.
- 16.4 If the Committee are unable to determine a Code Allegation without the aid of expert opinion concerning an issue in the Matter, the Committee shall direct that:
- 16.4.1 a named, appropriately qualified and experienced person, as determined by the Committee, (the "**Expert**") be provided with a copy of the Code, Relevant RANZCO policy, the Referral Material, the Respondent's Initial Response, the Complainant's Submissions and the Respondent's Submission (the "**Brief**") and be requested to provide a written opinion concerning a specified issue (the "**Expert Opinion**"). The Expert Opinion shall include a notation consistent with **paragraph 21.2**;
 - 16.4.2 the Expert Opinion shall, by written notice through the CEO, be provided to the Respondent within five (5) days of receipt of by the Committee;
 - 16.4.3 that the Respondent is to lodge any Respondent's Further Submission within thirty-two (32) days of the date of the notice referred to in **paragraph 16.4.2** in accordance with **paragraphs 12 and 17**; and
 - 16.4.4 the date for the Final Meeting (which shall be not more than fourteen (14) days after the date for lodgement of the Respondent's Further Submission).

- 16.5 In a Matter where the Committee determines that a breach of the Code has occurred but one or more Code Allegations has yet to be resolved, given the operation of **paragraph 16.4**, then the notice to be given pursuant to **paragraph 16.2** shall not be given until all Code Allegations have been determined unless Committee determine at their discretion that urgent notice to the Board is required.
- 16.6 Within 5 days of the Third Meeting, the Committee shall by written notice through the CEO, inform the Complainant and the Respondent of the following:
- 16.6.1 any direction pursuant to **paragraph 16.3**;
- 16.6.2 any direction pursuant to **paragraph 16.4**.

(Second Further Directions)

17. RESPONDENT'S FURTHER SUBMISSION

- 17.1 The Respondent's Further Submission is intended to provide an opportunity for the Respondent to reply concerning any adverse opinion expressed in the Expert Opinion.
- 17.2 The Respondent's Further Submission shall:
- 17.2.1 detail all arguments of the Respondent made in opposition to the Expert Opinion;
- 17.2.2 identify any and all evidence relied upon within the Code, the Referral Material, the Respondent's Initial Response, the Complainant's Submissions, the Respondent's Submission and the Expert Opinion; and
- 17.2.3 include any evidence not included within the Code, the Referral Material, the Respondent's Initial Response, the Complainant's Submissions and the Respondent's Submission that the Respondent relies upon in opposition to the Expert Opinion;
- 17.2.4 not include any comments other than a reply made in opposition to the Expert Opinion.
- 17.3 To the extent to which the Respondent's Further Submission makes commentary other than in opposition to the Expert Opinion, those comments shall not be considered by the Committee.

18. FINAL MEETING

- 18.1 The Committee shall at the Final Meeting consider only the following to determine all surviving Code Allegations:
- 18.1.1 the Code;
- 18.1.2 subject to **paragraph 21.2** the Referral Material;
- 18.1.3 the Respondent's Initial Response;
- 18.1.4 the Complainant's Submissions;
- 18.1.5 the Respondent's Submission the Expert Report; and
- 18.1.6 the Respondent's Further Submission.

18.2 If the Committee determines that a breach of the Code has occurred, it shall within five (5) days, by written notice through the CEO, provide its Recommendation and Code Determination in respect of that breach to the Board.

18.3 If the Committee determine that some or all of the Code Allegations have not been established, the Committee shall make a direction dismissing on that basis:

18.3.1 the relevant Code Allegations;

18.3.2 and where none of the Code Allegations have been made out, the Matter.

(“**Third Further Directions**”)

18.4 Within five (5) days of the making of the Third Further Directions, the Committee shall by written notice through the CEO, inform the Complainant and the Respondent of the Third Further Directions.

19. DISMISSAL OF CODE ALLEGATION OR MATTER

19.1 The Committee may dismiss a Code Allegation or Matter pursuant to **paragraph 14.2, 16.3 or 18.3**:

19.1.1 after consideration of the material in **paragraphs 14.1, 16.1 or 18.1** respectfully; and

19.1.2 in the case of a Code Allegation, where a Code Allegation has not been proved beyond Reasonable Doubt; or

19.1.3 in the case of a Matter, where all Code Allegations have not been proved beyond Reasonable Doubt.

19.2 If the Committee dismisses a Code Allegation or Matter pursuant to **paragraph 14.2, 16.3 or 18.3**:

19.2.1 it shall not make a Code Determination concerning the relevant Code Allegation or Matter;

19.2.2 its decision shall not require Board acceptance or approval;

19.2.3 its decision is not evidence that the Complaint was trivial, made without reasonable basis or for vexatious or ulterior purpose;

19.2.4 its decision shall be final and not subject to Reassessment of any form; and

19.2.5 the Complaint may not be raised against the Respondent in any subsequent Complaint or Matter.

20. CODE VIOLATION

20.1 The Committee may only find that a Code Allegation has been made out and that a breach of the Code has occurred:

20.1.1 after consideration of the material in **paragraphs 16.1 or 18.1** as the case may be; and

20.1.2 where a Code Allegation has been proved beyond Reasonable Doubt; or

- 20.1.3 where the Code Allegation has been admitted pursuant to **paragraphs 8.1.1 and/or 8.3.**
- 20.2 If the Committee find that a Code allegation has been made out and that a breach of the Code has occurred:
 - 20.2.1 it shall prepare a written Code Determination and associated Recommendation in accordance with **paragraph 22;**
 - 20.2.2 its Recommendation shall require adoption by the Board for the Code Determination to become a binding College determination.

21. DECISION MAKING AND THE REASONABLE RANZCO OPHTHALMOLOGIST

- 21.1 Material to which the Committee may have regard when determining a Code Allegation pursuant to this Policy are exhaustive unless expressly specified otherwise in this Policy.
- 21.2 The Committee shall attach no weight to view expressed by the Referral Body in the Code Concerns Notice and shall treat the view as a mere submission. The Committee must at all times make any relevant determination in accordance with this Policy based on the available evidence. Nothing in this paragraph shall however be taken to preclude the Committee from adopting in part or in full a submission of the Referring Body or referring to evidence cited by the Referring Body in any submission.
- 21.3 Where the Committee consider themselves compelled to objectively substantiate a breach of this Code when impugned conduct is novel or its merits are the subject of reasonable disagreement, the Committee shall have regard to the conduct expected by the College of the Reasonable RANZCO Ophthalmologist.
- 21.4 The Committee, as the College' primary adjudicators of Member conduct, shall determine the conduct of the Reasonable RANZCO Ophthalmologist:
 - 21.4.1 having regard to RANZCO policy and their collective wisdom, training, knowledge and experience; or if considered reasonably justified by the Committee
 - 21.4.2 with the assistance of an Expert Opinion obtained pursuant to **paragraph 16.4.1.**
- 21.5 Where the Committee obtains an Expert Opinion pursuant to **paragraph 16.4.1** and that opinion is adverse to the Respondent, **paragraph 17** shall apply.
- 21.6 The Committee may, but are not obliged to adopt any Expert Opinion when determining the conduct of the Reasonable RANZCO Ophthalmologist.
- 21.7 Where the Committee determine the conduct expected of the Reasonable RANZCO Ophthalmologist, that determination shall be final and not subject to Reassessment of any form.

22. CODE DETERMINATION & RECOMMENDATION

- 22.1 The Code Determination must specify:
 - 22.1.1 all material considered by the Committee in accordance with this Policy;

- 22.1.2 each Code Allegation;
- 22.1.3 each breach of the Code including admitted breaches pursuant to **paragraphs 8.1.1 and/or 8.3;**
- 22.1.4 the Committee reasons for the finding of each and every breach of the Code including reference to relevant considered material; and
- 22.1.5 based on the nature of the breach(es), a finding of:
 - 22.1.5.1 Unsatisfactory Conduct;
 - 22.1.5.2 Misconduct; or
 - 22.1.5.3 Other finding.
- 22.2 The Code Determination shall not include findings of fact beyond those relevant to determination of a Code Allegation and to support a finding pursuant to **paragraph 22.1.5.**
- 22.3 The Code Determination shall be considered a decision of the Committee for the purpose of the Reconsideration, Review and Appeals Policy.

23. RECOMMENDATION

- 23.1 The Recommendation shall state:

“The Code of Conduct Committee recommend that the Board adopt the attached Code Determination in [identify Matter] as the College determination in that Matter.”
- 23.2 The Recommendation may also include any addition recommendation associated with the Matter that the Committee consider reasonably necessary or justified.

24. NOTICE OF CODE DETERMINATION AND RECOMMENDATION FOLLOWING THIRD OR FINAL MEETING

- 24.1 The Committee Shall, within **five (5) days** of the making of any Code Determination and Recommendation, by written notice through the CEO:
 - 24.1.1 advise the Complainant and the Respondent that the Matter has been determined by the Committee and referred to the Board in accordance with this Policy;
 - 24.1.2 provide the Code Determination and Recommendation to the Board Chair.

25. THE BOARD

- 25.1 Within fourteen (14) days of receipt of a notice pursuant to **paragraph 24.1.2 or 27.4**, the Board shall:
 - 25.1.1 convene to consider the Matter; and
 - 25.1.2 in the case of notice pursuant to **paragraph 24.1.2**, subject to **paragraphs 25.2 and 25.3**, adopt the Recommendation; or
 - 25.1.3 in the case of notice pursuant to **paragraph 27.4**, adopt the Recommendation.

- 25.2 The Board may reject the Recommendation if it determines that the Code Determination has not been made in accordance with College policy or the Constitution.
- 25.3 If the Board rejects the Recommendation pursuant to **paragraph 25.2**, the Board shall, by written notice via the CEO, remit the Matter back to the Committee for reconsideration to ensure consistency with College policy and the Constitution and to prepare a fresh Code Determination and Recommendation.
- 25.4 Any fresh Code Determination and Recommendation shall:
- 25.4.1 apply in place of the original Code Determination and Recommendation; and
 - 25.4.2 be communicated back the Board pursuant to **paragraph 24.1.2**
- 25.5 Notwithstanding adoption of a Recommendation, the Board may, at its absolute discretion, reject a Committee finding of Misconduct or Unsatisfactory Conduct, as expressed in the Code Determination and apply a different finding in its place.
- 25.6 The Board's decision to reject or adopt a Recommendation or finding pursuant to this paragraph shall be binding and final and not subject to Reassessment of any form.

26. BOARD NOTIFICATION

- 26.1 Within five (5) days of a meeting the Board pursuant to **paragraph 25.1**, or any subsequent meeting of the Board to consider any fresh Code Determination and Recommendation, the Board shall by written notice via the CEO, notify the Complainant and the Respondent on a confidential basis of any relevant adoption or rejection of a Code Determination.
- 26.2 Where a Code Determination has been adopted, the notice pursuant to **paragraph 26.1** shall:
- 26.2.1 include a copy of the Code Determination;
 - 26.2.2 inform the Respondent that the Code Determination shall become a binding and final determination of the College within twenty-eight (28) days (the "Application Period") of the notice unless the Respondent lodges a valid Application pursuant to the Reconsideration, Review and Appeals Policy and paragraph 27 challenging the Code Determination; and
 - 26.2.3 inform the Respondent that:
 - 26.2.3.1 if a valid Application is not made by the Respondent pursuant to the Reconsideration, Review and Appeals Policy within the Application Period, then the Code Determination shall be referred to the Council, after the expiry of the Application Period, for determination of the relevant sanction to be imposed;
 - 26.2.3.2 the Respondent must lodge any relevant submission as to the appropriate sanction to be imposed by the Council within twenty-one (21) days from the date of the expiry of the Application Period.
- 26.3 Any submission lodged pursuant to paragraph 26.2.3.2 should include any relevant submissions the Respondent wishes to make in regard to the current breach of the Code and successive breaches of the Code where a previous a breach of the Code

has already been recorded against the Respondent. No other submissions can be made. Any other submissions shall not be considered.

- 26.4 Where a Code Determination has been rejected, the notice pursuant to **paragraph 26.1** shall confirm that the Code Determination has been referred back to the Committee pursuant to **paragraph 24.3**.

27. CHALLENGING A CODE DETERMINATION

- 27.1 Notwithstanding **paragraph 26.2.2** or any other College Policy:

27.1.1 any Application seeking Reassessment of a Code Determination shall be an Application against the Committee making the Code Determination not the Board adopting the Code Determination;

27.1.2 for the purpose of calculating the time for Reassessment under the Reconsideration, Review and Appeals Policy, the Code Determination shall not be taken to have been made by the Committee until it is adopted by the Board.

- 27.2 Where the Respondent lodges a valid Application pursuant to the Reconsideration, Review and Appeals Policy challenging the Code Determination, the Matter shall be stayed pending the outcome of the Application.

- 27.3 Where the Respondent successfully applies to have some or all of a Code Determination overturned, the adoption by the Board of that portion of the Code Determination shall have no effect as and from the date of the successful Application.

- 27.4 Upon conclusion of the Reconsideration, Review and Appeals Policy process, the CEO shall cause the surviving and if relevant, varied portions of the Code Determination to be conveyed to the Board together with a recommendation in the following form for adoption pursuant to **paragraph 25.1.3**:

“The CEO recommend that the Board adopt the attached Code Determination in [identify Matter] as the College determination in that Matter.”

28. REFERRAL TO COUNCIL

- 28.1 Where the Respondent:

28.1.1 does not lodge a valid Application pursuant to the Reconsideration, Review and Appeals Policy within the Application Period; or

28.1.2 exhausts its reassessment opportunities pursuant to the Reconsideration, Review and Appeals Policy (“**RRAP Exhaustion**”),

the Board shall by written notice via the CEO, not less than twenty-eight (28) days after the expiry of the Application Period or the RRAP Exhaustion, refer the Matter to Council for determination of any relevant sanction to be applied.

- 28.2 The notice specified in **paragraph 28.1** shall include:

28.2.1 the adopted Code Determination;

28.2.2 details of any previous breaches of the Code by the Respondent;

28.2.3 any submission lodged by the Respondent pursuant to **paragraph 26.2.3.2**; and

28.2.4 a direction that the Matter is to be considered on a confidential basis by Council and that the decision of Council as to the sanction may only be notified pursuant to **paragraph 30**

28.3 All Council deliberations undertaken pursuant to the Policy shall be minuted. Those minutes shall not be disclosed except with the Board's permission or by compulsion of Law.

29. SANCTION FOR BREACH

29.1 Council shall consider the adopted Code Determination, details of any previous breaches of the Code by the Respondent, any submission lodged by the Respondent pursuant to **paragraph 26.2.3.2** and any submission made by the Board at the first scheduled meeting of the Council, which shall not be less than thirty-five (35) days after the expiry of the Application Period, to determining any relevant sanction to be imposed.

29.2 Council shall in accordance with **paragraph 7.2** of the Constitution, determine the sanction for any and all breaches of the Code. Sanctions may include:

29.2.1 discipline;

29.2.2 suspension of College membership;

29.2.3 termination of College membership;

29.2.4 suspension of right to participate in the VTP;

29.2.5 revocation of right to participate in the VTP.

29.3 All sanctions determined by Council shall:

29.3.1 have immediate effect;

29.3.2 be final and not subject to Reassessment of any form.

30. NOTIFICATION OF SANCTION

30.1 Within five (5) days of the meeting of Council pursuant to **paragraph 29.1**, Council shall by written notice via the CEO, notify the Complainant and the Respondent on a confidential basis of any relevant sanction to apply.

31. MATTERS SUBJECT TO EXTERNAL AGENCY INVESTIGATION, LITIGATION OR COMPLAINTS RESOLUTION PROCESS ENACTED BY ANOTHER ENTITY.

31.1 If prior to determination of a Matter pursuant to this Policy, the Matter becomes the subject of an External Agency investigation, Litigation or complaints resolution process enacted by another entity, the Committee procedure shall:

31.1.1 be stayed pending the outcome of the External Agency investigation, Litigation or Complaints Resolution Process enacted by another entity as the case may be; and

31.1.2 not be recommenced until after the outcome of the relevant External Agency investigation, Litigation or Complaints Resolution Process enacted by another

entity, as the case may be, unless the Committee determines, at its unfettered discretion, that the Committee procedure is to proceed.

- 31.2 Where the Matter has been referred to an External Agency or another entity by the College pursuant to this Policy, the CEO shall liaise with the External Agency or other entity, as the case may be, to obtain confirmation of the cessation of any relevant investigation or Litigation.
- 31.3 Where the facts, matter or issues of the Matter have been referred to an External Agency or another entity by a Complainant or those facts, matters or issues are the subject of Litigation, the Committee Procedure shall not recommence pursuant to **paragraph 31.1.2** until the College is provided with satisfactory evidence from the Complainant that any relevant investigation or Litigation has concluded.
- 31.4 The Committee shall, by written notice via the CEO, advise the Complainant and the Respondent if the Committee procedure is to proceed within five (5) days of a determination under **paragraph 31.1.2**.
- 31.5 Where Committee Procedure recommences following notice in accordance with **paragraph 31.4**, the Committee is entitled to have regard to any determination or judgment by an External Agency or court of competent jurisdiction concerning the Respondent provided always that:
- 31.5.1 no regard shall be had unless and until the time for the lodgement of an appeal or challenge to the relevant determination or judgment has passed; and
- 31.5.2 the Respondent is afforded a reasonable opportunity to respond to any information adverse to its interest prior to any determination by the Committee.

32. REFERRAL TO EXTERNAL AGENCY

- 32.1 The Committee may, at any time prior to determination of a Matter, determine to refer the Matter to an External Agency.
- 32.2 When determining to refer a Matter to an External Agency pursuant to **paragraph 32.1**, the Committee may have regard to:
- 32.2.1 the jurisdiction of any External Agency to investigate and/or make relevant determinations in respect of the Matter;
- 32.2.2 the urgency of the Matter;
- 32.2.3 any Serious Issue raised in the Matter;
- 32.2.4 the relevance of the Matter to a College's objects as specified in paragraph 2 of the Constitution;
- 32.2.5 the complexity of the Matter;
- 32.2.6 the resources available in the College to Investigate and manage the Complaint;
- 32.2.7 the specific skill set of the Committee;
- 32.2.8 the existence of an Exceptional Circumstances.

33.2 Any referral of a Matter to an External Agency shall be made by the Committee via written notice through the CEO.

34.3 The CEO shall provide all relevant assistance and information reasonably required by the External Agency to investigate the Matter.

33. BREACH OF LAW

33.1 Notwithstanding the content of this Policy, if a breach of the Law is alleged in a Matter or reasonably appears to have been committed from the facts matters and issues disclosed in a Matter:

33.1.1 the Committee procedure shall be immediately stayed;

33.1.2 the Matter shall be immediately referred to the Board; and

33.1.3 the Board shall immediately convene to determine whether, in all relevant circumstances, the Matter shall be referred to an External Agency.

33.2 The Board may take advice and inform itself as it considers necessary in order to consider the appropriateness of a referral under **paragraph 33.1.3**.

33.3 If the Board determines pursuant to **paragraph 33.1.3**, that the Complaint shall not be referred to an External Agency, the stay of the Committee process pursuant to **paragraph 33.1.1** shall be deemed lifted by the Board and the Board shall direct that the Committee procedure is to recommence and continue in accordance with this Policy.

33.4 If the Board determine pursuant to **paragraph 33.1.3** that the Matter shall be referred to an External Agency:

33.4.1 the Board shall direct the CEO to immediately:

33.4.1.1 notify the relevant External Agency; and

33.4.1.2 provide all relevant assistance and information reasonably required by the External Agency to investigate the Matter;

33.4.2 the Committee procedure shall:

22.4.2.1 remain stayed pursuant to **paragraph 33.1.1**, pending the outcome of the External Agency investigation and any associated Litigation or prosecution as the case may be; and

33.4.2.2 not be recommenced until after the outcome of the relevant External Agency investigation and any associated Litigation or prosecution unless the Board determines, at its discretion, that the Committee procedure is to proceed.

33.4.3 the CEO shall, within five (5) days of the referral unless otherwise directed by the External Agency, by written notice, advise the Complainant and the Respondent that the Board has determined that the Matter be referred to the External Agency and that the Matter is stayed until further notice.

34. REPORTING AND USER FEEDBACK

34.1 This Policy recognises that ongoing Code Matter data generation and analysis is essential to understanding and addressing Code issues within the College context.

- 34.2 The Committee shall:
- 34.2.1 on and from the date of adoption of this Policy, maintain a Code Matter Register;
 - 34.2.2 on and from the date of adoption of this Policy, ensure that all Matters are recorded in the Code Matter Register; and
 - 34.2.3 each year on the anniversary of adoption of this Policy, by written notice via the CEO, provide the de-identified Annual Code Matter Report to the Board.
- 34.3 The Board shall consider the Annual Code Matter Report with a view to addressing negative trends, any systemic issues and improving relevant College policy and practices, including this Policy, where necessary.
- 34.4 The Code Matter Register and Annual Code Matter Report shall remain the property of the College at all times and shall, unless otherwise compelled by Law or determined by the Board, only be used by the College in connection with:
- 31.4.1 Investigation of Code Matters;
 - 31.4.2 Investigation of breach of this and other College policy;
 - 31.4.3 the imposition of sanctions for breach of this and other College policy;
 - 31.4.4 referral to an External Agency pursuant to this Policy;
 - 31.4.5 legal action commenced by the College; and
 - 31.4.6 College policy and procedure development.
- 34.5 Subject to **paragraph 34.4**, any and all personal information contained in the Code Matter Register and the Annual Code Matter Report shall be kept confidential and subject to the Privacy Policy and all applicable Laws, including but not limited to, the Privacy Act 1988 (Cth) (Australia) and the Privacy Act 1993 (New Zealand).

35. CALCULATION OF TIME

- 35.1 Reference to days in this Policy means normal business days and does not include weekends or official public holidays in Australia or New Zealand.
- 35.2 The date of lodgement by an Applicant shall be the date of receipt of the document by the College ending 12.00pm Eastern Standard Time.
- 35.3 Time is of the essence for the purpose of this policy.

36. LIMITS TO POLICY

- 36.1 To the fullest extent permitted by Law, this Policy does not oblige the College to take any steps which are not in its interest.

37. PRIORITY

- 37.1 To the extent of any inconsistency, between this Policy and the Constitution, the Constitution shall have priority.

38. INTERPRETATION

- 38.1 In this Policy:

38.1.1 Capitalised words defined in the text of this Policy have their defined meaning;

38.1.2 undefined words shall have their normal meaning; and

38.1.3 the following Capitalised words have the following meaning unless otherwise specified in the text of this Policy:

“**Annual Code Matter Report**” means a written, de-identified report prepared by the CEO based on the information contained in the Code Matter Register dealing with the issues specified in **Schedule 2** for the last year.

“**Associate**” means any associate of the College.

“**Board**” means the Board of Directors of the College.

“**Board Chair**” means the chair of the Board as appointed from time-to-time.

“**CEO**” means the Chief Executive Officer of the College as appointed by the Board from time-to-time.

“**Chair**” means the Chair of the Committee.

“**Code of Conduct**” means the Code of Conduct of the College as adopted and revised by the Board from time-to-time.

Code Determination and Recommendation

“**Code Determination**” means the Committees determination given by the Committee pursuant to **paragraph 22**.

“**Code Matter Register**” means a written register maintained by the CEO for each Matter including all information specified in Schedule 1.

“**College**” means *The Royal Australian and New Zealand College of Ophthalmologists* being an Australian public company limited by guarantee established under the *Corporations Act* (ACN 000 644 404)

“**Committee**” means the Code of Conduct Committee as appointed by the Board pursuant to the Code of Conduct Committee Terms of Reference.

“**Complaint**” means a Complaint made pursuant to the Complaints Resolution Policy.

“**Complainant**” means:

- (i) a Complainant who has lodged a Complaint pursuant to the Complaints Resolution Policy which has been referred to the Committee; and
- (ii) Any Referring Body Complainant as pursuant to **paragraphs 4.2 and 4.3**.

“**Complainant’s Submissions**” means those submissions lodged by the Complainant pursuant to **paragraphs 12 and 13**.

“**Complaints Resolution Policy**” means the Complaints Resolution Policy of the College as adopted and revised by the Board from time-to-time.

“**Concerns Information**” has the definition ascribed to it in the Conflict of Interest Policy.

“**Concerns Notice**” has the definition ascribed to it in the Conflict of Interest Policy.

“**Conflict of Interest Policy**” means the Conflict of Interest Policy of the College as adopted and revised by the Board from time-to-time.

“**Constitution**” means the Constitution of the College as amended from time-to-time.

“**Council**” means the Council of the College.

“**Exceptional Circumstances**” means circumstances which, having regard to the facts matters and issues of the Complaint, justify referral to an External Agency including, but not limited to, a Serious Issue.

“**External Agency**” means any government agency including, but not limited to, regulatory agencies and police forces.

“**Fellow**” means any fellow of the College from time-to-time.

“**Law**” means any and all statute, regulation and common law enacted and otherwise applicable within the jurisdiction of the Commonwealth of Australia, its states and territories and New Zealand.

“**Litigation**” means any proceedings or prosecution commenced in any Court or Tribunal within Australia and/or New Zealand.

“**Members**” means the members of the Committee.

“**Party**” means the Complainant and the Respondent.

“**Policy**” means this *Code of Conduct Procedure Policy* as amended by the Board from time-to-time.

“**Privacy Policy**” means the privacy policy of the College as adopted and revised by the Board from time-to-time.

“**Misconduct**” means:

- (i) where the conduct of a Fellow or Associate involves a serious breach of RANZCO policy (including this Code) or damages the professional standing and reputation of RANZCO; and
- (ii) where the conduct of a Fellow or Associate occurring in connection with the practice of ophthalmology or occurring otherwise than in connection with the practice of ophthalmology is inconsistent with the Fellow or Associate being a fit and proper person to be a Fellow or Associate of the College.

“**Reasonable Doubt**” means there could be no reasonable doubt in the mind of a reasonable person that the Code has been breached.

“**Reasonable RANZCO Ophthalmologist**” acts at all times, having regard to all relevant circumstances, facts, matters and issues, with all due care, skill, diligence and reasonableness.

“**Reassessment**” means any Reconsideration, Review or Appeal under the Reconsideration, Review or Appeal Policy.

“**Recommendation**” means the Recommendation made by the Committee pursuant to **paragraph 23**.

“**Referring Body**” means the body referring the Matter to the Committee under the Complaints Resolution Policy.

“**Respondent**” means the person against whom the Code Allegation has been made (also referred to as the Subject in any Complaint lodged under the Complaints Resolution Policy).

“**Respondent’s Initial Response**” means the response given in accordance with paragraphs 7.1.2.3 and 8.

“**Serious Issue**” means issues containing serious allegations against the College, Fellows, Associates or issues which may impact on the governance, reputation and liability of the College, Fellows or Associates. Without limiting the definition, Serious Issue shall include any allegation of discrimination, bullying, and sexual harassment.

“**Trivial**” means petty or of little significance as reasonably determined by the Committee having regard to the College objects as expressed in the Constitution.

“**Unsatisfactory Conduct**” means conduct of a Fellow or Associate occurring in connection with the practice of ophthalmology that is a breach of RANZCO policy (including this Code) or falls short of the standard of competence and diligence that RANZCO expect of its Fellows and Associates.

“**Vexatious**” means a Matter or part thereof, reasonably determined by the Committee, to have been made, regardless of its merits, solely to harass or subdue the Respondent.

“**VTP**” means the College’s Vocational Training Program.

Version Control

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Date of Adoption by the Board:	27 May 2017

Schedule 1

“Code Matter Register”

The Following items to be recorded for each Matter:

1. Unique Matter Number [Include date and unique number e.g. 2016/001]
2. Name of and contact details of Complainant
3. Name of and contact details Respondent
4. Date of Complaint
5. Date of referral to the Committee
6. Code Allegations
7. Code Allegations dismissed
8. Code Allegations found
9. Date of Code Determination
10. Brief description of all recommendations
11. Date of adoption of Code Determination by Board
12. Date of sanction imposed by Council
13. Sanctions applied
14. Estimated time dealing with Matter
15. Complainant feedback
16. Respondent feedback
17. Other Comments

Schedule 2

“Annual Code Matter Report”

All Annual Code Matter Report are to be **de-identified**.

1. Period

1.1 Description of the relevant period covered by the Report.

2. Headline Information

2.1 Total number of Matters

2.2 Total number of withdrawn Matters

2.3 Total number of dismissed matters

2.4 Total number of determined Code violations.

3. Code Determinations

3.1 Number of Code determinations made

3.2 Number of Code Determinations adopted

3.3 Adopted Code Determination breakdown with reference to all Code Allegations

3.4 Adopted Code Determination breakdown with reference to all established Code violations

4. Findings

4.1 Total number of finding of Unsatisfactory Conduct

4.2 Total number of findings of Misconduct

4.3 Total Number of other findings (to be individually specified)

4.4 Breakdown of findings with reference to established code violations.

5. Code Determination Appeals

5.1 Number of Code Determinations subject to Application pursuant to Reconsideration, Review and Appeals Policy (Appeals)

5.2 Outcome of all Appeals

6. Sanctions

6.1 Number of sanctions applied by Council

6.2 Breakdown of sanctions by Category e.g. loss of Membership.

7. Code Trends and Overview

7.1 Code Trends

7.2 Code feedback Overview

8. CEO Recommendations for further improvement of Policy.