



RANZCO Professional Code of Conduct Policy

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1. POLICY ADOPTION

- 1.1 This Policy should be read in conjunction with the *Complaints Resolution Policy* and the *Professional Code of Conduct* (“**Code**”).
- 1.2 The Board have adopted this Policy to govern the arbitration of alleged breaches of the RANZCO Professional Code of Conduct, which is conducted by the Professional Conduct Committee (“**PCC**”), 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 process that ensures natural justice and procedural fairness;
 - 2.1.2 a timely, fair and transparent mechanism for determining Matters;
 - 2.1.3 a mechanism for the College acting against a Code breach by a member; and
 - 2.1.4 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.
- 2.3 This Policy does not prevent the College from engaging external assistance as and when considered necessary to assist with implementation of this Policy.

3. RESPONSIBILITIES

- 3.1 The CEO:
 - 3.1.1 is responsible for the implementation of this Policy;
 - 3.1.2 will ensure that the PCC receives any and all necessary secretarial support; and
 - 3.1.3 may, at the request of the PCC and when reasonably required, engage legal advisors to provide legal advice and assistance to the PCC in connection with the implementation of this Policy.
 - 3.1.4 may, at the request of the PCC and when reasonably required, engage the aid of expert opinion concerning an issue in the Matter. The expert (the “**Expert**”) shall be a named, appropriately qualified and experienced person, as determined by the PCC, and will be provided a copy of the Code, relevant RANZCO policy, the Complaint and any other documentation collected during the review of the Matter and be requested to provide a written opinion concerning a specified issue (the “**Expert Opinion**”).
- 3.2 The PCC 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**.
 - 3.2.3 making any request to the CEO for expert advice and assistance pursuant to **Paragraph 3.1.4**.

- 3.3 The responsibilities of the CEO and the PCC 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 PCC from a legal advisor or expert engaged pursuant to **paragraphs 3.1.3** and **3.1.4** shall remain at all times confidential and privileged and shall not be disclosed to any person by the PCC or the College except under compulsion of Law or as otherwise directed by the Board.

4. COMMITTEE JURISDICTION

- 4.1 The PCC shall, pursuant to this Policy, determine Matters concerning alleged breaches of the Code ("**Code Allegations**") as specified in a Complaint.
- 4.2 Where a Matter contains a mixture of allegations, the PCC shall only determine the Code Allegations.
- 4.3 The Complainant bears the onus of proof when establishing an alleged breach of the Code by the Respondent.
- 4.4 Given the seriousness of a breach of the Code, the standard of proof shall be proof beyond Reasonable Doubt. The PCC may dismiss any or all Code Allegations that have not been proved beyond Reasonable Doubt.
- 4.5 Notwithstanding **paragraph 4.3**, any views expressed by the complainant shall not be taken to be a settled or final view. Any decision to refer any Matter to the PCC shall be taken to have occurred due to a lack of relevant jurisdiction on the Complaint Officer's part, not an acknowledgment or statement concerning the veracity of the relevant view as to any possible breach.
- 4.6 The PCC shall not consider Code Allegations that have been sent to an external agency for review, that are currently under investigation by another RANZCO or external body, that are under litigation or related to a breach of law.
- 4.7 At any point during the PCC's review of a Code Allegation, the Allegation is referred to an external body or becomes the subject of litigation or a breach of law is established, the Matter will be stayed.
- 4.8 The PCC's jurisdiction extends to scrutinising a Matter and making a Determination and Recommendation for the Board to consider.
- 4.9 If the PCC dismisses a Code Allegation or Matter:
 - 4.9.1 it shall not make a Code Determination concerning the relevant Code Allegation or Matter;
 - 4.9.2 its decision shall not require Board acceptance or approval;
 - 4.9.3 its decision is not evidence that the Complaint was trivial, made without reasonable basis or for vexatious or ulterior purpose;
 - 4.9.4 its decision shall be final and not subject to Reassessment of any form; and
 - 4.9.5 the Complaint may not be raised against the Respondent in any subsequent Complaint or Matter.

5. PROCEDURAL OVERVIEW

- 5.1 The PCC shall determine Matters in accordance with this Policy.
- 5.2 The PCC shall endeavour to deliver any Code Determination and Recommendation within six (6) months of receiving a Matter. Where, in the reasonable opinion of the PCC, the Code Determination and Recommendation requires further time, the PCC shall advise the CEO and the CEO shall advise the Complainant and Respondent in writing as soon as practicable.
- 5.3 The PCC process can be stopped at any stage by written notice from:
 - 5.3.1 the Complainant to the CEO confirming that the Complainant withdraws the Matter; or
 - 5.3.2 any factors arising pursuant to **paragraph 4.7**.
- 5.6 Notwithstanding notice pursuant to **paragraph 5.3.1 or 5.3.2**, the PCC may investigate the Matter where the Board resolves, it is in the College's best interest for the Conduct Committee to do so.
- 5.7 All PCC procedures concerning the determination of Matters and Code Allegations shall be conducted always with procedural fairness and natural justice.
- 5.8 The PCC 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.
- 5.9 The PCC shall act independently but always in compliance with this Policy.
- 5.10 The PCC does not possess any power in respect of the determination of Matters and Code Allegations other than that expressly specified in this Policy.
- 5.11 The rules of evidence shall not apply.

6. DECISION MAKING AND THE REASONABLE RANZCO OPHTHALMOLOGIST

- 6.1 Material to which the PCC may have regard when determining a Code Allegation pursuant to this Policy are exhaustive unless expressly specified otherwise in this Policy.
- 6.2 The PCC must at all times make any relevant determination in accordance with this Policy based on the available evidence.
- 6.3 Where the PCC consider themselves compelled to objectively substantiate a breach of the Code when impugned conduct is novel or its merits are the subject of reasonable disagreement, the PCC shall have regard to the conduct expected by the College of the 'Reasonable RANZCO Ophthalmologist'.
- 6.4 The PCC, as the College' primary adjudicators of Member conduct, shall determine the conduct of the "Reasonable RANZCO Ophthalmologist":
 - 6.4.1 having regard to RANZCO policy and their collective wisdom, training, knowledge and experience; or if considered reasonably justified by the PCC
 - 6.4.2 with the assistance of an Expert Opinion obtained pursuant to **paragraph 3.1.4**.

- 6.5 Where the PCC obtains an Expert Opinion pursuant to **paragraph 3.1.4** and that opinion is adverse to the Respondent, the Respondent retains the right of reply.
- 6.6 The PCC may, but are not obliged to, adopt any Expert Opinion when determining the conduct of the “Reasonable RANZCO Ophthalmologist”.
- 6.7 Where the PCC determine the conduct expected of the ‘Reasonable RANZCO Ophthalmologist’, that determination shall be final and not subject to Reassessment of any form.
- 6.8 Where the PCC determine the conduct expected of the ‘Reasonable RANZCO Ophthalmologist’, this must be documented and, at the discretion of the CEO, communicated to all RANZCO members without disclosing the particulars of the Matter currently under review.

7. CONFLICT OF INTEREST

- 7.1 When determining the existence of and managing any relevant conflict of interest, the PCC must have regard to the definitions, substance and intent of the *Conflict of Interest Policy*.
- 7.2 Any PCC member with a relevant conflict of interest will stand down and shall have no further involvement with the Matter.
- 7.3 Any PCC member against whom a Concerns Notice is issued will have no further involvement with the Matter until the Concerns Notice is addressed.
- 7.4 The Chair shall not be deemed to be relevantly conflicted simply by virtue of their involvement, if any, in any deliberations with the Complaints Officer. Should the Chair be subject of a Concerns Notice on another basis, that basis shall be determined by reference to the *Conflict of Interest Policy*.
- 7.5 For the purpose of the *Conflict of Interest Policy*, all work of the PCC is College Business.

8. CODE DETERMINATION AND RECOMMENDATION

- 8.1 The PCC must consider the following when making a Code Determination:
 - 8.1.1 All materials contained within the Matter, including Expert Opinion, admitted breaches and the Respondent’s submissions
 - 8.1.2 Their documented definition of the ‘Reasonable RANZCO Ophthalmologist’ from **paragraph 6.4**
- 8.2 The PCC must document reasons for the finding of each and every breach of the Code including reference to relevant considered material; and
 - 8.2.1 based on the nature of the breach(es), a finding of:
 - 8.2.1.1 Unsatisfactory Conduct;
 - 8.2.1.2 Misconduct; or
 - 8.2.1.3 Other finding.
- 8.3 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 8.2.1**.

8.4 The Code Determination shall be considered a decision of the PCC for the purpose of the *Reconsideration, Review and Appeals Policy*.

8.5 The Code Recommendation shall state:

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

8.6 The Code Recommendation may also include any additional recommendation associated with the Matter that the PCC consider reasonably necessary or justified.

9. CHALLENGING A CODE DETERMINATION

9.1 Any Application seeking Reassessment of a Code Determination shall be through the *Reconsideration, Review and Appeals Policy* and as an Application against the PCC not the Board adopting the Code Determination;

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

9.2 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.

9.3 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.

9.4 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:

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

10. SANCTION FOR BREACH

9.1 Council shall consider the adopted Code Determination, details of any previous breaches of the Code by the Respondent, all materials that comprise the Matter 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 determine any relevant sanction to be imposed.

9.2 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:

9.2.1 discipline;

9.2.2 suspension of College membership;

9.2.3 termination of College membership;

9.2.4 suspension of right to participate in the VTP;

9.2.5 revocation of right to participate in the VTP.

- 9.3 All sanctions determined by Council shall:
- 9.3.1 have immediate effect;
 - 9.3.2 be final and not subject to Reassessment of any form.

10. REPORTING AND USER FEEDBACK

- 10.1 This Policy recognises that ongoing Code Matter data generation and analysis is essential to understanding and addressing Code issues within the College context.
- 10.2 The PCC shall:
- 10.2.1 on and from the date of adoption of this Policy, maintain a Code Matter Register;
 - 10.2.2 on and from the date of adoption of this Policy, ensure that all Matters are recorded in the Code Matter Register; and
 - 10.2.3 each year on the anniversary of adoption of this Policy, by written notice via the CEO, provide a de-identified Annual Code Matter Report to the Board.
- 10.3 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.
- 10.4 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:
- 10.4.1 Investigation of Code Matters;
 - 10.4.2 Investigation of breach of this and other College policy;
 - 10.4.3 the imposition of sanctions for breach of this and other College policy;
 - 10.4.4 referral to an External Agency pursuant to this Policy;
 - 10.4.5 legal action commenced by the College; and
 - 10.4.6 College policy and procedure development.
- 10.5 Subject to **paragraph 10.4**, 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).

11. LIMITS TO POLICY

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

12. PRIORITY

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

13. INTERPRETATION

13.1 In this Policy:

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

13.1.2 undefined words shall have their normal meaning; and

13.1.3 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.

“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 Conduct Committee.

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

“Code Determination” means the Conduct Committees determination given by the Committee pursuant to **paragraph 8**.

“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 Professional Conduct Committee as appointed by the Board pursuant to the Conduct Committee Terms of Reference.

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

“Complainant” means a Complainant who has lodged a Complaint pursuant to the *Complaints Resolution Policy*, which has been referred to the Committee.

“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 Conduct 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 8.5**.

“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).

“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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