

Disciplinary & Dispute Resolution Procedure

Preamble

The Massage & Myotherapy Australia Disciplinary and Dispute Resolution Procedure (Guidelines) is a statement about appropriate and expected management of complaints by Massage and Myotherapy Australia (a brand of the Australian Association of Massage Therapists Ltd (AAMT)) The Association) and as such reflect the values of the Association.

The Guidelines, along with the Code of Ethics and Standards of Practice (Code), outline the professional conduct expected of members to preserve and enhance their professional reputation as well as the general reputation of the massage industry in Australia. Further the Code seeks to protect the general public.

These Guidelines apply to all members of Massage & Myotherapy Australia and members of Massage & Myotherapy Australia must comply with the resolution process pursuant to the terms of the AAMT Constitution.

Aim

Purpose of Guidelines

This document outlines the process to be followed by Massage & Myotherapy Australia and its members if a complaint is made against a Massage & Myotherapy Australia member by any person.

These Guidelines and the Code apply to all members of the Association and the Code prescribes the standard of professional conduct expected of Massage & Myotherapy Australia's members. If a complaint is received by Massage & Myotherapy Australia against a member, then (at the discretion of the Massage & Myotherapy Australia board of directors (Board)):

- under Clause 6.11 of the AAMT Constitution, the Board may discipline or expel the member; and/or
- if deemed appropriate by the Board (having regard to the nature of the complaint), the matter may be referred to either the Police or the relevant State or Territory Health Commission to investigate and/or handle, as they see fit.

Massage & Myotherapy Australia will not address any complaints made against a Massage & Myotherapy Australia member that are frivolous, vexatious or outside the jurisdiction of Massage & Myotherapy Australia's control (having regard to the nature of the complaint).

Massage & Myotherapy Australia does not have the jurisdiction to provide any form of compensation in respect of any disciplinary action or finding against any Massage & Myotherapy Australia member to any complainant. Any claims for compensation or any request to have a Massage & Myotherapy Australia member cease practicing must be addressed with the relevant authority (eg. an alleged crime must be referred to the police), and Massage & Myotherapy Australia has no jurisdiction in this regard.

This Guideline details the manner in which Massage & Myotherapy Australia will handle complaints, issues and disciplinary matters that might arise from time to time under the Code.

The handling of all complaints will be conducted by Massage & Myotherapy Australia in accordance with all relevant laws (including applicable Privacy Laws).

It is important to note Massage & Myotherapy Australia cannot hear complaints or discipline any massage therapists that are not members of the Association. Any complaints in respect of such therapists should be directed to the relevant State Health Commission or the Police, as appropriate.

Revocation of Previous Procedures and Guidelines

This Guideline supersedes any previous Disciplinary and Dispute Resolution Procedure that dealt with any of the matters set out in this Guideline (Previous Disciplinary Guideline) and the same are hereby expressed to be revoked. This Guideline will apply in substitution for any Previous Disciplinary Guideline, even if a complaint or resolution process commenced prior to the adoption of this Guideline and the revocation of any applicable Previous Disciplinary Guideline.

Right to discipline members

Clause 6.11 of the AAMT Constitution allows for a member to be disciplined, suspended or expelled from the Association for breaching the Code or for engaging in conduct which the Board reasonably believes is unbecoming of a member or prejudicial to the interests of Massage & Myotherapy Australia.

Any disciplinary action that Massage & Myotherapy Australia may elect to take against a member will occur after the process set out in this Guideline has been followed, having regard to the Code, the Constitution, and the principles of the Association in respect of:

- Client Wellbeing;
- Confidentiality and Privacy;
- Application of Accepted Techniques;
- Commitment to the Industry;
- Professional Attitudes; and
- Any other principle deemed relevant to the nature of any complaint by the Board at the relevant time.

Once a member becomes involved in any matter that requires investigation the Association is required to abide by the contractual arrangements with Private Health Insurers and suspend eligibility for health fund rebates until the matter is finalised.

The role of the NEC

If any complaint is lodged against a member of the Association, the National Ethics Committee (NEC) will form part of the disciplinary process and is charged with ensuring the Code (including any Standards of Practice) is upheld and complaints against members are heard in a consistent manner.

Members of Massage & Myotherapy Australia are expected to be of good standing in the community and to observe the highest standards of ethics, probity and professional conduct in the course of performing their duties as a therapist. Ethical and professional behaviour is not simply compliance with legal requirements, it extends to honesty, equity, integrity and social responsibility in all dealings as a professional therapist. It is behaviour that holds up to disclosure and to public scrutiny. Members of Massage & Myotherapy Australia are required to comply at all times with all applicable laws (whether related to their role as a massage therapist or otherwise).

The NEC's role within Massage & Myotherapy Australia is to:

- Review information and education provided to members with respect to the Code;
- Participate in the development of best practice models;
- Monitor ethical matters as they appear on the Ethics Register in order to provide advice on amendments to training and information materials for members;
- Refer matters for investigation to authorised bodies eg criminal offences (if appropriate);
- Hear complaints (and has the power to appoint panels to conduct investigations into complaints and make decisions about the next step following completion of the investigation);
- Conduct disciplinary hearings; and
- Recommend to the Board sanctions on practitioners who are found to have:
 - breached the Code;
 - engaged in professional misconduct (including sexual misconduct); or
 - engaged in incompetent practices, as contemplated by the Constitution of AAMT.

The NEC may seek assistance from the Board in respect to any disciplinary matters or breaches of the Code and may make test case determinations to assist with developing higher standards for the industry.

The NEC reports to the Board.

Keeping the role of the NEC in mind, the complaint, disciplinary and dispute resolution process in respect of any member of Massage & Myotherapy Australia is as follows:

Process

Lodging a complaint

Complaints made against a member must be made in writing and emailed to ea@massagemyotherapy.com.au or addressed and mailed to:

Chief Executive Officer
Massage and Myotherapy Australia Limited
Level 8
53 Queen Street
MELBOURNE VIC 3000

A complaint must include details sufficient to describe the nature of the complaint or dispute.

All complaints should have the full name and contact details required for Massage & Myotherapy Australia to follow up the complaint.

Massage & Myotherapy Australia cannot investigate any complaint or dispute that is lodged on an anonymous basis. To ensure your complaint is managed as efficiently as possible, please ensure that you have included as much detail as possible in your documentation.

If you have any evidence to support your claim, for example medical records please include them with your documents (together with any consent required from relevant persons to disclose such confidential/private information).

If you have included the names of the witnesses, please ensure you have permission from the witness for Massage & Myotherapy Australia to contact them directly. Massage & Myotherapy Australia will require full name and contact details for all witnesses to your complaint.

CEO to refer complaint to NEC

Any complaint which is provided to Massage & Myotherapy Australia is, in the first instance, referred to the Chief Executive Officer (CEO) of the Association. The CEO will then refer any complaints involving a breach of the Code to the National Ethics Committee (NEC). Within 5 business days of referring a complaint to the NEC, the CEO and the Chairperson of the NEC will determine whether an investigation is required (in which case a hearing will follow), or will close the complaint (or refer the matter to an appropriate third party).

The CEO will ensure that there is appropriate systematic recording of complaints, dispute notifications and their outcomes and that a report is published each year in the Annual Report of Massage & Myotherapy Australia in respect of any relevant complaints (on a no names basis, and in accordance with the Privacy Laws).

Determination/hearing process (after lodging/receiving any complaint)

NEC dispute hearing/process

If the NEC receives a complaint or dispute from any person in respect of a Massage & Myotherapy Australia member and based on the nature of that complaint or dispute (and the information provided by the complainant) elects to investigate the matter further, the CEO will promptly notify the complainant and the member of the next steps in the process.

Within 21 days of the lodgement of a complaint or dispute, the NEC must notify in writing, each person it thinks reasonably necessary for the just determination of any issue raised before it, of their proposed involvement in the investigation and state any directions required to be complied with by that person to enable the NEC to hear the matter and determine the outcome of the proposed hearing.

Directions made by the NEC may include (but are not limited to) directions that:

- confirm the ability of a party to have representation;
- preserve the anonymity of any individual;
- seek to clarify any issue in dispute;
- require the provision of information or documents;
- require the giving or obtaining of any evidence;
- allow for the making of submissions;
- preserve the confidentiality of any information communicated in the course of the matter;
- refer the matter to mediation;
- propose expedited determinations, including determination on the basis of written submissions; and/or
- set out any other matters in respect of the proposed conduct of the investigation, hearing or determination.

What happens if you fail to comply with an NEC directive in respect of any complaint?

Any party may, on reasonable notice, apply to the NEC for further directions to assist in the preparation of its case.

A member who fails to comply with a direction of the NEC may, upon evidence of such failure being presented to the Board, be immediately subjected to discipline under clause 6.11 of the Constitution.

A person that is not a member of Massage & Myotherapy Australia who fails to comply with a direction of the NEC may:

- if the party is a complainant - have its complaint or dispute notification dismissed; or
- if the party is not a complainant - have a determination on the complaint or dispute notification made against it.

Proceedings Generally

Proceedings conducted by the NEC will be based upon the parties' right:

- to a lawful outcome;
- to be heard (whether in person or on papers);
- to know whether the Code has been observed;
- to provide and request all relevant material to support or respond to the complaint or dispute notification;
- to be informed of the criteria and processes for determining the complaint or dispute, including avenues for further review;
- to be informed of the response (in a general sense, without the NEC having to provide a copy of the response in full form to any other party) of any party against whom allegations or cross allegations are made;
- to be informed of the outcome and reasons for that outcome;
- to have the complaint or dispute heard and determined independently so far as is practicable;
- to maintain the confidentiality of all confidential information;
- to maintain privacy so far as is practicable in accordance with the National Privacy Principles. If a complaint is unsubstantiated and/or anonymous, NEC may simply register a complaint without taking action; and
- to have the matter disposed with as little cost, formality and delay as may be consistent with the requirements of fairness.

Determination of any complaints or disputes

NEC Determinations

Prior to making any determination, the NEC may request that each party to a complaint attend a hearing (if the information provided on papers in respect of the complaint by either party is deemed insufficient by the NEC to make a determination, in its absolute discretion).

The determination of the NEC of a complaint or dispute notification will be in the form of a recommendation to the Board as to the appropriate orders to be made supported by reasons that set out:

- any findings on material questions of fact; and
- a reference to the evidence or other material on which the findings were based.

The timeline within which the NEC will make a determination is 6 working days.

The determination may include:

- a recommendation for the imposition of sanctions of the type described at clause 6.11(a) of the Constitution; or
- a recommendation that a member do, or refrain from doing, an act or make a payment as may be considered:
- just in the circumstances; and
- becoming of the member or in the interests of Massage & Myotherapy Australia.

Notification of Determination by NEC

Within 7 business days of reaching a determination, the NEC will release a copy of its determination in writing to the CEO and the Board. The NEC will also provide notice (in writing) to the parties to any dispute or complaint process setting out the recommendation of the NEC to the Board (including any recommended sanction) (**Recommendation**). In order to ensure the Association complies with all applicable laws, and the requirements of each health fund provider, the Recommendation will apply to the parties to the process or dispute until such time as the Board considers and either affirms, rejects or changes the Recommendation.

Discretion of Board regarding implementation of determination by NEC

On receipt of the notice of determination by the NEC, the Board may, by ordinary resolution (**Resolution**), either:

- adopt the determination of the NEC;
- adopt the findings of the NEC but make a different order for the imposition of sanctions, or that a member do, or refrain from, doing an act or make a payment that is consistent with the findings of the NEC and which as may be considered:
- just in the circumstances; and
- as would be becoming of the member or in the interests of Massage & Myotherapy Australia; or
- decline to adopt the determination of the NEC on the grounds that:
- the proceedings conducted by the NEC were not conducted in accordance with this Guideline;
- the determination was induced or affected by fraud or bad faith;
- the determination was otherwise contrary to law; or
- the determination is subject to appeal or other proceedings before a court of competent jurisdiction.

Board determination

The Board must within 7 business days of the date of the Board's Resolution, notify the complainant in writing of the outcome of the Resolution and the outcome of the Resolution will supersede and replace any interim sanction or determination that took effect on and from the date on which the parties were made aware of the NEC's Recommendation in accordance with the provisions below.

Board's discretion to impose sanctions under the Constitution

If the Board resolved to impose sanctions or to direct that a member do, or refrain from doing, anything (including making any payment as a fine), the CEO must, within 7 business days after the Resolution is made by the Board to impose the relevant sanction, cause written notice to be given to the member (and the complainant) of:

- the Resolution;
- the reasons given or adopted by the Board for having made that Resolution; and
- the member's right of appeal (as set out below).

Any Resolution of the Board with respect to any sanction imposed in response to a complaint or dispute does **not** take effect until the expiration of the period within which the member (or complainant) is entitled to request an appeal of the Resolution under these Guidelines (albeit that any Recommendation will continue to apply until the outcome of such an appeal, if any).

Where a member or complainant requests an appeal of the Board's Resolution within the timeframe prescribed in these Guidelines, and the Appeals Panel makes a final determination consistent with the Board's Resolution, the Board's Resolution will take effect immediately upon the Appeal Panel notifying the relevant party of its final determination in writing.

If a member:

- fails to comply with a Resolution of the Board; and
- has not instigated an appeal within the prescribed timeframe as provided for in these Guidelines, the member may be liable to further censure, suspension or expulsion pursuant to clause 6.11 (a) of the Constitution without further notice (or a further right to be heard).

Rights to an Appeal

Subject to payment of the Appeal Fee, a complainant, member or any other party aggrieved by a Resolution of the Board with respect to the determination of a complaint or dispute in accordance with these Guidelines (**Appellant Party**), may seek to appeal the Resolution (**Appeal**) by providing to the Appeal Panel a notice in writing setting out in detail, the reasons for which the Appellant Party is seeking to Appeal.

The Appeal Panel is comprised of:

- the Chairperson of Massage & Myotherapy Australia from time to time;
- a legal advisor to Massage & Myotherapy Australia; and
- a third person being a person involved in the massage therapy industry whom is neither a Board member of Massage & Myotherapy Australia, nor a representative of the NEC, to be appointed by Massage & Myotherapy Australia from time to time.

For the avoidance of doubt, neither a member nor complainant can appeal a decision that was itself the outcome of an Appeal.

Prescribed timeframe for Appeal

An Appellant Party must, within 14 days of publication of the Board's Resolution notify Massage & Myotherapy Australia in writing of its request for an Appeal.

The Appeal Panel may elect to hold a hearing (if the information provided on papers in respect of the Appeal is deemed insufficient by the Appeal Panel to make a determination on the Appeal). If a hearing is requested by the Appeal Panel, a party may attend the hearing with a legal representative, should they elect to do so (provided their anticipated attendance is notified to the CEO (who will in turn notify each other party to the complaint or dispute of their anticipated attendance) no later than 2 business days prior to the hearing).

The Appeal Panel must deliver a decision in writing to the CEO and the Board (**Appeal Decision**) within 21 business days of receipt of the Appellant Party's request for an Appeal. The CEO must, within 7 business days of receipt of the Appeal Decision, cause written notice to be given to each party to the Appeal of the outcome of the Appeal Decision.

Appeal Fee

An Appellant Party must, prior to instigating an Appeal, pay the Appeal Fee of \$1000.00 ex GST to Massage & Myotherapy Australia. Any request for an Appeal is deemed invalid unless and until the Appeal Fee is paid in full.

The Appeal Fee may be paid by the Appellant Party by way of electronic transfer or credit card as directed by Massage & Myotherapy Australia.

Massage & Myotherapy Australia is not under any circumstances obliged to waive or reduce the Appeal Fee. However, Massage & Myotherapy Australia may exercise a general discretion in any situation where it considers a waiver or reduction to the Appeal Fee is appropriate to reduce or waive that fee.

Refund of Appeal Fee

In the event that the outcome of an Appeal results in the Resolution of the Board being overturned in the Appellant Party's favour, Massage & Myotherapy Australia will refund the Appeal Fee to the Appellant Party in full within 7 business days of the CEO's receipt of the Appeal Decision from the Appeal Panel.

Costs of this process

Except to the extent that:

- the Board or the Appeal Panel determines that a party must make a payment in respect of another party's legal costs on the basis that such payment is in the interests of Massage & Myotherapy Australia as a whole;
 - or*
 - a court of competent jurisdiction awards costs in favour of a particular party,
- the parties to any complaint or Appeal under these Guidelines will each bear their own costs of and incidental to the proceeding and in no circumstances will Massage & Myotherapy Australia be liable for any such costs.

Alternate Resolution

For the avoidance of doubt, nothing in this Guideline will prevent the parties to a complaint or dispute from agreeing to any other process for the resolution of any differences between them, provided that upon their difference being resolved, the parties jointly notify the CEO in writing that their difference has been resolved. Nothing in this Guideline restricts the ability of any party to a complaint or dispute referring the matter to any court of competent jurisdiction.