



**COMPLAINTS BOARD –  
POARI WHAKAPAE  
Rules for Complaints Procedure**

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# Rules for Complaints Procedure

The following rules apply to the proceedings of the New Zealand Audiological Society (NZAS) Complaints Board: Poari Whakapae (CB) in dealing with complaints involving members (including full, provisional and honorary audiologist and audiometrist members) and Associates (including Students) of the NZAS.

## Preamble

Complaints must be received in writing to the NZAS. Complaints will immediately be forwarded to the Complaints Board: Poari Whakapae (CB).

Records of correspondence in respect to complaints against members of the NZAS will be kept by the CB.

In all cases of complaints made by a member of the NZAS against another member, the complainant will be encouraged in the first instance to try to resolve the complaint at a personal level where this is feasible and appropriate in keeping with **Principle of Ethics 5, Rule 5.7** of the NZAS Code of Ethics.

In all cases the CB must observe the requirements of administrative law such that the CB must:

- i) Act within the powers granted by the Constitution of the Society and the Code of Ethics.
- ii) Act for proper purposes.
- iii) Observe the principles of natural justice when making decisions that affect the interests of individuals such that the person who is the subject of a complaint:
  - a. Must be able to know with reasonable accuracy the precise nature of the complaint.
  - b. Must have an opportunity to present his or her position on the allegations constituting the complaint.
  - c. Should have the opportunity to be heard in person and to be represented by counsel if they wish.
  - d. Should be judged fairly on the basis of objective evidence.
  - e. Has a legitimate expectation that he or she would be told of the intended decision and be given an opportunity to comment.
- iv) Act reasonably and fairly.

## Rules

1. If a complainant wishes to make a complaint against two or more members of the NZAS the complaint against each member should be recorded in a separate document. The CB may ask a complainant to reformulate any complaint that fails to comply with this rule.

2. The CB may investigate and/or make a recommendation or decision regarding matters referred to it by the Executive Council or its Committees, members of the NZAS, members of the public, users of audiological services or their whanau.
3. The CB may investigate and/or make a recommendation or come to a decision in circumstances where:
  - a. The CB considers that there may have been an ethical violation but no formal complaint has been made; or
  - b. A complaint initiated by a member or any other person is later withdrawn; or
  - c. A complaint is being investigated and when further information subsequently becomes available to the CB.<sup>1</sup>
4. Where the Executive Council or CB reasonably believes that the actions and/or behaviour of the person who is the subject of the complaint (the subject) presents a potentially serious and continuous risk to the public and that urgent steps are required to be taken to stop and/or mitigate the risk, the Executive Council can issue a notice on the subject to stop the potentially serious actions and/or behaviour until the matter has been investigated and a final decision has been made.
5. Unless and until the CB has made a decision in relation to the complaint, complainants and those subject to a complaint must only communicate with the CB through the Chair.
6. **Receipt and acknowledgement of complaint:** Upon receiving a complaint the CB may contact the complainant to clarify or seek further information about the complaint. If the CB has clarified or received further information, the CB will write to the complainant setting out the additional information received and asking the complainant to confirm the details of the complaint.
7. **Initial letter: Informing the subject and subject's opportunity to respond:** The CB shall inform in writing the person who is the subject of the complaint about the precise nature of the complaint, specifically:
  - a. The information included in the complaint that is relevant to the subject of the complaint,
  - b. Identifying each element of the complaint
  - c. Stating the membership of the CB, and the right of the subject of the complaint to comment on the membership of the CB
  - d. Stating that the subject of the complaint has a right to be heard, and providing sufficient detail of what it means to be heard
  - e. Providing an opportunity to respond to the complaint before the provisional findings of fact are decided
  - f. Timetabling
  - g. Suggesting mediation or dialogue between the complainant and the subject of the complaint if possible (and if not, why not). Providing sufficient detail of what mediation means, and

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<sup>1</sup> Where "new information" is discovered that the CB considers warrants investigation, to be complying with the principles of natural justice, the CB must write to the subject of the complaint to notify them that the scope of the investigation has broadened to beyond the particulars of the initial complaint.

- options to create a supportive and safe environment (e.g., facilitated by Complaints Board, support persons welcome).
- h. Communication protocols, and
  - i. Providing a copy of the Rules and the Code of Ethics.
  - j. Informing the subject of the complaint of their right to be represented, and providing sufficient detail of what that means.
8. Unless the CB is satisfied in its sole discretion that there are good reasons for not doing so, the subject must receive a copy of the complaint and attachments, including the identity of the complainant.
  9. The CB must also request, receive and consider the subject's response to the complaint within a reasonable stipulated period of time (usually being two weeks).
  10. The person who is the subject of the complaint may request to be heard in person and to be represented by counsel if they wish. The person who is the subject of the complaint may request to meet with the CB remotely (e.g., by zoom) or in person. If there is a hearing:
    - a. Before the hearing occurs, the subject of the complaint should be provided with all relevant information and have had reasonable time to consider it and seek advice
    - b. A recording may be taken if all parties agree.
    - c. Irrespective of (b), a transcription of the meeting must be taken.
    - d. The CB must send the transcription to the subject of the complaint to ensure the transcription is a true and accurate record of the hearing.
    - e. The subject of the complaint should be given opportunity to be represented or supported by another person.
  11. The parties to the complaint (both subject and complainant) shall be informed of the names of the members of the CB considering the complaint and will be notified of their right to reasonably request that any member or members of the CB who may, in the opinion of the subject of the complaint, not be free from bias in considering the complaint be replaced by another member.
  12. If the subject of the complaint chooses not to respond to the CB it will act on the complaint on the basis of the information which it has received and its own investigations.
  13. The CB shall be entitled to collect information from third parties and/or persons affected by, or connected with, the subject matter of the complaint. In particular the CB may verify or investigate the circumstances giving rise to the complaint. In doing so, the CB shall have regard to the position of the subject of the complaint, and the CB shall endeavour to make its enquiries in a manner which respects the confidentiality of the parties to the complaint, but without limiting the right of the CB to seek and obtain such information as it requires to make an informed decision on the matter.
  14. If any member of the CB is the complainant or the subject of the complaint or has a special interest in the complaint or relationship with any of the parties involved such that they cannot maintain impartiality in the complaints procedure then the CB shall at its discretion absolve that

member from participation in the proceedings. The CB may also in this instance, at its discretion, appoint another member to act as a temporary member of the CB for the time taken to resolve the complaint.

15. The CB will make every reasonable effort to investigate and resolve the complaint within as short a period of time as possible.
16. Resolution of complaints will be attempted through mediation and dialogue whenever possible. Such mediation and dialogue may be either written or verbal and may include meetings between the complainant, the subject of the complaint and one or more members of the CB.

### Subject of the complaint's opportunity to respond to the complaint

17. Upon receiving the CB's initial letter, the subject of the complaint shall be given an opportunity to comment on it within a reasonable stipulated period of time (usually being two weeks).

### The CBs provisional finding of fact

18. The CB will consider the complaint, any information or response received, and consider whether it will commence an investigation. If so, the CB will determine the parameters of the investigation, and its provisional findings of fact.
19. The parameters of the investigation and the provisional finding of fact will be provided to the complainant for comment. Once this has been received, the subject of the complaint will be invited to respond in a reasonable timeframe. The CB will meet and consider all responses before making and issuing a finding of fact.

### The CB's finding of fact and provisional decision on breach

20. In keeping with the principles of natural justice, the CB shall notify in writing the person who is the subject of the complaint of its findings of fact and its provisional decision on breach. It shall offer the subject of the complaint an opportunity to respond in a reasonable timeframe.
21. **The CB's Decision on breach:** Having received the subject's responses, the CB will make its decision. Where the CB is unable to reach a unanimous decision, it may be made by way of a simple majority. In such a situation, the majority and minority CB members must provide their reasons to the Executive Council. The Executive Council may remit the matter back to the CB with recommendations.
22. **Provisional decision on sanctions:** Having made a final decision on the findings of breach, the CB then forms a provisional decision on sanctions. The subject will be provided with a reasonable opportunity to respond to the provisional decision on sanctions.

**23. Final decision:** having made a final decision on sanctions, the outcome will be communicated to the complainant and the subject of the complaint.

## Recommendations

24. The CB may make recommendations or decisions regarding matters referred to it, even when a breach of the Code of Ethics has not been established or determined.

## Sanctions

25. When making a decision on sanctions, the CB must record and take into account the background and experience of the subject of the complaint.

26. A decision on sanctions by the CB may include, but is not limited to:

- a. Costs that can be awarded if the complaint is upheld against the member.
- b. Reprimand. Notification of reprimand is limited to the subject of the complaint and the complainant.
- c. Cease and Desist Order. The subject of a complaint will be required to cease non-compliant behaviour and to demonstrate that such behaviour has been reformed. Such demonstration of reformed behaviour may take place from time to time through peer review and/or audit or by such other means as the CB may decide. The subject of the complaint may be required to sign a Cease-and-Desist Order, which specifies the non-compliant behaviour and the terms of the Order. Notification of a Cease-and-Desist Order will be made to the subject of the complaint and the complainant and may be reported in an official publication of the Society.

27. Sanctions against members may be recommended to the Executive Council by the CB depending on the severity of the violation of the Code of Ethics as determined by the CB following its investigations into a complaint. In the following circumstances the Executive Council will make the final decision on sanction.

a. **Suspension of Membership**

Suspension may range from a minimum of three (3) months to a maximum of twelve (12) months. Suspension of membership will usually be notified in an official publication of the Society. Notification of the suspension will be made to Government agencies which require Membership of the Society for Audiologists rendering services on their behalf. No refund of membership dues shall accrue to the suspended individual.

b. **Revocation of Membership**

Revocation of Membership is considered the maximum punishment for violation of the Code of Ethics. Revocation of membership will be notified in an official publication of the Society. Notification of the revocation of membership will be made to Government agencies which require Membership of the Society for Audiologists or Audiometrists rendering services on their behalf. Individuals whose membership has been revoked will not be entitled to a refund

of membership dues.

Revocation of Society membership can be for a specified period.

The Executive Council must decide that the conduct of the member amounts to gross misconduct and/or the member is intransigent in their behaviour and/or the member has been defiant in the CB's attempt to investigate the complaint;

or

The member has previously been found in breach of his or her ethical obligations and has received two (2) written warnings in relation to breaches of the code or for non-compliance with the sanctions imposed.

Gross misconduct includes serious misconduct and serious wrongdoing and conduct that significantly and substantially falls below the standard of care that members of the public and the profession should be able to expect from a member of the NZAS.

## Appendix

Code of Ethics 5.11 states that members must be aware of and comply with all relevant New Zealand Law associated with their profession.

Such laws include, but are not limited to:

- The Privacy Act 2020
- The Human Rights Act 1993
- The Health Information Privacy Code 1994
- The Health and Disability Commissioner Act 1994
- The HDC Code of Health and Disability Services Consumers' Rights 1996
- Fair Trading Act 1986
- Vulnerable Children Act 2014
- Therapeutic and Health Advertising Code 2016
- The Protected Disclosures Act 2000
- Health and Safety at Work Act 2015