

Division:	Fellowship Engagement	Ref. No.	REG-3002
Department:	Professional Standards		
Title:	Professional Conduct Committee Terms of Reference		

1. PURPOSE AND SCOPE

The purpose of RACS includes the determination and maintenance of professional standards for the practice of surgery in Australia and New Zealand.

Clause 3 of the RACS Constitution provides the Council with powers to suspend and terminate membership in particular circumstances.

In addition, clause 6 of the RACS Constitution gives the Council power to make regulations as it deems necessary or desirable for the proper conduct and management of the RACS, the regulation of its affairs and the furtherance of its objectives – including, without limitation, the discipline of, and sanctions applicable to, Fellows, trainees and others, including suspension, counselling, reprimand, termination or expulsion – and, complaints made by any person against a Fellow of RACS and the establishment of committees and the processes for the resolution of such complaints.

Clause 14 of the RACS Constitution gives the Council power to delegate all or any of its functions, powers, or discretions to committees comprising such persons as the Council determines, and that the Council can determine the powers and duties of each sub-committee.

In connection with the maintenance of standards of surgery, and in connection with the discipline of members, the Council has determined to establish a Professional Conduct Committee to deal with complaints made to RACS in relation to Fellows, to deal with matters of standards referred to the Committee and to deal with breaches of the Code of Conduct of RACS with all of the powers delegated to it to act in accordance with this Regulation.

This Regulation establishes the Professional Conduct Committee (“Committee”).

The Professional Conduct Committee handles matters referred to it by the Chief Executive Officer (CEO) or the Council of the Royal Australasian College of Surgeons (RACS) relating to breaches of the Code of Conduct and complaints made under RACS “Complaints Policy” (“the Policy”) and other matters.

This policy does not apply to issues related to training or International Medical Graduate (IMG) assessments which are handled via the Education Board.

2. KEYWORDS

Code of Conduct, Professional Conduct, Breach, Constitution, Complaint

3. BODY OF REGULATION

3.1. Objectives

The objective of the Committee is to deal with -

- 3.1.1. Complaints against Fellows;
- 3.1.2. Breaches of standards;
- 3.1.3. Matters relating to breaches of the Code of Conduct and the Complaints Policy; and
- 3.1.4. To consider disciplinary matters under the RACS Constitution referred to the Committee by the CEO or by Council.

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3.2. Duties and Responsibilities

- 3.2.1. To consider matters within the objectives of the Professional Conduct Committee and other matters pursuant to other policies and procedures of RACS
- 3.2.2. To impose Sanctions on Fellows where appropriate and review circumstances where a Fellow has failed to comply with any Sanction or condition imposed
- 3.2.3. To consider other complaints made under the Complaints Policy

3.3. Composition and Size

Membership of the Committee shall be appointed by the CEO and/or President and shall consist of:

- 3.3.1. Chair, Professional Development and Standards Board (or nominee) - Chair
- 3.3.2. Chair, Professional Standards Committee (or nominee) - Deputy Chair
- 3.3.3. One other Fellow
- 3.3.4. Two members who are non-Fellows with legal or other relevant experience

In attendance:

- 3.3.5. Chief Executive Officer, RACS and/or nominee
- 3.3.6. Other relevant parties at the discretion of the Chair

Committee members must have no conflict of interest regarding the surgeon or the matter involved.

3.4. Conflict of Interest

In the event that any standing PCC Committee member outlined in 3.3 above has a conflict in the matter under deliberation, their role on the Committee will be suspended for that sitting. Alternative Committee composition will be appointed, and in the absence of the Chair and Deputy Chair, the Committee members will elect one of them to chair the Committee.

3.5. Quorum

A quorum shall be a voting majority of the membership of the committee. In the absence of the Chair, the Deputy Chair shall assume the role of Acting Chair.

4. ASSOCIATED DOCUMENTS

Code of Conduct

Complaints Policy

Termination and Readmission to Fellowship Policy

Appeals Policy

Restriction of College Activity Policy

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5. GENERAL PRINCIPLES

5.1. Confidentiality

A matter or complaint shall be dealt with, as far as possible, confidentially and consistent with the protection offered by the legal principle of qualified privilege. RACS does not, however, guarantee anonymity of those making complaints or those against whom a complaint is made.

5.2. Procedural Fairness

Any Fellow against whom a matter or complaint is made (including a matter to which clause 3.2 of the RACS Constitution applies) is entitled to receive sufficient details of the nature and circumstances of the allegations as will allow him or her to fully respond to the allegations and as the rules of procedural fairness and natural justice may require.

This may necessitate the disclosure of the identity of the complainant.

The Fellow is also entitled to respond to all allegations by making written submissions to the Committee and/or by making oral submissions at the Committee meeting or hearing at which the matter is considered.

6. COMPLAINTS PROCESS

6.1. Matters Brought to Committee

No matter or complaint shall be considered by the Committee unless it is:

- (a) made in accordance with clause 6.2, or
- (b) referred by the Chief Executive Officer (CEO) or by Council under clause 6.4

6.2. Lodging a Complaint

Any complaint made by a person against a Fellow must be made in accordance with the Complaints Policy.

6.3. Notification by Chief Executive Officer

Where RACS becomes aware of a particular matter or conduct by a Fellow that is considered to fall within the purview of this policy (including investigations by a statutory complaints authority, professional standards committee, medical board, medical council specialty society, employer or other relevant organisation or authority (**Authority**)), the CEO may refer the matter in accordance with this policy.

6.4. Initial Review of Complaint

6.4.1. Investigation and consideration of a complaint shall be dealt with as expeditiously as the circumstances permit in accordance with the Policy.

6.4.2. Prior to making any decision regarding the disposition of a matter or complaint, the CEO shall consider whether there is a *prima facie* case to answer and if not, take no further action; or if so, consider whether the matter or complaint:

- (a) falls within the scope of this policy;
- (b) would more appropriately be dealt with internally, pursuant to another policy;

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(c) would be more appropriately dealt with by an external Authority;

(d) is currently being dealt with by another Authority; or

(e) should be adjourned or not dealt with, pending a hearing or determination by another Authority.

6.4.3. Following the initial review, the CEO may determine to:

(a) take no action;

(b) notify the complainant that the matter should be directed to a more appropriate authority;

(c) refer the complaint to the Committee for consideration; or

(d) if it is considered that the conduct that is the subject of the matter or complaint may be of such a serious nature that it may constitute serious professional misconduct or that the conduct may fall within mandatory reporting requirements, refer the complaint to an Authority (as appropriate, based on the location of the conduct).

6.4.4. The CEO may delegate his or her functions under this policy.

7. REFERRAL TO THE COMMITTEE

The Committee shall, at least 21 days prior to the meeting of the Committee at which the matter or complaint will be considered, give the Fellow written notice of:

- (a) the intention of the Committee to consider the matter;
- (b) the time, date and place of the meeting;
- (c) particulars of the nature of the matter or complaint under consideration and
- (d) advise that the Fellow:
 - (i) may provide a written submission to the committee within 14 days of receiving notice of the meeting
 - (ii) may attend and give oral or written submissions at that meeting in respect of the matter; and
 - (ii) may be accompanied by a support person, but shall not be entitled to have an advocate or to be legally represented without the prior consent of the Committee.

7.1. Committee

The Committee is a committee of the Council, convened under this Regulation as required to consider matters or complaints made in accordance with the terms of this Regulation.

7.2. Conduct of Meetings

7.2.1. The Committee shall conduct its affairs as it determines but otherwise, subject to this Regulation, shall have full power to regulate its conduct and operation, including convening and adjourning any meeting as it may require. The Committee is not bound by the rules of evidence and, subject to the rules of procedural fairness, may inform itself on any matter and in such manner as it thinks fit.

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- 7.2.2. The Committee is entitled:
- (a) to make its own enquiries and seek legal or other professional advice in relation to any matter or complaint under consideration; and
 - (b) to consider all relevant information which it thinks fit and may invite any person to appear before it or to provide information.
- 7.2.3. The Committee may meet in person or by telephone or other electronic means, or by correspondence for the purpose of the members of the Committee carrying out their functions.
- 7.2.4. The Fellow shall be given an opportunity to be heard, and the Committee shall give due consideration to any written or oral submissions made by the Fellow.
- 7.2.5. The Fellow, if attending, may be accompanied by a support person, but shall not be entitled to have an advocate or to be legally represented without the prior consent of the Committee.
- 7.2.6. The Committee shall keep appropriate minutes of meetings, including details of any decisions made in relation to any matter or complaint before it. Minutes of hearings of the Committee may be confirmed in a report of the decision made by the Committee.

7.3. Outcome of Hearing

- 7.3.1. After consideration of a complaint or matter, the Committee may:
- (a) take no action;
 - (b) dismiss the matter or complaint and exonerate the Fellow;
 - (c) counsel the Fellow and/or require him or her to participate in any relevant College program or activity;
 - (d) censure the Fellow;
 - (e) apply sanctions in accordance with clause 8 of this Policy;
 - (f) terminate the membership of the Fellow; and
 - (g) refer the matter or complaint to an appropriate Authority.
- 7.3.2. The Committee may decide to refer the matter or complaint to an appropriate Authority at any time after receipt of the matter or complaint.
- 7.3.3. In considering the outcome of a complaint under clause 7.3.1, the Committee may take into account any prior decisions of the Committee (or any similar prior committee of RACS exercising similar powers) and/or any prior decisions in relocation to the Fellow by any Authority. The Fellow may make submissions to the Committee about any such prior decisions, before the Committee makes a final determination.

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7.4. Proceedings Confidential

- 7.4.1. Meetings and hearings of the Committee shall be confidential. In addition to the provisions in clause 8.5, information relating to the matter or complaint may be disclosed in:
- (a) the reporting of progress to RACS Council;
 - (b) appropriate reporting to the parties involved;
 - (c) reporting of the decision to the Council;
 - (d) referral of the matter or complaint to an external Authority; and
 - (e) any other disclosure which is otherwise allowed or mandated by law.
- 7.4.2. The Committee shall report on its decision, including a summary of the reasons for the decision, to the Council as soon as practicable.
- 7.4.3. At the conclusion of the hearing, the complainant (where appropriate) and the Fellow shall be notified in writing of the outcome.

8. SANCTIONS

There are three levels of Sanctions that may be applied to a Fellow as disciplinary action by the Committee with such additional conditions or modifications as the Committee may determine.

Level	Sanction	Conditions / Restrictions
Level 1	Reprimand with Warning	Acknowledge, sign and return a Deed of Undertaking (see 8.1)
Level 2	Censure	May involve (see 8.2): <ul style="list-style-type: none"> • Loss of privileges • Remediation • Reskilling • Peer review • Other conditions as determined by the Committee • Notification to regulatory bodies • Deed of Undertaking
Level 3	Termination	<ul style="list-style-type: none"> • Termination of Fellowship (see 8.3) • Notification to regulatory bodies

8.1. Level 1 – Reprimand with warning

Where a Reprimand is issued the Fellow will be required to enter into a Deed of Undertaking (Deed) to comply with the RACS Code of Conduct. By signing and returning the Deed, the Fellow is confirming that:

- 8.1.1. The Code of Conduct is the standard of behaviour required for all Fellows;
- 8.1.2. They undertake to comply with the Code of Conduct; and

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- 8.1.3. Failure to comply with the Deed may result in the application of a further Sanction.

Failure of a Fellow to sign and return the Deed within the time specified by the Committee decision shall be taken to be a failure of the Fellow to comply with a Sanction and the Committee may impose a further Sanction on the giving of 7 days' notice of its intention to do so.

8.2. Level 2 – Censure

A Censure is a serious rebuke of the Fellow where their behaviour has been found to breach the Code of Conduct.

A Fellow receiving a Censure will be required to sign and return the Deed of Undertaking. Further, the Fellow may be subject to conditions restricting the Fellow's participation in RACS activities for a specified period of time or until remediation activities are successfully completed.

If a Fellow fails to comply with the Censure requirements within the specified period of time, the matter will be referred back to the Committee. The Committee may grant an extension of time for the Fellow to complete the Censure requirements.

A Fellow subject to a Censure will not be considered to be in good standing with RACS until all Censures imposed have been met.

The Committee may impose any requirements or conditions through a Censure as they think fit, this may include but is not limited to:

- 8.2.1. Restricting the Fellow's participation in any specified RACS associated activity, including but not limited to Committees, teaching and representational activities
- 8.2.2. Requiring the Fellow to undertake training courses
- 8.2.3. Requiring a review of the Fellow's practice to be undertaken

A Level 2 Sanction will be in place for a minimum of 12 months and a maximum of 24 months (or earlier if all conditions of any Sanction have been met) from the date of the Committee decision.

8.3. Level 3 – Termination of Fellowship

Where a Fellow is found to have repeatedly breached the Code of Conduct or if a very serious breach of the Code of Conduct has occurred, the Committee may determine that their Fellowship be terminated under clause 3 of the RACS Constitution.

8.4. Sanction Principles

When imposing a sanction, the Committee shall take into account the following matters:

- 8.4.1. The number of times the Fellow has had adverse findings against them by the Committee;
- 8.4.2. The time period over which those adverse findings were made and their proximity to the current matter;

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8.4.3. The number of times the Fellow has had adverse findings in matters of the same type as the matter currently before the Committee as this evidences a pattern of behaviour; and

8.4.4. Whether the period of any sanction previously given had not expired at the time the matters currently alleged against the Fellow took place.

8.5. Reporting, Publication and Recording of Sanctions

8.5.1. A Sanction will be recorded against the Fellow on RACS databases.

8.5.2. The relevant specialty society shall be notified where a Level 2 or 3 sanction is imposed where appropriate. A notification may also be given for Level 1 Sanctions if the Committee so directs.

8.5.3. RACS will publish the names of Fellows with Level 2 or 3 Sanctions in RACS Publications.

8.5.4. Fellows subject to a Level 2 Sanction may be reported to a regulatory body and to their relevant hospital or institution where known.

8.5.5. Fellows subject to a Level 3 Sanction will be reported to a regulatory body and to their relevant hospital or institution, where known.

8.5.6. Fellows subject to a Level 2 or 3 Sanction will be reported to any relevant RACS Board or Committee.

All notifications will occur within 30 days from the date of the Committee decision. Any Sanction imposed by the Committee will take effect from the date of the written notification of the Committee decision unless otherwise specified in the decision.

9. APPEAL OF DECISION

Any appeal against a decision of the Committee under this Regulation may be made only in accordance with the provisions of RACS's Appeals Policy.

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