

18th October 2020

REVIEW OF THE ETHICS AND PROFESSIONAL STANDARDS COMMITTEE (EPSC) AND COMPLAINTS PROCEDURES OF THE NEW ZEALAND ASSOCIATION OF PSYCHOTHERAPISTS (NZAP)

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Titiro whakamuri

Kokiri whakamua

Look back and reflect

so that you can move forward

This whakatauki reflects our hope that the work that we have done here will help the Association reflect on these important issues and move forward with renewed purpose.

INTRODUCTION

This review arose from the New Zealand Association of Psychotherapists (NZAP) Council's Planning Day in 2015, who then commissioned a Review Committee in 2019. The Review Committee first met in October 2019 and have since met at least monthly to consider the issues and consult with the membership and with other professional groups. We would like to acknowledge the 62 people who either spoke with us or wrote to the committee, generously sharing their knowledge and experience.

We would also like to thank those members that took time to join the online Forum on the 22nd of March 2020 and the Zoom meeting that was set up on the 17th of August 2020.

We have also appreciated Waka Oranga who provided us with a clear statement of their position regarding the many questions that this review gave rise to. The past and present Chairs of the Ethics and Professional Standards Committee (EPSC) have spent a considerable amount of time answering our questions and clarifying issues we have raised. Many members, past and present, who have held this role, have spent many hours providing the best service possible to NZAP. NZAP's executive officer, Nikky Winchester, has given excellent support by responding to our many requests for Zoom meetings and by tracking down information that was not available on the website.

Finally, our thanks go to Gabriela Mercado for her constant support. Her understanding and encouragement as well as her willingness to answer questions have been important in maintaining focus and commitment to the task. The Review Committee acknowledges that the brief has been more complex and challenging than we initially expected it to be and that there are widely differing views held within the membership on these matters.

PURPOSE OF THE REPORT

Council Brief

- Critically review the role of the EPSC and the NZAP Complaints Procedure in the era of the Psychotherapy Board of Aotearoa/New Zealand (PBANZ).
- Identify duplication between NZAP and PBANZ and assess the need for an independent NZAP complaints process.

Format of this report

In this report we:

1. Outline the background to the complaints processes used by NZAP, PBANZ and the Health and Disability Commission.
2. Describe how we obtained our information and what views were represented to us.
3. Categorise the differing views into themes and discuss their merits before drawing a conclusion.
4. Discuss the role of the Ethics and Professional Standards Committee (EPSC) and express our view about how this would function within NZAP's structure.
5. Make three recommendations addressing the brief given to us before concluding with further actions for consideration by Council.

We also provide two appendices. The first summarises the background of the reviewers and the second gives more detail about the HDC, PBANZ and NZAP complaints procedures. The statutory obligations of HDC and PBANZ are also briefly described.

Quoted statements from NZAP members and others are in italics.

1. BACKGROUND

The first mention of the Ethics and Professional Standards Committee is from the Council meeting on 10 October 1992: *“It was resolved that a group known as the Ethics and Professional Standards Committee would be formed with a sub-group handling complaints to be known as the Complaints Assessment Committee.”*

NZAP established its Complaints Processes in 1992 and at this time was a leader in setting standards and protecting clients from malpractice. Its main aim was to ensure the provision of quality psychotherapy and the maintenance of high professional standards. In 1994 the complaints procedures were tightened up after a complainant had threatened to sue NZAP and a financial settlement had to be made.

At this point Council recognised that its complaints processes needed to be held within a carefully constructed legal framework.

The Health and Disability Commission was established in 1994. The Code of Health and Disability Commission Rights establishes the rights of the consumer and the obligations and duties of providers to comply with the code. Before PBANZ was established NZAP worked closely with the Commissioner so that complaints against members of NZAP were managed within NZAP’s processes. Fourteen years later, in 2008, the Psychotherapy Board of Aotearoa New Zealand (PBANZ) was established, and psychotherapy became a registered profession under the Health Practitioners Competence Assurance Act 2003 (HPCAA). Since that time, any practitioner using the title of Psychotherapist has been obligated to be registered with PBANZ. Both PBANZ and the HDC are required, by law, to have complaints procedures.

Alongside other professional Boards, PBANZ has the responsibility of protecting the public and of establishing mechanisms to ensure competence of psychotherapy practitioners. The Board’s conduct and competency procedures were not established until 2011, as it took a few years to develop a robust and reliable process for considering complaints from clients. For some years NZAP still had a role to play in managing complaints against its members. Today PBANZ pays anyone who sits on a complaints committee \$80 per hour and has a pool of *“eight psychotherapists who have expressed an interest in being available to consider competence committee mahi,”* and *“13 psychotherapists who have expressed an interest in being available to consider conduct committee mahi”* as well as having *“a pool of experienced lay people it can draw from”* (communication from PBANZ Registrar August 2020).

Only four complaints have had to be investigated by NZAP over the last eight years and three of these were dismissed as involving behaviour that did not breach the NZAP Code of Ethics. Although such a small number of complaints must be a good sign, it does mean that it is hard to maintain proficiency in handling complaints and very hard to ensure consistency in the processes.

In her last report as Complaints Convenor in March 2019, Susan Hawthorne outlined *“several challenges that had not yet been resolved with respect to the complaints process.”* They were: *“the early involvement of lawyers which inevitably and unavoidably influences the process... to having a legal focus... This also necessitated NZAP engaging legal services at considerable expense. (The) relationship with Waka Oranga and the place of Maoritanga in the complaints process and NZAP continuing a complaints process separate from that of PBANZ.”*

RATIONALE

The reason for this report is to examine the role of an NZAP complaints process alongside the roles of the PBANZ/HDC complaints processes. There is a duplication of role by these three organisations now that the HDC and PBANZ hold statutory responsibilities to protect the public and ensure fitness to practice. The role of EPSC may need to be considered further in the light of any changes to the complaints processes of NZAP.

2. METHODOLOGY OF THE CONSULTATION AND FEEDBACK PROCESS

Our aim initially was to seek the views of specific members and then to seek views more widely. We approached this task in this way to ensure we considered Treaty obligations and ascertained the views of past post holders for NZAP committees and structures. We were also interested in the views of the broader membership and considered ways to consult members who may not otherwise offer their perspective, unless invited to do so.

Written feedback was sought and received from:

- Waka Oranga
- Members of the EPSC
- A general invitation in the NZAP newsletter, on Connect and at the Zoom meeting inviting any member to write to the review group.

Individual interviews were held with:

- Past and present NZAP Council Members and any members who made contact and wanted to discuss the review
- Randomly allocated NZAP members who have been members prior to PBANZ registration – 15 people
- Randomly allocated NZAP members who have become members after PBANZ registration – 12 people.

The individual interviews were semi-structured and posed questions which asked participants to discuss what they considered the pros and cons of continuing or relinquishing the complaints processes were. Past and present NZAP Council members and members who asked to be heard were semi-structured and notes were kept of these discussions.

When further feedback was sought the randomly allocated members were asked the same questions:

1. When thinking of complaints about psychotherapists and psychotherapy, what do you think is the best way to resolve complaints?
2. Both NZAP and PBANZ have a complaints process. Do you think that NZAP should retain their process or disband it?
3. With regard to question 2, can you please say why you hold this view?

Group consultation was held through two events:

- NZAP Forum – date 22nd of March 2020.
- NZAP Connect Zoom meeting held on the 17th of August 2020.

The total number of people we received feedback from excluding, Waka Oranga and **Te Tiriti** Bicultural Committee (TTBC) was 62. Thirty of these people had had experience of complaint procedures either through NZAP or with another body, mainly in roles on complaints panels.

3. THEMES THAT SUPPORT RETAINING THE CURRENT PROCESS

TE TIRITI O WAITANGI (TREATY OF WAITANGI) ISSUES

Some NZAP members are opposed to any changes to the current complaints process on philosophical or political grounds. NZAP's Treaty partner, Waka Oranga, is of the collective view that NZAP not "*cede its Complaints Process to PBANZ.*" This view is rooted in "*Tino Rangatiratanga and the long-held professional authority of NZAP.*"

"Waka Oranga is on record as being opposed to registration with the Psychotherapy Board (PBANZ) as the legislation (Health Practitioners Competency Assurances Act 2003 – HPCA Act) did not, and to this day does not, acknowledge the Treaty of Waitangi, thereby negating any recourse Maori may have to be equitably served under this Act based on Treaty claims."

"The erosion of the authority and professional responsibilities of NZAP to the 'one size fits all' bureaucracy of the regulatory authority of PBANZ is noted with disappointment by Waka Oranga as the Tiriti partner to NZAP."

"Just as Waka Oranga will continue to uphold its authority and never cede to the Crown, we would hope that NZAP will maintain some form of its well-established complaints process in order to offer ongoing safety for clients and its own members."

OPPOSITION TO PBANZ

Some NZAP members were against allowing the complaints process to be left to PBANZ as they held the perspective that PBANZ was too harsh, impersonal and bureaucratic to manage complaints well. Some expressed fears about a loss of authority to the Board. Additionally, for some, NZAP is seen as more 'relational' than the HDC or PBANZ. Some members were not aware that PBANZ has psychotherapists involved in complaints processes.

"We have enough good intention and enough good will to do it best."

"I don't think they have psychotherapists on the Board."

"NZAP has already lost a lot of its authority to PBANZ."

A FEELING OF LOSS TO NZAP

There is respect for the ‘carefully developed history’ of the Association and a fear that the Association may lose knowledge about complaint issues and associated ethical thinking skills. Some members reported not having any knowledge about complaints processes but believed that NZAP’s processes are held in high esteem.

There was an impression that some members thought there was a ready and willing, experienced work force, ready to deal with complaints. The view was also expressed that being accountable to our peers, having to face them and dealing with shame issues has a positive impact for the Association. There were fears that not having a complaints procedure for clients to use might exclude us from groups we currently belong to and prevent students from using NZAP membership to cover themselves when on placement. Some members felt the complaints procedure was a bicultural process, and there were fears about moving ‘too quickly’ without considering carefully what will be lost.

“NZAP is stuck with its role precisely because of our community members’ expertise.”

“We should not remove one of NZAP’s foundations before we have prepared fully.”

“It took a long time to get it established.”

CONCERN FOR NON-REGISTERED NZAP MEMBERS

There are a small number (slightly less than 20%) of NZAP members who remain unregistered with PBANZ. For some members, there was concern about what would happen to unregistered members, were the complaints procedures to change.

“How would they be held accountable?”

4. THEMES THAT SUPPORT RELINQUISHING THE NZAP COMPLAINTS PROCESS

IMPROVING THE CARE AND SUPPORT OF NZAP MEMBERS

Some members felt that it was time for the Association to focus on the needs of NZAP members and to leave the protection of the public to the statutory authorities set up for this purpose. While NZAP continues to have its own complaints process it will, at times during the process of responding to complaints, have to prioritise client needs over the needs of its members. This process was necessary in the years when there was no statutory authority responsible for the protection of the public. Choosing to retain our own process of managing complaints means that the EPSC and its Chair are unable to offer support to members who face complaints, whether they are lodged with NZAP or with HDC/PBANZ.

Were the EPSC to give support and advice to its members while offering its own independent complaint process, the client would have every right to lodge a further

complaint against NZAP because of the likelihood of a conflict of interest.

“All the people I talked to (members who faced the NZAP complaints process) felt abandoned or betrayed by NZAP as it moved from being an Association for Professionals to an Inquisitional Body.”

“Let PBANZ get on with their job of protecting the public and let’s turn our attention to the needs of our members.”

“The main purpose of a complaint process is to look after the complainant not the psychotherapist.”

“The HPCA Act now, explicitly, protects the public with regard to professional complaints. As a consequence, my observation is that psychotherapists are, within this new process, less supported... My suggestion is that our longstanding internal complaints process is reconfigured to respond to these new circumstances. Primarily, that it offers members of the Association professional support and resources when they are under investigation.”

DUPLICATION OF COMPLAINTS PROCESSES FOR CLIENTS

Having a duplication of complaint processes means that NZAP members may have to go through at least two separate complaint processes. If a client is not satisfied by one process, then they can lay the same complaint again with other bodies.

“Once I was on a NZAP panel considering a complaint that had already been rejected by PBANZ, and after discussing it fully we rejected it too. I don’t think much good came of the NZAP process.”

CHALLENGES INHERENT IN NZAP’S COMPLAINT PROCESS

i. The membership pool is too small.

Some people who had experienced the process believe that NZAP is too small an organisation to manage its own complaints procedures. There are many overlapping roles and relationships within the profession and in the Association, and it can be difficult to set up complaints investigations where there are no perceived conflicts of interest. The potential for relationships to sour and for trust to be eroded was also mentioned.

“Holding the process in an organisation this small presents a challenge to looking after our members.”

“My learnings from the complaints process (NZAP) I was involved in as a support person and another on a preliminary panel were generally negative and more positive learnings took place in ethics training and workshops.”

“NZAP does not have the resources to sustain a good complaints process.”

“We are not adequately resourced in terms of expertise, money or time.”

“It’s hard to get people to do the work.”

“The Complaints Convenor role is very time consuming.”

ii. **Legal and forensic thinking is not easy for most psychotherapists.**

The skills necessary for managing complaints processes and for being part of complaints assessment committees are different from those needed for the practice of psychotherapy. Many psychotherapists do not have the skills required for these demanding roles. This was particularly noted by people who had had experience of these processes. Whilst the need to maintain confidentiality prevents a more comprehensive and frank discussion of NZAP’s processes and pitfalls, it was clear that many of the members who have had experience of complaint processes are keen for NZAP to leave the investigatory process to the HDC and PBANZ. Of the 30 people who offered feedback and who had had experience of complaint processes, 27 were against NZAP retaining the process of formal complaint investigation.

“It’s best to leave it (complaints) to the licensing authorities. We can’t be both therapeutic and legalistic.”

“A formal complaint process requires a different set of skills. It requires forensic and legal thinking skills and it cannot be a therapeutic process. Psychotherapists are generally ill-equipped to do it well.”

“It’s the hardest thing I have ever had to do in all my years as a psychotherapist.”
(Referring to another group’s complaint investigation.)

“Complaints are not happy processes. They take a lot of time and effort.”

iii. **Limited opportunity to develop expertise.**

The small number of cases considered worth investigating and the need to rely on volunteers means that no pool of experienced investigators has been developed and maintained.

Several people mentioned that it is hard to find volunteers willing to sit on complaints assessment committees and that the need for confidentiality means that the procedures are rarely understood by most members. As a result it is difficult to ensure consistency in the processes.

There was feedback from some who felt that the Association ‘paid a price’ in terms of the time taken and the emotional distress involved in these investigations. The fact that PBANZ pays psychotherapists for time spent sitting on investigative committees was mentioned to support the suggestion that NZAP members should also be paid.

“Being on a complaints committee was a brutal process that has left me feeling bruised.”

“It is just my opinion that complaints should be handled by the Board where panel members are paid for their time. Given the complexity of these matters and the time involved I think it is unfair for NZAP members to not be paid for their participation.”

MEDIATION

Some members felt that NZAP should pass on formal complaints to the HDC and PBANZ and instead, offer mediation services.

"I was previously clear that we should not continue with the complaints process but now my preference is to continue it, but to refocus it on mediation, calling it a complaints resolution process."

This same suggestion was rejected firmly by other members:

"Mediation never satisfies both parties and often just leads to more complaints."

"When NZAC offered mediation, absolutely every case led to further complaints being laid, so it was stopped." (Communication from a past NZAC Complaints Committee member.)

THE IMPORTANCE OF RESOLVING COMPLAINTS AT THE LOWEST LEVEL POSSIBLE

Some members expressed the wish that complaints could be prevented from escalating to the formal investigative level. The benefits of working with rupture and repair and of helping members de-escalate potential complaint situations were seen as skills psychotherapists could be supported to develop.

"I think it is most important that complaints be resolved at the lowest level possible."

"Rupture and repair is what psychotherapists are good at."

PERCEIVED RISKS OF POLICING OUR OWN MEMBERS

Shifts in public perception (which have developed since NZAP's processes were first established) means that many people feel cynical about organisations who investigate their own members. This argument was raised by several respondents who also noted that it is difficult for people to be unbiased when sitting on assessment committees.

"I don't agree with members policing themselves."

THE HDC PROCESS WILL BE 'GOOD ENOUGH'

Several people expressed a view that the process they had experienced when they had to face the HDC or PBANZ had been respectful and robust. In addition, people mentioned that now statutory regulation exists, the HDC and PBANZ have the 'final authority' regarding complaints. There was a general sense among many members that it was time to trust that the protection of the public was now the responsibility of the HDC. It was noted by several people that all NZAP and Waka Oranga members, being health practitioners, are accountable to the HDC regardless of whether NZAP has a complaints process or not. It was noted that some NZAP members are not registered under PBANZ, and therefore may perceive the importance of an NZAP complaints process more than NZAP members who are also PBANZ registered.

Some members expressed concern about NZAP's relationship with PBANZ and felt that it was time for NZAP to forge a more co-operative working relationship with the Board. The review committee report on Council recommended that: *"the NZAP Council make every effort*

at the highest level to **maintain an open relationship with PBANZ** and to represent the Association's views." (Critical Review of Council 2019.)

"I completed a Complaints Workshop in Auckland some years ago and felt that would prepare me to take part in a complaints panel should one be needed. The complaint came through the Health and Disability Commission who referred it to PBANZ and a panel was then selected. I was initially quite nervous as it would involve Zoom and conference calls, technology which I was unfamiliar with. However, I experienced it as a valuable learning process for me. Ethical, well-boundaried, and collegial."

"NZAP should get rid of its process and trust PBANZ and the HDC."

"I experienced the PBANZ process as very respectful and collaborative."

"My thought is that the complaints process should be given over to PBANZ who should have the money and expertise to get a robust even-handed process well worn in."

"I experienced a client I saw only once, complaining about me to the HDC. They handled the complaint very well. I had tried to offer to meet the client who had refused so the HDC decided that it would be sufficient if I wrote a letter and the case was closed."

"NZAP has no final authority anymore. There is no reason to keep it (the complaints process)."

"Unregistered members are all health practitioners and as such are covered by the HDC process."

"Maintaining a process for such a small number (of unregistered members) is expensive and not easily justified."

"I am concerned to hear an "us and them" attitude as far as the Board is concerned. Several members of NZAP are currently PBANZ board members."

"Nostalgia is not a good enough reason to retain the Ethics and Complaints Process."

Most of these themes in favour of letting go of the NZAP complaint process were summarised in the following submission:

"We need both to let go of an ownership and its consequent suspicion of other bodies and not look at our history through rose coloured glasses, as I don't think we have ever been able to do a good consistent job with complaints in our association. Over the years I have been involved in some and heard others, and the thinking and reasoning has not been consistently held. At least within the hands of a paid regulator, these processes and thoughts are written down and able to be examined and evaluated."

DISCUSSION

As the issues outlined above indicate there are themes both *for* and *against* retention of the NZAP complaints process. The themes which support *retaining* the complaints process could largely be grouped into those who feel opposed to the existence of the HDC and PBANZ and those people who had a fear of losing a process that had been carefully developed by NZAP over many years.

Some of those opposed to the Board and the HDC feel that these organisations represent crown oppression towards Maori. The review committee is sympathetic to cultural opposition to PBANZ and the HDC. However these wider issues regarding how the Crown interacts with the profession and Maori psychotherapists, are outside this committee's remit. The committee is supportive of any discussions between NZAP, the Registration Board and Waka Oranga as to the best means to address these issues.

There is also a view held by some members that the Board is 'out of touch' or unrepresentative of psychotherapists. Some of these views are based upon inaccurate information. For example, some members did not think that there were any psychotherapists on PBANZ complaints review panels. This is not correct as there are two psychotherapists and one lay person appointed by PBANZ to these panels. If it is felt that the Board is out of touch with NZAP members then this is best progressed through NZAP representations to the Board.

The committee is aware that some members feel that relinquishing the NZAP complaints process would mean a loss of professional autonomy. The committee notes however that this had already occurred, to a large extent, when the Board was established 12 years ago. In the process of lobbying to become a registered profession, NZAP relinquished its authority as a de-facto regulatory body.

We believe that the fears of loss are in part, attributable to the view, of some members, that NZAP is well resourced and skilled in administering a complaints process. The views of other participants in the feedback process contradict this and instead support the observation that a specialist set of skills and knowledge is required for these sorts of processes. The review committee observe that these skills are of a legal nature rather than being primarily relationally orientated and require a detailed focus on formal process. Whilst these skills and associated knowledge base may be present within NZAP, they are not widespread and thus the burden of administering a complaints process falls on just a few people.

Tellingly 90% of respondents (27 out of 30) who had personal experience of the NZAP or other complaint processes were in favour of NZAP relinquishing the complaints process.

Some members feel that the risks inherent in NZAP retaining the complaints process outweighed any advantage. These members believe that there are risks for individual members in retaining the process. For example, individual members may face financial, emotional and time-related costs by having to present material to both NZAP and the HDC should the complainant take the complaint to both organisations. Similarly, if NZAP investigate a complaint through its own complaints process, the individual member bears the emotional cost of a sense of isolation within the community of NZAP. In addition, if at any point the EPSC, the convenor or the assessment committees fail to follow procedures, NZAP could face costly legal battles if the parties involved complain and seek redress.

The review committee also noted – with some concern – that many NZAP members seemed unaware that every health practitioner is accountable to the HDC whether they accept regulation or not. Additionally, the possibility of a practitioner having to face two independent investigations, coupled with the realisation that NZAP is limited in being able to support individual members facing complaints, are factors not generally acknowledged.

Additionally, the review committee noted that there is a generally held scepticism within society about organisations that ‘police’ themselves, particularly when there is a lack of familiarity with complaints and review processes. The committee noted that NZAP receives very few complaints and when investigated, the vast majority are found to have no substance.

The review committee has considered carefully the views expressed by NZAP members. We have debated among ourselves the pros and cons of all opinions and weighed them up with consideration for the strongly held views on all sides. We have been mindful of the brief and direction that Council have given us in this task including the scope and focus of our recommendations.

The committee agreed with NZAP members who supported change and were of the view that the HDC and PBANZ processes were ‘good enough’. One aspect that particularly persuaded the review committee was that of the 30 members who had had experience of various roles within complaint processes only three members were disinclined to express a firm view on the matter and 27 were in support of NZAP ceasing to maintain a separate process to PBANZ and the HDC. Among this group, it was noted that there was generally a more positive attitude towards the Board and HDC, with some expressing personal experience of the HDC and PBANZ processes as being of a professional and well-managed nature.

The review committee think that there are substantial risks involved in retaining the NZAP complaints process and few, if any, advantages. Furthermore, the committee believe that relinquishing the complaints process offers NZAP several distinct advantages:

- It gives NZAP the chance to support members during the often-harrowing time of a complaint without being fettered by dual and conflicting roles.
- It allows time and energy to be freed up to devote to other NZAP related tasks and committee work in keeping with the organisation’s redesign.
- It eliminates the financial risk and emotional drain which is currently being borne both by NZAP and individual members and places this risk upon the regulatory authorities which have been established with this function in mind.
- It aligns NZAP with other professional organisations which have relinquished in-house complaints processes.
- It signals confidence in the HDC and PBANZ complaint processes which the review committee believes is overdue.

5. THE ROLE OF THE ETHICS AND PROFESSIONAL STANDARDS COMMITTEE: (EPSC) AND ITS CHAIR (CEPSC)

DISCUSSION

According to the NZAP Constitution, the EPSC 'was established to cultivate and maintain high principles and standards of practice and ethics in respect of psychotherapy and ancillary sciences and practices, to promote fair, honourable and proper practice and discourage malpractice or misconduct therein and to settle doubtful points of practice and questions of professional usage'.

The review committee has also been mindful of the Council Review Team Recommendations from 2019 which stated:

- That Council clarify its role and objectives and decide if the Association wants to be a **regulatory body or an Association** providing a 'home' for members.
- That, if NZAP were to relinquish its **complaints process**, it could engage differently to support any of its members experiencing a formal complaint against them.

Ethical thinking benefits the organisation at all levels. The Chairperson's role is central in ensuring clarity to Council processes and requires that the post-holder have a keen interest and training in ethical processes. Whether that Chairperson requires the support of a committee or needs to sit on Council has been questioned by some members. We have come to the view that a committee of at least three members is important in order that ethical issues can be discussed in some depth. We also believe the current position of the Chair, being a member of the Council's Executive, is also important in showing NZAP's commitment to ethical standards and professional practice.

The Chair has an important role in keeping Council aware of ethical process issues and of alerting members whenever there is a decision being made in which wider ethical consequences for the Association may be overlooked.

The report of the Critical Review of Supervision placed emphasis on the importance of professional development of psychotherapists. As it currently stands, the Ethics and Professional Standards Committee (EPSC) focuses its energy on complaints. However, if NZAP's complaints management was to change, then the EPSC could develop a work plan with the Professional Development committee to provide professional development and training in ethical thinking and decision making for the membership. In addition, offering training in "rupture and repair" could help members avoid situations that escalate and put members at risk of complaints.

As ethics are matters of opinion requiring deep consideration, upcoming proposed changes in legislation will also require ethical consideration and the development of ethical guidelines. For example, the upcoming referenda about the Legalisation of Cannabis and the End of Life Bill may result in new legislation, and this will have an impact on psychotherapy practice requiring ethical thought and education.

Whether the role of the EPSC is primarily one of regulation or education and support will depend on the decision Council makes about the future of the current complaint procedures. If Council decides not to continue a formal process in response to complaints received from the public then there may still be a role to direct and navigate any expressions of concern that are received by the Association.

This role would provide an opportunity to clarify concerns, provide advice on the options available including making a complaint to the HDC.

If NZAP no longer holds a complaints process, members and their supervisors would be able to gain guidance and support through all the steps of managing and responding to the complaint from the Association. This role is not currently possible while NZAP maintains its own investigative process.

“I agree that regulation is the particular responsibility of the Board. But regulation includes the codification of the ethical principles of a profession. Ethics is the particular responsibility of the profession, in my opinion. The profession consists of professionals, approved and inducted into Membership by their peers, not by the Board.”

“The relationship is a dynamic one in which the Board probably represents the law and the professional associations the flesh, soul, and blood ethical struggles of Members.”

“If we say they should be using the HDC guidelines then we (NZAP) must have some guidelines of our own, so we can say ‘should’. I agree with this ‘should’, but maybe this is something that the NZAP should explicitly require of unregistered Members, ie. maybe they should advertise that they are accountable to the HDC Guidelines and Complaints Process. If this is part of the requirement for Membership for an unregistered Member, then this implies the existence of a statement of NZAP professional standards. Otherwise what comeback does the NZAP have in the case of a breach of HDC standards and the respondent pleading ignorance?”

SUMMARY

To restate, the review committee was tasked with the brief to critically review the role of the EPSC and the NZAP Complaints Procedure in the era of the Psychotherapy Board of Aotearoa/New Zealand (PBANZ), and to identify duplication between NZAP and PBANZ and assess the need for an independent NZAP complaints process.

The review committee has reached the conclusion that NZAP not hold an independent formal complaint process, and that it is time to relinquish the current complaints procedure. After 11 years of statutory regulation and with over 80% of NZAP members being registered psychotherapists, the committee believes it is time for NZAP to refocus its energy on processes that better support its members. The review committee was mindful of the position of Waka Oranga and others in relation to the HDC and PBANZ and believe that these concerns lie outside the scope of this review.

There is less contention within the NZAP membership about the role of the EPSC and CEPSC. The review committee is of the opinion that the committee and chair roles should continue with a redirected focus to develop and support the membership to understand and apply ethical thinking in their practice. This would mean that the CEPSC remains on the Executive of Council and that the committee works closely with the professional development committee to agree a shared work plan of professional development.

6. RECOMMENDATIONS

1. The committee recommend that NZAP relinquish the NZAP complaints process.
2. That the Chair of the EPSC continue to sit on the Council Executive.
3. That the Chair be supported by a committee of at least three people.

FURTHER CONSIDERATIONS

- That Council work with Waka Oranga to explore their specific circumstances as this lies outside the scope of this report.
- That Council, along with the EPSC, put time and thought into developing a liaison role to receive expressions of concern and to direct clients to the HDC for further investigation, if this is appropriate.
- That the Council work towards further developing a co-operative and collaborative relationship with the Board that will increase trust in one another's processes.
- That the NZAP Code of Ethics be adapted to take the form of Ethical Guidelines for members of the Association and that the PBANZ Code of Ethics become the practice guideline for members of the Association that are psychotherapists.
- That further work be undertaken to establish what is required by the Allied Health Group, Incorporated Societies Legislation and Training Organisations with regard to these changes
- That the CEPSC and the committee develop guidelines for supporting and guiding members who receive complaints, as they navigate the HDC/PBANZ process.
- That the EPSC be encouraged to develop a sound process for managing dissatisfactions within the association as a whole and conflicts that arise between members.
- That the EPSC work with the Professional Development Committee to develop ways of bringing discussions about ethical principles and ethical decision making to the attention of the membership.

CLOSING STATEMENT

Council has given the committee the task of reviewing the question of how NZAP responds to complaints and the future role of the EPSC.

We have completed this task and now look to Council for a response to our recommendations.

Many members have contributed to this document and we ask that Council, in the interests of transparency, make this report widely available to the NZAP membership.

APPENDIX 1: COMMITTEE BACKGROUNDS

ROSALIND BROADMORE

I am currently a retired member of NZAP and an associate member of Waka Oranga.

I became a member of NZAP in 1991 and first served on the NZAP Council from 1993-1999. For five of those years I was Chair of the Ethics and Professional Standards Committee.

Together with Peter Reid I put in many long hours rewriting the Complaints Procedures for the Association. When I left Council I took the role of Chair of the Complaints Assessment Committee.

I returned to Council in 2005 as President Elect, was President in 2007 and 2008. These were extraordinarily difficult times with the advent of Statutory Regulation together with NZAP's growing commitment to biculturalism.

Looking back I can see how these two paths were set to bring conflict within the Association. At the time I think we were unaware of how difficult it would be. There was a real desire to establish psychotherapy as a registered health profession and the membership voted for Council to work to pursue acceptance of psychotherapists as registered health professionals under the HPCAA. It was seen as a way to ensure a career path for people who wished to gain tertiary qualifications and to give credibility to psychotherapy as an occupational category.

There was also a genuine desire to develop as a bicultural association. In 2008 when I was President it was evident that it was time for NZAP to make a heartfelt apology to Maori, during the conference at Waitangi. I delivered this at Ti Tii Waitangi Marae with the hope that it was a step towards healing.

I am aware that NZAP relinquishing its complaints procedure would be difficult for some NZAP members and for Waka Oranga. There are real challenges for Council to find the right processes to ensure the best interests of all.

Today I live in Puhoi, Auckland and have a very minimal practice.

CLARE GREENSMITH

I have been a full member of NZAP since 2010 and carried out my psychotherapy training in the UK in the 1990s after an initial training in occupational therapy. For the last four years I have worked entirely within a clinical role, and prior to that I combined working as a psychotherapist in a clinical capacity alongside health leadership roles for many years. I have worked partly in private practice and in agency settings, particularly statutory mental health services, cancer services and palliative care.

The experience which I believe has been relevant to being part of this NZAP review committee lies in the work I have done at a national level around policy development, audit and evaluation and in the development of models of care/practice. I represented allied health on the Ministry of Health palliative care advisory group for five years and was part of

a time-limited national workforce development group for Health Workforce New Zealand, again representing allied health. I have been an auditor for Hospice New Zealand with a particular focus on bereavement and psychological supports in palliative care. I have worked with complaints as part of leadership roles and have also been part of a complaints review committee in an NGO service where I have worked.

These roles have given me the opportunity to see the ways that many organisations promote ethical and professional standards, and how complaints processes are managed and reviewed. I have appreciated being part of this NZAP review team and the opportunity to work alongside other members of the review team in considering these vital areas of ethical and safe psychotherapy practice and the future direction of the association.

ANDREW JONES

I have been a psychotherapist in private practice since 2003. Prior to that I have worked as a Psychiatric Nurse and Psychotherapist for Capital and Coast DHB mental health services. Currently I am working for ACC as a Psychology Adviser. My interest is in the various expressions of psychoanalytic psychotherapy through individual, family and group.

BRENDA LEVIEN

I have run a private psychotherapy and supervision practice since 1990, working with individuals and couples, clinicians and managers.

From 1985 to 1990 I was the Counselling Director of Marriage Guidance Christchurch with responsibilities for professional practice matters, including two years as Director's Representative on the National Marriage Guidance Council. During that time the council engaged with Maori to develop and implement a bicultural focus within the organisation and a parallel Maori counselling training programme, Te Korowai Aroha.

From 1993 to 2000 I combined private practice with the role of trainer with the Gestalt Institute of NZ (GINZ) Diploma Course, an NZQA accredited programme. In 2001 I became the Director of Training and remained in that role until 2017 when we closed the programme. During those years I was responsible for the oversight of professional standards and training in Ethical matters and the management of any complaints.

In 1996 I was part of a trans-Tasman initiative to develop a professional association of Gestalt Therapists and Training institutes known as GANZ. This group became affiliated with PACFA as that organisation developed. I was part of the original GANZ council for 10 years, four of those years as President and ex-officio as a member of the Ethics Committee. I am a life member of that association.

In 2006 I was asked to join the NZAP Council, which I did the following year. I served on the NZAP council for seven years, five as Chair of Ethics and Professional Standards.

These roles have given me a good grounding in ethical matters and various complaints processes. I have since taken part on complaints investigation committees both Trans-Tasman and within New Zealand.

APPENDIX 2: DESCRIPTION OF COMPLAINTS PROCEDURES – PBANZ, HDC, NZAP

HEALTH AND DISABILITY COMMISSION (HDC)

The HDC receives complaints from health consumers about providers of health and disability services. All members of NZAP are health providers whether they are registered or not. Complaints will be assessed by a complaints resolution staff member. In the case of NZAP psychotherapists this may involve asking a psychotherapist, as an independent expert, to review the nature of the complaint.

Following review, the HDC may decide to investigate, take no further action and/or refer the complaint onto the appropriate Responsible Authority.

PSYCHOTHERAPIST BOARD AOTEAROA NEW ZEALAND (PBANZ)

Any complaint received that alleges that the practise or conduct of a psychotherapist has affected a health consumer must be forwarded onto the Health and Disability Commissioner (HDC). Following review, the HDC may decide to investigate, take no further action and/or refer the complaint onto the appropriate Responsible Authority.

Complaints received by the Psychotherapists Board of Aotearoa New Zealand (Board) are considered by the Notification and Complaints Committee (NCC). The NCC is a committee of the Board which receives and considers concerns raised about a psychotherapist's competence or behaviour on behalf of the Board. The NCC is made up of three members including a layperson.

The NCC will complete an initial review and may:

- Seek further information to help members make an informed decision.
- Refer the matter to the Fitness to Practise Operational Committee if it is a health issue.
- Refer the matter to another agency (if more appropriately dealt with by them).
- Refer the matter to the full Board for consideration.
- Recommend to the Board that a notice be issued under section 35 of the Health Practitioners Competence Assurance Act 2003.
- Recommend that the Board refer the matter to a Professional Conduct Committee (PCC) for investigation.
- Recommend that the Board refer the matter to a Competence Review Committee (CRC).
- Send the practitioner an educational letter.
- Take no further action on the matter.

COMPETENCE

The Board may decide to refer a psychotherapist to a Competence Review Committee (CRC) for a competence review. The CRC will consider the competence of a psychotherapist who

holds a current practising certificate and whether the psychotherapist practice of the profession meets the required standard of competence.

PROFESSIONAL CONDUCT

The Board may decide to refer a psychotherapist to a Professional Conduct Committee (PCC). PCCs are appointed by the Board to investigate information that raises questions about the appropriateness of a psychotherapist's conduct or the safety of their practice, should the need arise. A PCC is a statutory committee which regulates its own procedure. Every PCC must consist of two registered psychotherapists and one lay person. The PCC's role is to investigate the circumstances that lead to the complaint or conviction and then to make recommendations or determinations under section 80 of the Health Practitioners Competence Assurance Act 2003 (HPCAA).

If a PCC (or the Health and Disability Commissioner's Director of Proceedings) lays a charge against a health practitioner, the charge will be heard by the Health Practitioners Disciplinary Tribunal (HPDT).

NEW ZEALAND ASSOCIATION OF PSYCHOTHERAPISTS (NZAP)

When NZAP receives a complaint it is sent to the Complaints Convenor who checks it against various criteria. If it is accepted the Convenor, on behalf of NZAP, sets up a Complaints Assessment Committee (CAC) composed of two NZAP members and one lay person. At this point NZAP becomes the prosecutor of the complaint. If the CAC, after considering all the evidence, decides that the Code of Ethics has been breached the respondent has two options: they can agree with the committee's findings, which will usually result in their practice being reviewed by a Professional Practice Committee or, if they disagree with the findings, a Complaints Hearing Committee is set up in which lawyers may be present to argue the case for or against the facts of a breach.

The Professional Clinical Matters Committee is composed of two senior members who assist the member with their practice in meeting the Code of Ethics.

The Hearing Committee consists of two senior members and a lay person. The Hearing Committee reports its findings to Council.

STATUTORY RESPONSIBILITIES

- The **HDC's primary responsibility** is to promote and protect the rights of consumers of health and disability services.
- **HDC** has a **statutory** function to monitor and advocate for improvements to mental health and addiction services.
- The Code of Health and Disability Commission Rights (The Code) establishes the rights of the consumer and the obligations and duties of providers to comply with the Code (last reviewed 2014).
- It is a regulation under the Health and Disability Commissioner Act 1994.

(The statements above taken from the HDC government website 09/10/20.)

- *“The Psychotherapy Board has been set up to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions” under the Health Practitioners Competency Assurance Act 2003 (PBANZ website accessed 20/09/20).*