

A
Code of Conduct for
Corporations Involved in
the Provision of Management and
Administrative Services
in Medical Centres in
Australia

1 November 2001

1. INTRODUCTION: Industry self-regulation in the health sector

- 1.1 The health sector is subject to a complex network of standards, guidelines and regulatory frameworks, operating on a variety of levels. These include:
 - 1.1.1 Practice and accreditation standards, codes of ethics and other guidelines promulgated and administered by medical colleges and professional organisations.
 - 1.1.2 State/Territory legislation, Health Complaints Ombudsman, and Medical Registration Boards.
 - 1.1.3 Commonwealth legislation (*Health Insurance Act 1973*) and regulatory bodies (Health Insurance Commission and Professional Services Review).
- 1.2 Corporations operating in the health sector are also subject to a range of broader regulatory regimes and mechanisms, including:
 - 1.2.1 Commonwealth legislation (*Trade Practices Act 1974, Industrial Relations Act 1988, Workplace Relations Act 1996, Privacy Act 1998, Privacy Amendment (Private Sector) Act 2000*) and regulatory bodies (Australian Competition and Consumer Commission, Australian Securities and Investment Commission, Australian Industrial Relations Commission, and the Privacy Commissioner).
 - 1.2.2 State/Territory industrial relations legislation and industrial relations tribunals.
- 1.3 The code of conduct for medical corporations must be flexible enough to encompass the standards and regulations imposed on both corporations and medical practitioners under the various frameworks listed above.

2. PREAMBLE TO THE CODE OF CONDUCT FOR MEDICAL CORPORATE SERVICE ENTITIES

- 2.1 This Code has been developed to allow for self-regulation by corporate service entities – large and small – that provide services to medical practitioners.
- 2.2 This Code clarifies the parameters within which corporate service entities, and the medical practitioners that work with them, agree to operate.
- 2.3 The signatories to this Code affirm the importance of quality medical care. They are committed to creating working and clinical environments for medical practitioners that facilitate, among other things, the maintenance of relevant ethical standards and professional excellence in the delivery of primary health care services to the people of Australia.
- 2.4 The signatories to this Code acknowledge that they have an obligation to respect and support the professional independence and clinical autonomy of medical practitioners.

- 2.5 The signatories to this Code acknowledge that they have an obligation to provide an environment that promotes a high standard of patient care.
- 2.6 The understandings set out in this Code are entered into on the basis of goodwill and a commitment to reflect and apply appropriate ethical standards to the practice of medicine in the diversity of medical practice models in Australia.
- 2.7 All signatories to this Code agree to promote the objectives and observe the rules set out below.

3. SCOPE OF THE CODE

- 3.1 Each signatory to this Code agrees in good faith to abide by the Rules listed below in dealings between corporate service entities and individual medical practitioners.
- 3.2 Where an executed contract and this Code conflict, the contract shall prevail.
- 3.3 This Code will apply to contracts executed after the date on which a corporate service entity becomes a signatory to the Code. The performance by a party of contractual obligations after the date of becoming a signatory to the Code shall be deemed not to be a breach of the Code where the contract was entered into before becoming a signatory.
- 3.4 It is agreed by the signatories that this Code is intended to guide the conduct of the signatories, but is not a contract between them, does not create legally enforceable obligations and is not intended to be declared as either a voluntary or mandatory code under the Trade Practices Act.
- 3.5 A list of signatories to this Code is included in Schedule A.

4. OBJECTIVES OF THE CODE

The signatories to this Code shall use their best endeavours to:

- 4.1 Ensure the maintenance of generally accepted ethical standards in the delivery of medical services.
- 4.2 Provide an environment that facilitates the provision of quality medical care to patients as a prime objective.
- 4.3 Protect, maintain and uphold the professional independence and clinical autonomy of medical practitioners.
- 4.4 Ensure that adequate arrangements are in place to disclose information to patients about signatories' and medical practitioners' material or financial interests in institutions or services to which patients may be referred.
- 4.5 Maintain the privacy, confidentiality and security of patient information.
- 4.6 Ensure that commercial negotiations between corporate service entities and medical practitioners are conducted within a framework that is based on informed consent.
- 4.7 Establish a prompt, fair and accessible complaints handling scheme to resolve complaints about breaches of this Code.

- 4.8 Provide medical practitioners with reasonable opportunity to undertake vocational training and continuing learning.

5. RULES OF THE CODE

The signatories to this Code accept the following Rules.

5.1 Ethical standards

- 5.1.1 Each signatory to this Code declares that it will respect the generally accepted ethical framework in which medicine is practiced.
- 5.1.2 Each signatory acknowledges that agreements between corporate service entities and medical practitioners will require the observance of the generally accepted ethical framework in which medicine is practiced.

5.2 The provision of quality medical care

- 5.2.1 Each signatory to this Code declares that it will encourage medical practitioners providing services in its medical centres to observe appropriate professional standards.
- 5.2.2 Each signatory will put a process in place to ensure that the appropriate officers in its management structure are familiar with the relevant practice standards applying to medical practitioners.
- 5.2.3 Each signatory will aim to provide medical practitioners with a safe and appropriate standard of medical and workplace facilities, consistent with industry accreditation standards.

5.3 Professional independence and clinical autonomy

- 5.3.1 Each signatory to this Code declares that it will respect and maintain the professional independence and clinical autonomy of medical practitioners.
- 5.3.2 Each signatory acknowledges that, in a clinical context, the only relationship is that which exists between the medical practitioner and the patient.
- 5.3.3 Each signatory affirms that it will not offer or accept incentives or inducements for the purpose of influencing any medical practitioner's decisions regarding referrals.
- 5.3.4 Each signatory reserves the right to employ appropriate mechanisms with the aim of encouraging medical practitioners to achieve a higher standard of patient care and to optimise patient welfare.
- 5.3.5 Each signatory will support the doctor/patient relationship by ensuring that medical practitioners are free to:
- 5.3.5.1 make diagnostic and treatment decisions that are in the best interests of the patients.
 - 5.3.5.2 in consultation with patients, decide to which specialists they choose to refer, and when.

- 5.3.5.3 in consultation with patients, decide to which diagnostic services they choose to refer, and when.
- 5.3.5.4 in consultation with patients, decide to which allied health professional and other practitioners they choose to refer, and when.
- 5.3.5.5 determine the number, frequency, length, complexity and style of consultations.
- 5.3.6 Each signatory affirms that medical practitioners with whom it has entered an agreement are free to discuss clinical issues with other medical practitioners and health service providers, if this is in accordance with the law and accepted clinical practice.
- 5.3.7 Each signatory will put in place mechanisms to ensure that medical practitioners working in its medical practices have an opportunity to contribute to the operation and management of the practice.

5.4 Adequate disclosure arrangements

- 5.4.1 Each signatory to this Code affirms its commitment to endeavouring to ensure that patients are informed of any material or financial interests between institutions or services to which patients may be referred, and the signatory or medical practitioners working in the signatory's medical centres.
- 5.4.2 Each signatory will put a process in place to disclose such information to patients.
- 5.4.3 For the purposes of this Code, "material or financial interest" is defined as a holding of 5% or more in any institution or service to whom patients attending the signatory's medical centres may be referred, or a holding of 20% or more in a signatory held by a recipient of a referral.

5.5 Privacy, confidentiality and security of patient information

- 5.5.1 Each signatory will comply with all relevant obligations under the *Privacy Act 1988*, the *Privacy Amendment (Private Sector) Act 2000*, the Federal Privacy Commissioner's *Guidelines on Privacy in the Private Health Sector (2001)*, and any relevant State or Territory legislation.
- 5.5.2 In accordance with industry practice, each signatory will ensure that medical practitioners, when requested by patients, will have access to the relevant information contained in the medical records of the patients in their care or who have been in their care, including in the event of separation from the corporate service entity.

5.6 Commercial negotiations between corporate entities and medical practitioners

- 5.6.1 Each signatory to this Code will ensure that all contractual arrangements with medical practitioners are fair and reasonable.

- 5.6.2 Each signatory will ensure that all contracts and agreements for the provision of medical services concluded with medical practitioners are not contrary to the principles set out in this Code.
- 5.6.3 Each signatory will ensure that the number of working hours and the times at which a medical practitioner works are determined on a mutually agreed basis.
- 5.6.4 Each signatory will ensure that medical practitioners with whom it has an agreement are free to discuss issues associated with their contractual arrangements and matters covered by this Code with their advisers. Such advisers are bound to keep confidential matters that the medical practitioners are required to keep confidential.
- 5.6.5 Each signatory agrees to endeavour in good faith to resolve matters covered by the Code.
- 5.6.6 In the event that a satisfactory resolution to a dispute between a signatory and a medical practitioner cannot be achieved, access to independent mediation may be sought, with each party to pay its own costs of such mediation.

5.7 Complaint resolution

- 5.7.1 Each signatory to this Code will establish an internal complaints handling scheme for medical practitioners working in the signatory's medical centres.
- 5.7.2 Each signatory's scheme will conform to the following broad principles, which are derived from *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, published by the Commonwealth Department of the Treasury in August 1997.
- 5.7.3 Each signatory's scheme will operate according to the following principles:
 - 5.7.3.1 *Accessibility*

The scheme makes itself readily available by promoting knowledge of its existence, being easy to use and having no cost barriers.
 - 5.7.3.2 *Fairness*

The scheme produces decisions that are fair and seen to be fair by observing the principles of procedural fairness, by making decisions based on the information before it and by having specific criteria upon which its decisions are based.
 - 5.7.3.3 *Accountability*

The scheme accounts for its operations by providing information about complaints it has received and its determinations to the Code Administration Committee.
 - 5.7.3.4 *Efficiency*

The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the

appropriate process or forum, and regularly reviewing its performance.

5.7.3.5 *Effectiveness*

The scheme is effective by having appropriate and comprehensive terms of reference and periodic reviews of its performance.

- 5.7.4 A guide to implementing the principles is provided in Schedule B of this Code. The purpose of the guide is to provide a menu of options to assist signatories.

5.8 Education and training

- 5.8.1 Each signatory to this Code will provide medical practitioners with reasonable opportunity to undertake vocational training and education.
- 5.8.2 Each signatory acknowledges the medical profession's obligations to research and to the education of medical students and trainee medical practitioners.

5.9 Reporting on progress

- 5.9.1 Each signatory to this Code will provide a written report annually to the Code Administration Committee on its progress in meeting the objectives of the Code.

6. ADMINISTRATION OF THE CODE

6.1 The Code Administration Committee

- 6.1.1 This Code will be administered by a Code Administration Committee.
- 6.1.2 The Code Administration Committee will be chaired by an independent, voting chairperson, selected by the Committee.
- 6.1.3 All signatories to this Code will have an equal right of representation on the Code Administration Committee.
- 6.1.4 Each signatory will provide funding to support the Code Administration Committee.
- 6.1.5 All decisions of the Code Administration Committee must be made with the agreement of at least 75% of the voting representatives on the Committee.

6.2 Role of the Code Administration Committee

- 6.2.1 The role of the Code Administration Committee will be to:
- 6.2.1.1 receive, review and make a determination about applications for membership of this Code;
 - 6.2.1.2 maintain a register of signatories to this Code;

- 6.2.1.3 ensure adequate financing for the administration of this Code, to be provided by the Code signatories;
 - 6.2.1.4 publicise this Code;
 - 6.2.1.5 monitor signatories' compliance with this Code;
 - 6.2.1.6 monitor the accessibility and fairness of signatories' internal complaints handling processes;
 - 6.2.1.7 monitor the operation of this Code and recommend amendments to the Code, such amendments to be agreed by 75% of the voting representatives on the Committee; and
 - 6.2.1.8 prepare and make available an annual report, as described below in Section 6.10.
- 6.2.2 The Code Administration Committee will put in place appropriate administrative arrangements to facilitate its performance of the activities and functions listed under Section 6.2.1.

6.3 Accession to the Code

- 6.3.1 Only medical corporate service entities may seek to become a signatory to this Code.
- 6.3.2 Accession to this Code is by written application to the Code Administration Committee.
- 6.3.3 The Code Administration Committee will review all applications according to standard criteria, to be developed by the Committee. The criteria may include:
 - 6.3.3.1 evidence that the applicant is a corporate medical service entity;
 - 6.3.3.2 a declaration that the applicant's chief executive officer is not an undischarged bankrupt and, if a medical practitioner, has not been disbarred from practicing medicine in any State or Territory of Australia;
 - 6.3.3.3 a declaration that the applicant's board of directors does not include any person who is an undischarged bankrupt and, if a medical practitioner, has not been disbarred from practicing medicine in any State or Territory of Australia;
 - 6.3.3.4 such other criteria that the Code Administration Committee may regard as necessary to preserve the integrity and good name of the signatories to this Code.
- 6.3.4 The Code Administration Committee will publish the criteria for becoming a signatory to this Code, and ensure that the criteria are readily available to all applicants.
- 6.3.5 The Code Administration Committee will advise all applicants in writing of its determination.
- 6.3.6 A signatory may cease to be a signatory to this Code by written notification to the Code Administration Committee.

- 6.3.7 A notification shall become effective upon its receipt by the Code Administration Committee, or upon such date as may be specified in the notification.

6.4 Schedule of signatories

- 6.4.1 The Code Administration Committee will keep a record of all signatories to this Code.
- 6.4.2 The Code Administration Committee will list all current signatories to this Code in its annual report.

6.5 Funding

- 6.5.1 Each signatory to this Code agrees to provide funding to support the activities of the Code Administration Committee.
- 6.5.2 The Code Administration Committee will develop an appropriate funding scale for signatories to this Code.
- 6.5.3 The funding scale will take account of a number of criteria, to be determined by the Code Administration Committee. These may include:
- 6.5.3.1 the size or scale of medical centre operations of the signatory; and
 - 6.5.3.2 such other criteria that the Code Administration Committee may regard as necessary to ensure that all signatories contribute equitably.
- 6.5.4 Funding arrangements for the Code Administration Committee are not intended to be financially onerous.

6.6 Publicity

- 6.6.1 The Code Administration Committee shall publicise the existence of this Code.

6.7 Monitoring compliance

- 6.7.1 The Code Administration Committee is responsible for monitoring signatories' compliance with this Code.
- 6.7.2 In the course of discharging its responsibility for monitoring compliance with this Code, the Code Administration Committee may take into account information that it receives from parties that are not signatories to the Code.
- 6.7.3 The procedures described in Sections 6.7.5 to 6.7.32 will apply in the event of the Code Administration Committee receiving information alleging that this Code has been breached by a signatory.
- 6.7.4 A flow-chart of the compliance monitoring process is included in Schedule C of this Code.

Initial determination of the status of an alleged breach

- 6.7.5 The Chairperson of the Code Administration Committee shall acknowledge in writing the receipt of information alleging a breach of this Code within 10 working days.
- 6.7.6 The signatory that is alleged to have committed a breach of this Code will be given full details of all allegations against it lodged with the Code Administration Committee, within 10 working days of receipt of the information by the Committee.
- 6.7.7 The Chairperson of the Code Administration Committee will make an initial determination of the category of the alleged breach (ie. technical or material, as described below) and the most effective compliance pathway.
- 6.7.8 If, during the initial determination phase, the Chairperson determines that an allegation is vexatious or frivolous, the Chairperson may inform the party making the allegation that no further will be taken.
- 6.7.9 If the Chairperson determines that an allegation of a breach of this Code relates to a matter that should more properly be dealt with by an external agency, the Chairperson will inform the party making the allegation that, in his/her opinion, the party should refer the allegation to the appropriate external agency.
- 6.7.10 The Chairperson should also seek to determine if the allegation concerns a matter that would be better addressed by the complaints handling scheme of the signatory that is the subject of the allegation. The Chairperson is required to refer such matters back to the signatory's complaints handling scheme if:
- 6.7.10.1 the allegation relates to a matter that could be addressed by the signatory's complaints handling scheme in the first instance;
 - 6.7.10.2 the matter has not been so addressed, or is still under consideration by the signatory's internal complaints handling scheme; and
 - 6.7.10.3 the interests of the party making the allegation will not be harmed if the matter is referred back to the signatory for resolution through the signatory's internal complaints handling scheme.

Categories of breach

- 6.7.11 Two primary categories of breach are recognised: technical breach and material breach.
- 6.7.12 Typically, a technical breach would be a (possibly inadvertent) breach of the Code that does not transgress the intent of the Code. In such cases, the Code Administration Committee may choose to take no further action after notifying the signatory concerned that it is in breach of the Code.

- 6.7.13 A material breach is one that transgresses both the letter and intent of the Code. The Code Administration Committee is required to take action in cases of a material breach of the Code commensurate with its assessment of the severity of the breach.

Compliance pathways

- 6.7.14 Several pathways are available to investigate alleged breaches of this Code. In the first instance, responsibility for selecting the appropriate pathway resides with the Chairperson of the Code Administration Committee.

Pathway one: investigating a technical breach

- 6.7.15 If, in the opinion of the Chairperson of the Code Administration Committee, the alleged breach constitutes a purely technical breach of this Code, the Chairperson may refer the alleged breach to the signatory concerned, along with details of any recommended action.
- 6.7.16 The signatory has 21 days in which to respond to the Chairperson's recommendation.
- 6.7.17 The Chairperson must document the recommendation in writing and ensure that the recommendation is tabled for endorsement at the next scheduled meeting of the Code Administration Committee.
- 6.7.18 A copy of the recommendation must also be forwarded to the party that originally informed the Code Administration Committee of the alleged breach.

Pathway two: investigating a material breach

- 6.7.19 If, in the opinion of the Chairperson of the Code Administration Committee, the alleged breach constitutes a material breach of this Code, the Chairperson may institute a range of actions. These may include:
- 6.7.19.1 referring the alleged breach to the next scheduled meeting of the Code Administration Committee for deliberation and appropriate action;
 - 6.7.19.2 referring the alleged breach to the members of the Code Administration Committee out of session, for deliberation and appropriate action; or
 - 6.7.19.3 appointing an independent third party to undertake further investigation of the alleged breach.
- 6.7.20 The Chairperson of the Code Administration Committee may appoint an independent third party to investigate an alleged breach of the Code if, in the Chairperson's opinion:
- 6.7.20.1 investigation of the breach by the Code Administration Committee would not be in the best interests of the party making the initial allegation;
 - 6.7.20.2 the interests of natural justice would be best served by independent third party investigation;

- 6.7.20.3 the Code Administration Committee does not have sufficient resources and/or expertise to investigate the breach effectively;
 - 6.7.20.4 the alleged breach involves two or more signatories to this Code; or
 - 6.7.20.5 the complaint refers to a commercial or contractual matter.
- 6.7.21 An independent investigator will be required to:
- 6.7.21.1 investigate an allegation impartially, using all lawful means; and
 - 6.7.21.2 make a recommendation to the Code Administration Committee detailing the verity, seriousness and extent of the alleged breach, and recommending appropriate action within the scope of this Code.
- 6.7.22 The Chairperson will make the outcomes of any independent investigation available to a signatory that is alleged to have committed a breach of this Code.
- 6.7.23 The signatory will have 21 days in which to respond to the outcomes of the investigation.
- 6.7.24 The appointment of an independent third party to investigate an allegation that the Code has been breached does not in any way diminish the responsibility of the Code Administration Committee to make an appropriate determination with respect to all alleged breaches of the Code.

Determination by the Code Administration Committee

- 6.7.25 In making a determination about an alleged breach of this Code, the Code Administration Committee will take account of all information presented to it, including the findings of any independent investigation and any response to those findings by the signatory that is alleged to have committed a breach of this Code.
- 6.7.26 The Code Administration Committee may choose to appoint an independent third party to investigate an alleged breach of this Code, if the Chairperson has not already instigated such action.
- 6.7.27 The representative on the Code Administration Committee of the signatory that is alleged to be in breach of the code will be ineligible to participate in the Committee's deliberations with respect to the alleged breach.
- 6.7.28 The signatory will be invited to state within 10 working days whether or not the information about the alleged breach is correct, and to give any answer or explanation that may be deemed necessary.
- 6.7.29 The signatory and the party providing the information about the alleged breach will provide whatever references or information is deemed necessary by the Code Administration Committee to fully investigate the alleged breach.

- 6.7.30 All information and materials tendered to the Code Administration Committee and an independent investigator will be kept confidential.
- 6.7.31 If the Committee, after making such further inquiry as is necessary or desirable, forms the opinion that a breach of this Code has occurred, it shall specify the Section found to be breached, provide a full explanation of its decision, and recommend appropriate corrective action.

Corrective Action

- 6.7.32 The Code Administration Committee may apply one or more of the following sanctions to a signatory that it has found to be in breach of this Code, taking into account the nature and severity of the breach. Sanctions may include:
 - 6.7.32.1 written notification from the Code Administration Committee that the signatory is in breach of this Code;
 - 6.7.32.2 a recommendation that the signatory take immediate action to discontinue or modify any practice that is determined to constitute a breach of this Code. Written notification of this action must be provided to the Code Administration Committee within 10 working days;
 - 6.7.32.3 such other sanction that the Code Administration Committee may regard as necessary to preserve the integrity of this Code; or
 - 6.7.32.4 if, failing all other measures, suspension or expulsion of the signatory.

6.8 Monitoring signatories' complaints processes

- 6.8.1 The Code Administration Committee has the power to monitor the accessibility and fairness of signatories' complaints handling schemes.
- 6.8.2 The Code Administration Committee's monitoring role with regard to signatories' complaints handling schemes is separate and distinct from its role in ensuring signatories' compliance with the provisions of this Code.
- 6.8.3 The Code Administration Committee may only exercise its power to monitor signatories' complaints handling schemes if it has received a written request to do so from a complainant providing evidence that:
 - 6.8.3.1 a signatory's complaints handling scheme was not accessible, as defined in Section 5.7.2.1 above; and/or
 - 6.8.3.2 a signatory's complaints handling scheme did not follow the principle of fairness, as defined in Section 5.7.2.2 above.
- 6.8.4 Only the original complainant responsible for initiating a complaint that was subsequently actioned by a signatory's complaints handling scheme may seek to have the outcome of that complaint process reviewed by the Code Administration Committee.

- 6.8.5 The Code Administration Committee will have a range of remedies at its disposal where it has been proven that a signatory's complaints handling scheme has failed to meet the principles of accessibility or fairness. The remedies may include:
- 6.8.5.1 a recommendation that the signatory concerned makes an apology to the complainant;
 - 6.8.5.2 a recommendation that the signatory concerned puts procedures in place to ensure that its complaints handling scheme meets the principles of accessibility and/or fairness; or
 - 6.8.5.3 a recommendation that the signatory concerned initiate appropriate training activities to ensure that its staff are fully aware of their responsibilities with respect to complaints, and understand the principles listed in Section 5.7 of this Code.

6.9 Monitoring the operation of the Code

- 6.9.1 The Code Administration Committee shall undertake to monitor the operation of this Code on an ongoing basis.
- 6.9.2 In addition, the Code Administration Committee shall arrange for the review and evaluation of the Code after every three years of operation, or earlier if it is deemed appropriate.
- 6.9.3 The Code Administration Committee will ensure that wide consultation with relevant stakeholders, including medical professional organisations, consumers and government, is an integral part of the review and evaluation process.
- 6.9.4 If as a result of its ongoing monitoring of this Code, or during the triennial review process, elements of the Code are found to be no longer relevant or effective, the Code Administration Committee will recommend appropriate revisions and amendments to this Code.
- 6.9.5 Any such revisions and amendments must be agreed to by 75% of the corporate medical service entities that are signatories to this Code.

6.10 Reporting on progress

- 6.10.1 The Code Administration Committee will prepare and publish an annual report.
- 6.10.2 The annual report will describe signatories' progress to date in meeting the Objectives of this Code, as listed in Section 4 above.
- 6.10.3 The annual report will also provide information about the activities of the Code Administration Committee during the reporting period. This should include information about:
- 6.10.3.1 accessions and secessions from this Code;
 - 6.10.3.2 de-identified data on the volume and nature of all complaints and allegations received by the Committee, the

compliance pathway used to resolve each one, and the result of each process (including recommendations for referral to external agencies);

6.10.3.3 monitoring of signatories' complaints processes; and

6.10.3.4 the outcomes of any review/evaluation activities undertaken.

6.10.4 The annual report will also include an independently audited financial statement.

SCHEDULE A

Signatories to the Code

1 November 2001

Endeavour Healthcare Ltd

Dr Garry Garside
Managing Director
Endeavour Healthcare Ltd

The Gribbles Group Ltd

Mr Dean Lewsam
National Manager
Medical Centres and Radiology
The Gribbles Group Ltd

Mayne Health

Ms Jeannette McLoughlin
Group General Manager Public
Affairs
Mayne

SCHEDULE B

A Guide for Internal Complaints Handling

The following guide is intended to assist signatories to meet the principles listed in Section 5.7 of this Code. The guide provides a menu of activities that will help signatories to establish and maintain an effective complaints handling scheme.

The guide is based on the benchmarks and menu of activities contained in the Department of the Treasury's publication, *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*. It should be noted that the guide does not completely replicate the Treasury *Benchmarks*. Anyone wishing a copy of the complete *Benchmarks* may contact:

The Department of Treasury
Treasury Building
Parkes Place
PARKES ACT 2600

Ph: (02) 6263 3963
Fax: (02) 6263 2830
Email: consumer.affairs@treasury.gov.au
Internet: <http://www.treasury.gov.au>

Benchmarks and menu of activities

1. Accessibility

The scheme makes itself readily available by promoting knowledge of its existence, being easy to use and having no cost barriers.

Funding

1. The scheme should have sufficient funds to enable its caseload and other relevant functions necessary to fulfil its terms of reference to be handled.

Promotion and access

2. The scheme should seek to ensure that all relevant parties are aware of its existence.
3. The scheme should produce readily available material explaining:
 - 3.1 how to access the scheme;
 - 3.2 how the scheme works;
 - 3.3 the major areas in which the scheme deals; and
 - 3.4 any restrictions on the scheme's powers.
4. Complainants should be permitted to make initial contact with the scheme orally or in writing, but the complaint should ultimately be reduced to writing.
5. The terms of reference of the scheme should be expressed clearly.

Cost

6. Complainants should not be required to pay any application or other fee or charge before a complaint is dealt with by the scheme, or at any stage in the process.

Use

7. The scheme's processes should be easy to understand and use.
8. The scheme should provide for a complainant's case to be presented orally or in writing at the determination stage, at the discretion of the decision-maker¹.
9. The scheme should provide for complainants to be supported by another person at any stage in the scheme's processes.

Non-adversarial approach

10. The scheme should use appropriate techniques, including conciliation, mediation and negotiation in attempting to settle complaints.
11. The scheme should provide for informal proceedings that discourage a legalistic, adversarial approach at all stages in the scheme's processes.

Legal representation

12. The scheme should discourage the use of legal representation before the decision-maker except in special circumstances.
13. The scheme should provide the opportunity for both parties to be legally represented where one party is so allowed.

2. Fairness

The scheme produces decisions that are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

Determinations

1. The decision-maker should base determinations on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.

Procedural fairness

2. The scheme should have a process for informing complainants of their right to access the legal system or other redress mechanisms at any stage if they are dissatisfied with any of the scheme's decisions or with the decision-maker's determination.
3. Complainants should be able to put their case to the decision-maker.
4. Both parties to a complaint should be told the arguments, and sufficient information to know the case, of the other party.
5. Both parties should have the opportunity to rebut the arguments of, and the information provided by, the other party.
6. Complainants should be told the reasons for any determination.

¹ The 'decision-maker' refers to the individual, panels of individuals or other body within the corporate medical service entity that is responsible for the final determination of complaints under a scheme.

7. Complainants should be advised of the reasons why a complaint is outside jurisdiction or is otherwise excluded.

Provision of information to the decision-maker

8. The decision-maker should encourage but not compel both parties to a complaint to provide information relevant to a complaint.
9. Either party to a complaint may withhold information pertinent to a complaint if that information may identify a third party to whom a duty of confidentiality or privacy is owed, or contains information that the party is prohibited by law from disclosing.

Confidentiality

10. The scheme should ensure that information provided to it for the purposes of resolving complaints is kept confidential, unless disclosure is required by law or for any other purpose specified in these benchmarks.
11. Parties to a complaint should agree not to disclose information gained during the course of any mediation, conciliation or negotiation to any third party, unless required by law to disclose such information.

3. Accountability

The scheme accounts for its operations by providing information about complaints it has received and its determinations to the Code Administration Committee.

Determinations

1. The scheme should provide regular written reports of determinations to the Code Administration Committee for the purpose of demonstrating consistency and fairness in decision-making.
2. Written reports of determinations should not name the parties involved.

Reporting

3. The scheme should provide a detailed and informative annual report to the Code Administration Committee containing specific statistical and other data about the performance of the scheme, including:
 - 3.1 information about how the scheme works;
 - 3.2 the number and type of complaints received and their outcome;
 - 3.3 the time taken to resolve complaints;
 - 3.4 any systemic problems identified by complaints;
 - 3.5 examples of representative case studies; and
 - 3.6 information about how the scheme ensures equitable access.

4. Efficiency

The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

Appropriate process or forum

1. The scheme should deal only with complaints that are within its terms of reference and which have not been dealt with, or are not being dealt with, by another dispute resolution forum.
2. The scheme should have mechanisms and procedures for referring relevant complaints to other, more appropriate fora.
3. The scheme should have mechanisms and procedures for referring systemic industry problems, which become obvious from complaints, to the Code Administration Committee.
4. The scheme should exclude vexatious and frivolous complaints, at the discretion of the decision-maker.

Tracking of complaints

5. The scheme should set reasonable time limits for each of its processes that facilitate speedy resolution without compromising quality decision-making.
6. The scheme should have a system for tracking the progress of complaints.
7. The scheme should have a process for keeping the complainant informed about the progress of the complaint.

Monitoring

8. The scheme should set objective targets against which it can assess its performance.
9. The scheme should keep systematic records of all complaints and enquiries, their progress and outcome.
10. The scheme should conduct regular reviews of its performance.
11. The scheme should report annually to the Code Administration Committee on the results of its monitoring and review.

5. Effectiveness

The scheme is effective by having appropriate and comprehensive terms of reference and periodic reviews of its performance.

Coverage

1. The scope of the scheme and the powers of the decision-maker should be clear.

2. The decision-maker should be able to recommend a range of remedies for complaints that are upheld, appropriate to the nature of the complaint.

Scheme performance

3. The scheme should have procedures in place for receiving complaints about the scheme.
4. The scheme should respond to any recommendations from the Code Administration Committee in a timely and appropriate manner.

SCHEDULE C

Flow-Chart for Monitoring Compliance

