

APPEALS REGULATION

1 PURPOSE AND SCOPE

This policy sets out the mechanism for appeal by any person adversely affected by a decision of the College.

2 BACKGROUND

2.1 Any person adversely affected by a decision referred to below, may, within three months of receipt of notice of such decision, apply to the Honorary Secretary to have the decision considered by the Appeals Committee.

2.2 An appellant may ask the College to explain the original decision that is being appealed. This request must be in writing. The College, within four (4) weeks of receiving the request, will write to the appellant to explain the reasons for the original decision.

3 BODY OF POLICY

3.1 Reconsideration of Decisions

3.1.1 Before referring a matter to the Appeals Committee, the Honorary Secretary may advise an applicant to seek a reconsideration and review of the original decision, in accordance with the processes approved by the Council from time to time. Such reconsideration and review shall not, and does not, constitute an appeal under these rules.

3.1.2 An applicant may request copies of information on which the decision was based (other than information supplied to the College on a confidential or privileged basis). The College will provide such information upon written request, subject to obligations of privacy and confidentiality which may apply.

3.1.3 The Honorary Secretary shall not convene the Appeals Committee until satisfied :

- (a) that all other avenues of re-consideration and review of the relevant decision have been exhausted; and
- (b) that, on the basis of the material submitted, there are prima facie grounds for appeal.

3.2 Grounds of Appeal

3.2.1 Any person adversely affected by a decision referred to below, may, within three months of receipt of notice of such decision, or within 3 months of notice of the outcome of a Review of that decision (whichever is the later), apply to the Honorary Secretary to have the decision considered by the Appeals Committee. Such application shall be in writing and accompanied by all relevant information or grounds upon which the person seeks to rely in respect of the review. An appellant shall be asked to lodge a written submission to the Appeals Committee as required in these rules.

3.2.2 The decisions which may be considered by the Appeals Committee are:

- Decisions in relation to trainees regarding selection/non-selection, discipline, dismissal and recognition of training.
- Admission/non-admission to Fellowship.

- Decisions in relation to assessment of International Medical Graduates.
- Decisions arising from College examinations.
- Decisions in relation to Continuing Professional Development of Fellows.
- Disciplinary decisions or actions in relation to Fellows.
- Decisions in relation to the financial status of Fellows.
- Such other decisions as the Board of the College nominate for the purpose of this regulation; and
- Such other decisions of the College, its Boards or Committees as the College Board may determine from time to time.

3.2.3 An appeal may only be made on one or more of the following grounds:

- (a) That an error in law or in due process occurred in the formulation of the original decision.
- (b) That relevant and significant information, whether available at the time of the original decision or which became available subsequently, was not considered or not properly considered in the making of the original decision.
- (c) That the original decision was clearly inconsistent with the evidence and arguments put before the body making the original decision.
- (d) That irrelevant information was considered in the making of the original decision.
- (e) That procedures that were required by College policies to be observed in connection with the making of the decision were not observed.
- (f) That the original decision was made in accordance with a rule or policy without regard to the merits of the particular case.
- (g) That the original decision was made for an improper purpose.

3.3 Appeals Committee Composition

An Appeals Committee will be convened by the Honorary Secretary, comprising the following:

Members:

- Chairman (one of the non Fellow members of the Appeals Committee),
- President–Elect of the College or another Fellow appointed by the Board,
- One Fellow of the College,
- Up to three members nominated by the Australian Health Ministers Conference (or a delegate).

The Appeals Committee will not comprise any individual who was a party to the decision of the College to which the appeal relates (or, in the case of an appeal in relation to the

assessment of overseas trained doctors, any individual who was on the panel to assess the overseas trained doctor).

The Honorary Secretary and the College Solicitor (or their respective delegates) shall be the Secretary and Legal Adviser respectively to the Appeals Committee, but shall not form part of the Appeals Committee.

A quorum for meetings of the Appeals Committee will be the Chairman and three other members. All members of the Appeals Committee shall be entitled to vote on decisions. The Appeals Committee shall decide on the basis of a majority vote. In the event of an equality of votes, the Chairman may exercise a casting vote.

Each Appeals Committee shall be constituted with a majority of non-Fellows as members.

3.4 Consideration of Appeals

- 3.4.1 In any appeal, the applicant will have the onus of proof to establish the grounds of the appeal.
- 3.4.2 An applicant will be asked to lodge a written submission to the Appeals Committee at least 30 days before an appeals hearing. Subject to these rules, the Appeals Committee may receive written or oral submissions at any time in the course of a hearing, at its discretion.
- 3.4.3 At least 45 days prior to the convening of the Appeals Committee hearing, the Honorary Secretary will advise the applicant in writing of:
- (a) The date, time and place of the hearing.
 - (b) The right of the applicant to appear before the Appeals Committee and to seek leave to have legal representation, in accordance with these rules.
- 3.4.4 The Appeals Committee must act according to the rules of natural justice and decide each appeal on its merits. The Appeals Committee is not bound by the rules of evidence and, subject to the rules of natural justice, may inform itself on any matter and in such manner as it thinks fit.
- 3.4.5 The Appeals Committee shall be entitled to consider all relevant information which it thinks fit and may invite any person to appear before it, or to provide information.
- 3.4.6 The Appeals Committee shall conduct its affairs with as little formality as possible and in accordance with the procedures set out in these rules, but otherwise, subject to these rules, shall have full power to regulate its conduct and operation.
- 3.4.7 Except where otherwise required by law, or otherwise determined by the Appeals Committee, a transcript of the hearing of the Appeals Committee and other information provided to the Appeals Committee shall be kept confidential (save that information may be released with the consent of the applicant, and a report of the Appeals Committee hearing may be issued by the Appeals Committee to the College Board and/or published by the College Board as the College Board thinks fit).
- 3.4.8 Minutes of hearings of the Appeals Committee shall be confined to a report of the decision made by the Appeals Committee and its recommendations, if any, to the College Board.
- 3.4.9 An applicant to the Appeals Committee shall have the right to appear and address the Appeals Committee in relation to his or her submissions. The applicant shall be

entitled to have a legal representative as an observer before the Appeals Committee, who may, with the consent of the Appeals Committee, act as an advocate.

- 3.4.10 The applicant may be assisted by a personal advocate colleague or mentor in those cases where the Appeals Committee considers that an applicant could not, or would be disadvantaged in his or her appeal if required to present in person.
- 3.4.11 Hospitals sponsoring overseas-trained doctors may appeal on behalf of the doctor.
- 3.4.12 Before convening an Appeals Committee, the applicant shall pay a fee (currently \$6,600 plus GST) or such amount as the College Board determines from time to time. One half of the fee is non-refundable, to cover the direct administrative costs of the appeal. If the applicant is successful, up to half of the fee, or such part of the fee as the Appeals Committee determines, will be refunded.
- 3.4.13 The Honorary Secretary may delegate his or her powers and duties in respect of any appeal to such person as he or she determines.

3.5 Decisions of the Appeals Committee

An Appeals Committee may, upon considering all submissions:

- 3.5.1 Confirm the decision which is the subject of the appeal.
- 3.5.2 Revoke the decision which is the subject of the appeal.
- 3.5.3 Revoke the decision and refer the decision to the relevant Board or Committee for further consideration (upon such terms or conditions of the Appeals Committee may determine).
- 3.5.4 Revoke the decision and make the recommendations to the College Board on an alternative decision (save that the Appeals Committee may not exercise the power of appointment or selection of trainees to the College Training Program).
- 3.5.5 Recommend to the College Board whether part or all of the costs associated with the Appeals Committee should be waived.

The Appeals Committee will endeavour to issue a written decision, with reasons for the decision, within 21 working days of the appeal hearing or within 21 working days of receiving written submissions after the appeal, whichever is later.

The Appeals Committee may not appoint a person (who has applied for selection unsuccessfully) to the College Training Program, but shall refer any such decision to appoint the person to the appropriate Board or other appropriate committee or body.

3.6 Annual Report

The College shall publish annually a report on the activities of the Appeals Committee including the number of appeals lodged and the results of appeals.

4 PROCEDURES

- 4.1 The College shall endeavour to convene the Appeals Committee within three months of the lodging of an appeal, and hear the appeal as soon as practicable.
- 4.2 The Appeals Committee will not, except in exceptional circumstances, consider a matter de novo.

- 4.3 Prior to the hearing of the Appeal:
- 4.3.1 at least 10 weeks prior to the hearing, the College will provide the applicant with copies of documents and records of the College relevant to the Appeal;
 - 4.3.2 at least 6 weeks prior to the hearing, the applicant will provide the College with written submissions and copies of any other documents and records upon which the applicant wishes to reply;
 - 4.3.3 at least 3 weeks prior to the hearing, the Board or committee (or other decision maker) whose decision is the subject of the appeal, will provide the College and the applicant with any written submissions in reply;
 - 4.3.4 at least 1 week prior to the hearing, the applicant will provide any further or final submissions in reply.
- 4.4 The Appeals Committee will meet alone for up to one hour at the commencement of each meeting to review the matter before it.
- 4.5 The applicant and other parties attending to provide information to the Committee will be admitted together.
- 4.6 Any legal or other adviser permitted to be present will direct questions only to the Chairman and shall conduct himself or herself in accordance with directions from the Chairman.
- 4.7 The College Solicitor may attend to provide legal advice to the Committee as necessary, but is not a member of the Appeals Committee.
- 4.8 The Honorary Secretary of the College attends as Secretary to the Appeals Committee and to provide advice on the aspects of College policy, practice and procedures but is not a member of the Appeals Committee.
- 4.9 The Appeals Committee may request, or permit, other parties to appear before it strictly in the role of providing information to the Committee.
- 4.10 The Chairman will invite the applicant to present his or her submission and may at any time direct the applicant to any point of that submission or invite questions on any point of that submission and may request the applicant to bring his or her submission to a close if the presentation is too protracted.
- 4.11 The Chairman will then invite members of the Appeals Committee to seek clarification from the applicant of any matters raised.
- 4.12 The Chairman will then invite any person attending to provide information to the Committee to comment on the submission of the applicant.
- 4.13 The Appeals Committee may direct questions to any person attending to provide information to the Appeals Committee.
- 4.14 The applicant will be asked to respond or make submissions in relation to material presented by other parties or participants.
- 4.15 The Appeals Committee will then adjourn, and the parties participating in the appeal will remain available to clarify any further matters following the adjournment of the Appeals Committee.
- 4.16 Any or all persons, including members of the Appeals Committee, may participate telephonically or electronically as the Chairman permits.

- 4.17 The parties involved in the appeal will, if the Appeals Committee requires such further clarification, rejoin the meeting and provide the clarification sought.
- 4.18 The applicant will be asked if he or she has any further submissions or wishes to make any further comments or responses before the formal proceedings are closed.
- 4.19 The applicant may be given an opportunity to make any further written submissions necessary within a short period of time following the close of the meeting.
- 4.20 The Chairman will thank all parties for their attendance and dismiss them.
- 4.21 The Appeals Committee will reach a determination which will be conveyed to the participants subsequently in writing by the Honorary Secretary and shall endeavour to issue the determination within 21 working days of the hearing.
- 4.22 The Honorary Secretary has the right to waive the application fee in appropriate circumstances.