



Regulation 31

Appeals process

31. Appeals process

Preamble

This Appeals Process is expressed in terms appropriate to the College.

However, it is also to apply throughout the College and the Faculties.

Accordingly, references to Office Bearers, Fellows, Councils, Boards and Committees apply equally to Office Bearers, Fellows, Councils, Boards and Committees of the Faculties, unless otherwise indicated.

It is expected that persons will lodge appeals only as a last resort, with the College having exhausted avenues of reconsideration by the body making the original decision.

31.1 Reconsideration and Review of Decisions

Before convening the Appeals Committee, the Chief Executive Officer/Faculty General Manager may advise an applicant to seek a reconsideration or review of the original decision. Such reconsideration or review will not, and does not, constitute an appeal under these Rules.

The Appeals Committee will only be convened if the Chief Executive Officer/Faculty General Manager is satisfied that the applicant has exhausted all other avenues of reconsideration and review of the relevant decision.

31.2 Appeals Committee

31.2.1 An Appeals Committee may be convened by the Chief Executive Officer, comprising the following:

Chair: The Vice-President of the College, or another Councillor appointed by the Council.

Members: A Fellow of the College (from the specialty involved in the subject matter of the appeal).

A Fellow of the College (from a specialty not involved in the subject matter of the appeal).

Two other appropriately qualified persons who are not Fellows of the College, of whom one will be a member of the legal profession.

31.2.2 The Appeals Committee will not comprise any individual who was party to the decision of the College to which the appeal relates.

31.2.3 The Chief Executive Officer and the College Solicitor will be the Secretary and Legal Adviser respectively to the Appeals Committee, but will not form part of the Appeals Committee.

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

31.3 Grounds of Appeal

- 31.3.1 Any person adversely affected by a decision referred to below, may, within three months of receipt of notice of such decision, apply to the Chief Executive Officer to have the decision reviewed by the Appeals Committee. Such application will be in writing and accompanied by all relevant information or grounds upon which the person seeks to rely in respect of the review, together with the appeal fee.

- 31.3.2 The decisions which may be reviewed by the Appeals Committee are:

- 31.3.2.1 Decisions of the Council; DPA Assessor; the Committees for Education, Training and Assessments; Supervisors of Training; or other assessors in relation to the assessment of progress of trainees of the College and the Faculties (including admission, dismissal or recognition of training).

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- 31.3.2.2 Decisions of Councils, Boards and Committees in relation to applications for admission to Fellowship and Trainee Performance Reviews.

- 31.3.2.3 Decisions of the Specialist International Medical Graduate (SIMG) Committee or Interviewing Panel, DPA Assessor or DPA SIMG in relation to applications from SIMG for assessment for recognition on behalf of the Australian Medical Council, or the Medical Council of New Zealand, or any applicable State or Territory Medical Board (or for other appropriate purposes).

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- 31.3.2.4 Decisions of the SIMG Committee or Interviewing Panel in relation to examinations or training required by the Chair of the SIMG Committee/DPA Assessor to be undertaken by SIMG for assessment as set out above.

- 31.3.2.5 Decisions of the Continuing Professional Development Committee in relation to participation in the CPD Program, recognition of suitable activities, verification of activities completed and awarding of the Certificate of Compliance.

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- 31.3.2.6 Decisions of the Boards and Committees of the College or the Faculties in relation to accreditation for training of hospitals, units, teaching centres, or other persons.

- 31.3.2.7 Decisions of the College in relation to the financial status of Fellows, trainees or other persons.

- 31.3.2.8 Such other decisions of the College or the Faculties and their Boards or Committees, as the Council may permit or determine.

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

- 31.3.3.1 That an error in law or in due process occurred in the formulation of the original decision.

- 31.3.3.2 That relevant and significant information existing at the time of the original decision was not considered, or not properly considered, in the making of the original decision.

- 31.3.3.3 That the original decision was clearly inconsistent with the evidence and arguments put before the body making the original decision.

- 31.3.3.4 That the original decision was made for an improper purpose.

31.4 Consideration of Appeals

- 31.4.1 In any appeal, the applicant will have the onus of proof to establish the grounds of the appeal.
- 31.4.2 At least twenty-one days prior to the convening of the Appeals Committee hearing, the Chief Executive Officer will advise the applicant of:
- 31.4.2.1 The date, time and place of the hearing. For Appeals generated in Australia or New Zealand, every effort will be made to convene the Appeals Committee in the relevant Australian State/Territory or New Zealand in order to minimise costs to the appellant.
- 31.4.2.2 The right of the applicant to appear before the Appeals Committee and to seek leave to have legal representation.
- 31.4.3 An applicant to the Appeals Committee will have the right to appear and address the Appeals Committee in relation to his or her submissions. The applicant may be accompanied by another person, but will not be entitled to have an advocate or be legally represented before the Appeals Committee, unless the Appeals Committee has given its prior consent.
- 31.4.4 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.
- 31.4.5 The Appeals Committee will be entitled to consider all relevant information which it thinks fit, and may invite any person to appear before it or to provide information.
- 31.4.6 The Appeals Committee will conduct its affairs with as little formality as possible, but otherwise, subject to these Rules, will have full power to regulate its conduct and operation.
- 31.4.7 An appellant has the right and responsibility to appear before the Appeals Committee and to advocate orally the merits of the appeal himself/herself as represented through written submissions.
- 31.4.8 The appellant has the right to be advised by a legal representative or support person. Legal advisors and/or support persons may not act as advocates for the appellant but the legal advisor (if any) may be invited to address the Appeals Committee regarding any particular legal issue that the Appeals Committee believes cannot adequately be addressed by the appellant.
- 31.4.9 A representative(s) of the relevant decision maker may attend and address the Appeals Committee on matters relevant to the appeal and will be given equal opportunity to comment on submissions of the appellant and the decision maker.
- 31.4.10 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, will be kept confidential (save that information may be released with the consent of the applicant and a report of the Appeals Committee may be issued by the Appeals Committee to the Council, and/or published by the Council, as the Council thinks fit).
- 31.4.11 Minutes of hearings of the Appeals Committee will be confined to a report of the decision made by the Appeals Committee and its recommendations, if any, to Council.
- 31.4.12 Costs to the appellant associated with convening a meeting of the Appeals Committee will be capped at AUD1,000 per Appeal. The Appeals Committee may recommend to the Council that some or all of the costs be waived. In the event that the Appeal is successful, all ANZCA related costs paid by the appellant may be refunded at the discretion of the Appeals Committee.
- 31.4.13 The Chief Executive Officer may delegate his or her powers and duties in respect of any appeal to such persons as he or she determines.

31.5 Decisions of the Appeals Committee

31.5.1 An Appeals Committee may, upon considering all submissions:

31.5.1.1 Uphold the decision which is the subject of the appeal.

31.5.1.2 Overturn the decision which is the subject of the appeal.

31.5.1.3 Overturn the decision and/or refer the decision to the relevant Council, Board or Committee for further consideration (upon such terms or conditions as the Appeals Committee may determine).

31.5.1.4 Overturn the decision and/or replace it with such other decision as it thinks fit.

31.5.1.5 Recommend to the Council whether part or all of the costs associated with the Appeals Committee should be waived.

31.5.2 A decision of the Appeals Committee cannot:

31.5.2.1 recommend a pathway to Fellowship for an SIMG without reference to a new SIMG Assessment;

31.5.2.2 revoke a clinical or examination assessment of a trainee and replace the assessment with an assessment of its own; or

31.5.2.3 award a Fellowship to any appellant.

Promulgated April 2006

Revised July 2015