



# The Australasian College of Aerospace Medicine

## **RECONSIDERATION REVIEW AND APPEALS PROCESS BY-LAW**



# The Australasian College of Aerospace Medicine

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## 1. INTRODUCTION AND PURPOSE

1.1. The Australasian College of Aerospace Medicine Ltd (“the College”) is committed to procedural fairness. This Reconsideration, Review and Appeals By-Law applies to the College and other College Bodies

1.2. The purpose of this By-Law is to provide an internal appeals mechanism to ensure that those affected by decisions of the College are treated fairly, consistently and impartially at all times.

## 2. RECONSIDERATION AND REVIEW

2.1. Any person who is dissatisfied with a Decision referred to below may apply to have that Decision reconsidered or reviewed (“the Applicant”) within the timeframes set out in Clause 7 of this By- Law.

2.2. A reconsideration is conducted by the College Body that made the original Decision (“Reconsideration”).

2.3. A review is conducted by the Dean of Education.

2.4. “Decision” means any decision of a College Body which may be reconsidered, reviewed or appealed (subject to clause 2.5) and which are:

2.4.1. Decisions in relation to the assessment, supervision and progress of trainees of College Bodies (including admission, dismissal or recognition of training but excluding the outcome or results of the assessment of written or clinical examinations);

2.4.2. Decisions in relation to applications for special consideration in relation to the College’s assessment process made in accordance with the College’s Application for Special Consideration for Assessments Policy (which applies if there are adverse circumstances during summative assessments);

2.4.3. Decisions in relation to applications for admission to Fellowship;

2.4.4. Decisions in relation to applications from overseas trained doctors;

2.4.5. Decisions in relation to requirements for summative assessment, top up training and peer review for overseas trained doctors for assessment as set out above;

2.4.6. Decisions in relation to participation in the Continuing Professional Development (CPD) Program;

2.4.7. Decisions in relation to accreditation for training hospitals, units, teaching centres or supervisors;

2.4.8. Decisions in relation to the financial standing of Fellows, trainees or other persons with the College or any of its College Bodies;

2.4.9. Decisions made by the Board of Directors of the College ("Board") to terminate the membership of a member under clause 4.1.1(c) of the Constitution; or

2.4.10. Such other Decisions as the Board may permit or determine from time to time.

2.5. This By-Law does not apply to any decision made by the Board other than a Decision referred to in clause 2.4.9 and 2.4.10 above.

## 2.6. Reconsideration

2.6.1. A reconsideration of a Decision is conducted by the same College Body which made the Decision.

2.6.2. The Applicant must apply in writing to the Chairman of the applicable College Body:

(a) stating the Decision in respect of which the reconsideration is sought;

(b) stating the grounds for the reconsideration and the matters in issue; and

(c) providing any additional information or material considered relevant to the Decision, within the timeframe specified in this By-Law.

2.6.3. The relevant College Body will convene a Reconsideration Committee within the timeframe specified in this By-Law.

2.6.4. The Reconsideration Committee will consider:

(a) all original information and material provided;

(b) the reasons for the Decision being taken;

(c) any additional information and material provided by the Applicant;

(d) any additional information and/or material considered relevant by the Chairman of the Reconsideration Committee.

Note: Evidence of further training and experience by the Applicant during the period between making the original Decision the subject of the reconsideration and the convening of the Reconsideration Committee shall not be considered as additional information.

2.6.5. The Reconsideration Committee retains the right to an extension of time within which to undertake the reconsideration process. The Applicant will be notified in writing as soon as practicable by the Chairman (or his/her nominee) of any extension of time required by the Committee.

2.6.6. Minutes of the Reconsideration Committee's deliberations and decision, including

reasons for the decision taken, shall be kept in accordance with the College's governance practices.

2.6.7. The decision made by the Reconsideration Committee shall be conveyed to the Applicant in writing within the timeframe specified in this By- Law.

2.6.8. Where possible the Reconsideration Committee should endeavour to provide the Applicant with reasons for its decision.

2.6.9. The Applicant should be advised of his/her right to have the Reconsideration Committee's decision reviewed, by following the procedures set out in this By-Law.

2.6.10. A decision made by the Board is not subject to reconsideration.

## 2.7. Review

2.7.1. An Applicant dissatisfied with the decision of the Reconsideration Committee may elect to have that decision reviewed.

2.7.2. Alternatively any person dissatisfied with the Decision of a College Body may elect to move directly to the review process.

2.7.3. A review of a reconsidered decision or of the Decision as elected pursuant to Clause 2.7.2 is undertaken by the Dean of Education, or a nominee acting on their behalf ("Review Committee").

2.7.4. The Review Committee will not include any members who were part of the College Body making or reconsidering the Decision. The Chairman of the Review Committee will ensure, before convening that Committee, that all those taking part were not members of the original College Body and/or the Reconsideration Committee and had not discussed the Decision with members of the original College Body and/or the Reconsideration Committee.

2.7.5. The College President may determine that an application for review should proceed directly to an Appeal under clause 3 of this By-Law if:

- (a) it is not possible to constitute a Review Committee which complies with clause 2 of this By-Law; or
- (b) the President is otherwise satisfied that there are exceptional circumstances which justify the matter proceeding by way of an Appeal.

2.7.6. An Applicant seeking a review must apply in writing to the Chairman of the Review Committee:

- (a) stating the Decision in respect of which the review is sought;
- (b) stating the grounds for the review and the matters in issue;
- (c) providing any additional information or material considered relevant to the Decision; and
- (d) providing payment of the applicable fee; within the timeframe specified in this By-Law.

Note: Evidence of further training and experience by the Applicant during the period between making the original Decision the subject of the review and the convening of the Review Committee shall not be considered as additional information.

2.7.7. The Review Committee will consider:

- (a) all original information and material provided;
- (b) the reasons for the Decision being taken;
- (c) any additional information and material provided by the Applicant to the Reconsideration Committee (as applicable);
- (d) any additional information and material sought by the Reconsideration Committee (as applicable);
- (e) the decision of the Reconsideration Committee (as applicable);
- (f) any additional information and/or material provided by the Applicant to the Review Committee;
- (g) any additional information and/or material considered relevant by the Chairman of the Review Committee, including any information regarding the policy and procedures relevant to the Decision.

2.7.8. The extension of time within which to undertake the review process. The Applicant will be notified in writing as soon as practicable by the Chairman (or his/her nominee) of any extension of time required by the Committee.

2.7.9. Minutes of the Review Committee's deliberations and decision, including reasons for the decision taken, shall be kept in accordance with the College's governance practices.

- (a) The decision made by the Review Committee shall be conveyed to the Applicant in writing within the timeframe specified in this By-Law.
- (b) Where possible the Review Committee should endeavour to provide the Applicant with reasons for its decision.
- (c) The Applicant should be advised of his or her right to have the Review Committee's decision appealed, by following the procedures set out in this By-Law.
- (d) The decision made by the Review Committee shall also be conveyed to the original College Body in writing following the meeting, providing reasons for its decision if the original Decision is overturned.

2.7.10. A decision made by the Board is not subject to review.

### **3. APPEALS**

3.1. An Applicant who is dissatisfied with:

3.1.1. a Decision of the Review Committee; or

3.1.2. a Decision made by the Board to terminate the Applicant's membership under clause 4.1.1(c) of the Constitution may within 30 days of receipt of notice of that Decision, apply to the President to have the Decision heard by the Appeals Committee ("Appeal").

3.2. Except:

3.2.1. in the case of a Decision made by the Board to terminate the Applicant's membership under clause 4.1.1(c) of the Constitution; or

3.2.2. where the President has made a determination under clause 2.7.5 of this By-Law

appeals to the Appeals Committee may only be made after the matter has been considered by the Review Committee. Before convening the Appeals Committee, the President must be satisfied that the Applicant has exhausted all other avenues of reconsideration and review of the Decision.

3.3. A request for Appeal must be made in writing to the President requesting that the President convene the Appeals Committee and must:

3.3.1. state the Decision in respect of which the Appeal is sought;

3.3.2. stating the grounds for the Appeal and the matters in issue; and

3.3.3. provide any additional information or material considered relevant to the Decision and/or subsequent reconsideration and/or review decisions;

3.3.4. provide payment of the applicable fee. Note: Evidence of further training and experience by the Applicant during the period between making the original Decision the subject of the Appeal and the convening of the Appeals Committee shall not be considered as additional information.

3.3.5. After determining that the Appeal is to proceed, the President, or delegate shall acknowledge receipt of the request and the applicable fee to the Applicant and proceed to convene the Appeals Committee.

3.4. The President may, with the agreement of the Applicant, convene the Appeals Committee outside the time frame set out in clause 7.

## **4. APPEALS COMMITTEE**

4.1. The Board shall approve suitably qualified people to be members of the Appeals Committee Panel.

4.2. After a matter has been accepted for Appeal, an Appeal Committee will be formed for the purposes of hearing and deciding that Appeal.

4.3. The Board will approve the membership of Appeal Committees.

- 4.4. An Appeals Committee will consist of five members.
- 4.5. The Chair of an Appeals Committee will be a Fellow appointed by the Board to chair the Committee.
- 4.6. When possible, the other members of an Appeals Committee will be:
- 4.6.1. A Fellow of the College Body that made the Decision (in the case of an Appeal of a Decision made by the Board under clause 4.1.1(c) of the Constitution, a member of the Board);
  - 4.6.2. A Fellow of a College Body not involved in the subject matter of the Decision on Appeal; and
  - 4.6.3. Two other appropriately qualified persons (one of whom may need to be a lawyer, if considered necessary).
- Except in the case of an Appeal of a Decision made by the Board under clause 4.1.1(c) of the Constitution, the Appeals Committee must not include any person who was party to the Decision or was a member of any Committee that reconsidered or reviewed that Decision, or had discussed the Decision with any member of any Committee that reconsidered or reviewed the Decision. In any case, the Appeals Committee must not include any person who has a personal interest in the outcome of the Appeal.
- 4.7. The Secretary should be present during the Appeals Committee deliberations.
- 4.8. A quorum for meetings of an Appeals Committee will be the Chairman plus three other members.
- 4.9. In the case of an Appeal of a Decision made by the Board under clause 4.1.1(c) of the Constitution, the quorum must include three members who are not also members of the Board.
- 4.10. 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.
- 4.11. An Appeals Committee is a committee of the Board of the College.

## **5. CONSIDERATION OF APPEALS**

- 5.1. At least 21 days prior to the convening of the Appeals Committee hearing the Chief Executive Officer will advise the Applicant of:
- 5.1.1. the date, time and place of the hearing; and
  - 5.1.2. the right of the Applicant to appear before the Appeals Committee to be accompanied by another person and to seek leave to have legal representation.
- 5.2. An Applicant has the right to appear before and address the Appeals Committee in relation to his or her submissions. The Applicant shall not be entitled to have an advocate or to be legally represented before the Committee, unless the Committee has given its



prior consent.

5.3. An Applicant who seeks leave to be legally represented will be required to present arguments as to why permission should be granted. Whenever possible the Chairman of the Committee shall consult with the other members of the Committee and determine whether consent should be given, prior to the meeting of the Appeals Committee. When such a determination cannot be made in advance, the Appeals Committee shall determine the matter at the hearing as its first item of business.

5.4. An Appeals Committee must act only on the basis of the supporting evidence according to the rules of procedural fairness and must decide each Appeal on its merits.

5.5. The Appeals Committee is not bound by the rules of evidence and 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.

5.6. Except where otherwise required by Law or otherwise determined by the Appeals Committee, a transcript of the hearing and other information provided to the Committee will be kept confidential (save that information may be released with the consent of the Applicant, and information will be released in the Committee's report to the Board. Board Documents remain confidential).

5.7. Minutes of the Appeal Committee's deliberations and decision, including reasons for the decision taken, shall be kept.

## **6. DECISIONS OF THE APPEALS COMMITTEE**

6.1. An Appeals Committee may, upon considering all submissions:

6.1.1. confirm the Decision;

6.1.2. revoke the Decision;

6.1.3. revoke the Decision and refer the Decision to the relevant Committee for further consideration (upon such terms and conditions as the Appeals Committee may determine);

6.1.4. revoke the Decision and replace it with such other decision as it thinks fit; and

6.1.5. make such recommendations to the Board as it determines.

6.2. There may be occasions where a decision may be believed by the Appeals Committee, College President or Board to have direct relevance and ramifications beyond the College Body from which the Decision that was the subject of the appeal originated. In such cases, where it is considered necessary for a College process, procedure or policy to be altered as a result of the decision of an Appeal, and with the agreement of the Chairman of the Appeals Committee, the decision of the Appeals Committee, together with a summary of the reasons for the decision that is considered to be of direct relevance, may be conveyed to such other bodies or staff as is considered necessary, provided that the information conveyed is first "de- identified" to protect the confidentiality of the Appeals process.

## 7. APPLICABLE TIMEFRAMES

7.1. The following time limits have been set for the handing down of decisions and the right to request Reconsideration, Review or Appeal of Decisions.

Stage	Committee	Time Limit	Action initiated by
<b>Reconsideration</b>			
Period to lodge request for Reconsideration		28 days from receipt of decision	Applicant

Reconsideration	College Body that made the Decision (Reconsideration Committee)	28 days from the later of receipt of the Applicant's request for reconsideration or when all documentation is received from the Applicant	Chair of Reconsideration Committee or Director of Education if an OTD or Trainee
<b>Review</b>			
Period to lodge request for Review		28 days from receipt of decision or reconsideration decision	Applicant
Review	College Body that made the Decision (Review Committee)	56 days from the later of receipt of the Applicant's request for review or when all documentation is received from the Applicant	Chair of Review Committee or Director of Education if an OTD or Trainee
<b>Appeal</b>			
Period to lodge request for Appeal		28 days from receipt of review decision or Board's decision pursuant to clause 4.1.1(c) of the Constitution	Applicant
Appeal	Appeal Committee	112 days from receipt of the Applicant's appeal, or at a date agreed.	President

7.2. The following notes are to be read in conjunction with the above timetable.

7.2.1. The Applicant may, without charge, elect to have the Decision reconsidered by the original College Body (Reconsideration Committee). The

Applicant may provide new or additional material in support of their request for reconsideration.

7.2.2. At any time the Applicant may request the Reconsideration Committee grant an extension of time in which to provide further information or material, and the Committee will grant any requests for an extension of time considered reasonable.

7.2.3. If no request for an extension of time is made then the Committee will hand down its decision within 28 days of receipt of the request for reconsideration. If an extension of time is granted, then the Committee will hand down its decision within 28 days of receipt by the Committee of the additional information or material.

7.2.4. An Applicant may elect, on payment of any scheduled fee, to have the Decision reviewed (Review Committee). The Applicant may provide new or additional material in support of their request for review.

7.2.5. At any time the Applicant may request the Review Committee grant an extension of time in which to provide further information or material, and the Committee will grant any requests for an extension of time considered reasonable.

7.2.6. If no request for an extension of time is made then the Committee will hand down its decision within 56 days of receipt of the request for review. If an extension of time is granted then the Committee will hand down its decision within 56 days of receipt by the Committee of the additional information or material.

7.2.7. If an Applicant elected for reconsideration and receives an unfavourable decision then the Applicant may, within 28 days, elect to have that decision reviewed, and the costs set out in clause 9 and timeframes outlined in clause 7.1 above will stand as if that election had been made.

7.2.8. If an Applicant is dissatisfied with the decision of the Review Committee, he or she may, within 28 days and on payment of the scheduled fee, elect to have the matter considered by the Appeals Committee.

7.2.9. The Secretary of the Appeal Committee, on behalf of that Committee's Chairman, will notify the Applicant in writing of the Committee's decision, including reasons for the decision, within 28 days of the Committee's hearing.

## **8. GENERAL MATTERS**

8.1. The Director of Education is responsible for the Overseas Trained Doctors' (OTDs) and Trainees' appeal processes, and as such will have no role in the consideration of appeals from OTPs and Trainees. The Chairman of each relevant Committee is responsible for convening that Committee to hear the reconsideration or review, and to hand down a decision within the applicable timeframe. However where it appears for any reason that a timeframe may not be met in the course of events, then the Board may request that the relevant Committee meet as soon as possible, either in or out of session, in order to hand down a decision within the relevant timeframe.

8.2. In the case of an Appeal the President has authority to convene the Appeals Committee, which the President can delegate to any other person. Where it appears for any reason that a timeframe may not be met in the course of the Appeal, then the Board may request that the Appeals Committee meet as soon as possible, either in or out of session, in order to hand down a decision within the relevant time. The President may also delegate any, or all, of his or her powers and duties under this By-Law to such person or persons as he or she determines, provided that person or persons was/were not a member of any Committee that reconsidered or reviewed the Decision, or otherwise has a personal interest in the outcome of the reconsideration, review and appeals process.

8.3. The relevant committee may at any stage grant leave for the Applicant to bring a matter for reconsideration, review or appeal outside of the time limit for doing so if the Applicant can demonstrate that there are reasonable grounds to allow the application out of time including but not limited to:

8.3.1. the availability of new information;

8.3.2. matters preventing the Applicant from making the application at an earlier time;

8.3.3. that it would impose unjustifiable hardship on the Applicant to be prevented from bringing a matter to the relevant committee.

8.4. The Board of the College shall review this By-Law at such time as it considered appropriate.

## **9. Scheduled Fees**

9.1. No fee is payable on Reconsideration.

9.2. A fee of \$500 is payable on a request for Review.

9.3. A fee of \$500 is payable on a request for Appeal.

## **10. Definitions**

Unless the context requires otherwise, defined terms used in these by-laws have the same meaning as those terms in the Constitution of the College.