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

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## 1. PURPOSE

- 1.1. The purpose of this By-Law is to provide:
  - (a) an internal process for the reassessment of specified decisions made by College Bodies; and
  - (b) a process to Appeal Termination of Membership Decisions.
- 1.2. The three stages of the College's internal process for the reassessment of specified decisions are:
  - (a) Reconsideration – by the same College Body that made the Decision;
  - (b) Review – by the College Body that oversees the College Body that made the Decision; and
  - (c) Appeal – to an Appeals Committee appointed by the Board.
- 1.3. Each of these stages involves a review 'on the merits'. This means that the relevant decision maker is required to reassess all of the facts and circumstances relating to the decision (including any additional material provided by the Applicant or otherwise obtained by the decision maker, subject to clauses 2.8, 3.12 and 7.4 below) and make a new decision.

## 2. Reconsideration

- 2.1 A person:
  - (a) whose interests are directly and adversely affected by a Decision; and
  - (b) who is dissatisfied with the Decision.

may apply for Reconsideration of the Decision in accordance with this clause.

***Note - an Applicant may elect whether to seek Reconsideration or review of a Decision. As set out in clause 3.1 below, an application for Review can be made without first seeking Reconsideration.***

- 2.2 An application for Reconsideration must:
  - (a) be made in writing in the approved form;
  - (b) be received by the College within 28 days of the Applicant being advised of the Decision; and
  - (c) be accompanied by the prescribed fee (if any).
- 2.3 Reconsideration of a Decision is conducted by the same College Body which made the Decision.
- 2.4 Subject to clause 2.8, the College Body undertaking a Reconsideration of a Decision may exercise all of the powers and discretions it was able to exercise when it made the original Decision.
- 2.5 In determining an application for Reconsideration of a Decision, the College Body must have regard to:
  - (a) any information, documents and materials provided to it in relation to the original Decision;
  - (b) the application for Reconsideration and, subject to clause 2.8, any submissions or other additional documents provided by the Applicant with the application for Reconsideration; and

- (c) any other information obtained by the College Body which is relevant to the application for Reconsideration.
- 2.6 If the College Body intends to take into account information which has not been provided to the Applicant, unless the rules of procedural fairness do not require it, the information will be provided to the Applicant and the Applicant will be allowed a reasonable time to respond to that information before the College Body makes a decision on the Reconsideration application.
- 2.7 Reconsideration of a Decision is conducted on the basis of the materials referred to in clause 2.5 above. An Applicant does not have a right to attend any meeting of the College Body or to make oral submissions to the College Body undertaking the Reconsideration.
- 2.8 The College Body undertaking the Reconsideration of a Decision must not take into account evidence of further training and experience by the Applicant obtained during the period between the making of a Decision and the Reconsideration of that Decision.
- 2.9 The College Body must give the Applicant written notice of its decision on the application for Reconsideration within a reasonable timeframe.
- 2.10 Only one application for Reconsideration can made in respect of a Decision.
- 2.11 Quorum for a Reconsideration Committee is a minimum of three members or one-third of the membership of the Committee, whichever is the higher.

### **3. Review**

3.1 A person:

- (a) whose interests are directly and adversely affected by a Decision; and
- (b) who is dissatisfied with the Decision.

may apply for Review of the Decision in accordance with this clause without first requesting Reconsideration.

3.2 A person:

- (a) whose interests are directly affected by a Reconsideration Decision; and
- (b) who is dissatisfied with the Reconsideration Decision,

may apply for Review of the Reconsideration Decision in accordance with this clause.

3.3 An application for Review must:

- (a) be made in writing in the approved form;
- (b) be received by the College within 28 days of the Applicant being advised of the Decision or the Reconsideration Decision; and
- (c) be accompanied by the prescribed fee (if any).

3.4 Subject to clause 3.6, review of a Decision or a Reconsideration Decision is conducted by the College Body that oversees the College Body that made the Decision or the Reconsideration Decision.

3.5 The Reviewing Body must not include a member who participated in either the Decision or the Reconsideration Decision or otherwise has a conflict of interest.

3.6 The Chief Executive Officer may determine that an application for review should proceed directly to an Appeal if:

- (a) it is not possible to convene a Reviewing Body that complies with this by-law; or

- (b) the Chief Executive Officer is otherwise satisfied that there are exceptional circumstances which justify the matter proceeding by way of Appeal.
- 3.7 Subject to clause 3.12, the Reviewing Body may:
- (a) exercise all of the powers and discretions of the College Body that made the Decision.
  - (b) refer the matter to the College Body that made the Decision or Reconsideration Decision for further consideration in accordance with any directions or recommendation of the Reviewing Body.
- 3.8 For the avoidance of doubt, other than the ability to refer a matter back as set out in 3.7(b), the Reviewing Body may not make a Review Decision that the College Body that made the Decision could not have made.
- 3.9 In determining an application for Review, the Reviewing Body must have regard to:
- (a) any information, documents and materials provided to the College Body that made the Decision and the Reconsideration Decision;
  - (b) the application for Review and, subject to clause 3.12, any submissions or other additional documents provided by the Applicant with the application for Review; and
  - (c) any other information obtained by the College Body which is relevant to the application for Review.
- 3.10 If the Reviewing Body intends to take into account information which has not been provided to the Applicant, unless the rules of procedural fairness do require it, the information will be provided to the Applicant and the Applicant will be allowed a reasonable time to respond to that information before the Reviewing Body makes a decision on the application for Review.
- 3.11 A Review is conducted on the basis of the materials referred to in clause 3.8. An Applicant does not have a right to attend any meeting of the Reviewing Body or to make oral submissions to the Reviewing Body.
- 3.12 The Reviewing Body must not take into account evidence of further training and experience by the Applicant obtained during the period between the making of the Decision and the Review.
- 3.13 The Reviewing Body must give the Applicant written notice of its decision on the application for Review within a reasonable timeframe.
- 3.14 Only one application for Review can made in respect of each Decision or Reconsideration Decision.
- 3.15 Quorum for a Review Committee is a minimum of three members or one-third of the Committee whichever is the higher.

#### **4. Appeal**

- 4.1 A person:
- (a) whose interests are directly and adversely affected by:
    - (i) a Review Decision; or
    - (ii) a Termination of Membership Decision; and
  - (b) who is dissatisfied with the Review Decision or the Termination of Membership Decision,

may appeal the Review Decision or Termination of Membership Decision in accordance with this clause.

4.2 An application for Appeal must:

- (a) be made in writing in the approved form;
- (b) be received by the College within 28 days of the Applicant being advised of the Review Decision or the Termination of Membership Decision; and
- (c) be accompanied by the prescribed fee (if any).

4.3 An Appeal is conducted by an Appeals Committee.

4.4 Only one application for appeal can made in respect of each Review Decision or a Termination of Membership Decision.

## **5. Appeals Committee**

5.1 An Appeals Committee shall consist of:

- (a) the President-Elect of the College (as chair of the Appeals Committee) or a Fellow appointed by the Board to chair the Appeals Committee;
- (b) a Fellow of the College; and
- (c) a member of the legal profession.

5.2 The Chief Executive Officer may determine to expand the membership of the Appeals Committee to include additional Fellow and/or non-Fellow members, as the circumstances of the appeal may warrant.

5.3 The Chief Executive Officer or his/her delegate shall be the Secretary of the Appeals Committee.

5.4 Except for the Chair, members of the Appeals Committee shall be selected by the Company Secretary or his/her delegate. The Company Secretary shall select the legal profession member from a list of eligible candidates approved by the Board. The Company Secretary shall select the Fellow member from the roll of Fellows.

5.5 The Appeals Committee must not include a member who participated in the Decision, the Reconsideration Decision, the Review Decision or otherwise has a conflict of interest.

## **6. Appeal Process**

6.1 The Secretary of the Appeals Committee or his/her delegate will prepare an Appeal Pack to be provided to the members of the Appeals Committee and the Applicant.

6.2 The Applicant has not less than 14 days from receipt of the Appeal Pack to provide the Secretary of the Appeals Committee with any further written submission or written materials relevant to the Appeal.

6.3 After receiving material in accordance with clauses 6.1 and 6.2, the Appeals Committee will determine the process it will adopt to determine the Appeal, including:

- (a) whether the Appeals Committee requires further written information or submissions from the Applicant or any other party; and
- (b) whether the Appeal will proceed by:

- (i) the Appeals Committee considering all the written material contained in the Appeal Book and any further materials obtained by the Appeals Committee from the Applicant, another party or any other means without the need to hear oral submissions from the Applicant or any other party;
  - (ii) the Appeals Committee inviting the Applicant to attend a meeting of the Appeals Committee to present an oral submission, answer questions from the members of the Appeals Committee or to hear and ask questions of any other party invited by the Appeals Committee to attend the meeting; or
  - (iii) by any other means.
- 6.4 If requested to attend a meeting of the Appeals Committee, the Applicant:
- (a) does not have a right to be legally represented at that meeting, but may make an application to be legally represented;
  - (b) does not have a right to call witnesses or to cross examine other parties who have provided information to the Appeals Committee; and
  - (c) may be accompanied by a person of their choosing. The accompanying persons will not be allowed to advocate or speak on behalf of the Applicant during the meeting of the Appeals Committee.
- 6.5 If the Appeals Committee obtains information or submissions from a party or source other than the Applicant which is relevant to the Appeal, unless the rules of procedural fairness do not require it, that information or those submissions will be provided to the Applicant by the Secretary of the Appeals Committee or his/her delegate and the Applicant will have not less than 5 days to provide the Secretary of the Appeals Committee with any further submissions or material in response.

## **7. Decision of Appeals Committee – Review Decisions**

- 7.1 Subject to clause 7.4 the Appeals Committee may:
- (a) exercise all of the powers and discretions of the College Body that made the Decision.
  - (b) refer the matter to the College Body that made the Decision or Reconsideration Decision for further consideration in accordance with any directions or recommendation of the Reviewing Body.
- 7.2 For the avoidance of doubt, other than the ability to refer a matter back as set out in 7.1(b), the Appeals Committee may not make a decision that the College Body that made the Decision could not have made.
- 7.3 The Appeals Committee may make any recommendation to the Board it considers appropriate arising from an Appeal.
- 7.4 The Appeals Committee must not take into account evidence of further training and experience by the Applicant obtained during the period between the making of the Decision or the Termination of Membership Decision and the determination of the Appeal.
- 7.5 The Appeals Committee must give the Applicant written notice of its decision on the application for appeal within a reasonable timeframe.

## **8. Recommendations of the Appeals Committee – Termination of Membership Decisions**

- 8.1 In respect of an appeal from a Termination of Membership Decision, the Appeals Committee will hear the Appeal and make a recommendation to the Board. The Appeals Committee's recommendation is not binding on the Board and the Appeals Committee has no power to make any decision in relation the appeal other than to make recommendations to the Board.

## **9. Action by the Board**

- 9.1 On receiving a recommendation from the Appeals Committee pursuant to clause 8.1 in relation to Termination of Membership Decisions, the Board may accept and act upon all or part of a recommendation of the Appeals Committee as it sees fit, subject to the provisions of the College Constitution.
- 9.2 The decision of the Board following a recommendation of the Appeals Committee will be provided to the Applicant.

## **10. Decisions of the Board and Recommendations of College Bodies**

- 10.1 This by-law does not apply to any decision of the Board other than a Termination of Membership Decision.
- 10.2 This by-law does not apply to any recommendations of the Standards Committee or any other College Body, including the Appeals Committee, which may make recommendations to a College Body or the Board.



## 11. Definitions

'Applicant'	means a person who has made an application for Reconsideration, Review or Appeal.
'Board'	means the Board of Directors of the College.
'Chief Executive Officer'	means the Chief Executive Officer of the College.
'College'	means The Royal Australasian College of Physicians (ACN 000 039 047), an incorporated body limited by guarantee.
'College Body'	means: <ul style="list-style-type: none"> <li>• the Council of each Division or Faculty of the College;</li> <li>• the Committee of each Chapter formed within a Division or Faculty;</li> <li>• each Board Committee;</li> <li>• each Committee, sub-committee, working group, expert advisory group or other sub-group formed under the auspices of any of the above, whether or not limited in time or purpose.</li> </ul>
'Decision'	<p>(a) a decision of a College Body in relation to:</p> <p>(i) 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 or research projects);</p> <p>(ii) 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);</p> <p>(iii) applications for admission to Fellowship;</p> <p>(iv) applications from overseas trained doctors for recommendation to the Australian Medical Council or the Medical Council of New Zealand or any other regulatory authority, or for other appropriate purposes;</p> <p>(v) requirements for summative assessment, top up training and peer review for overseas trained doctors for assessment as set out above;</p> <p>(vi) participation in the Continuing Professional Development (CPD) Program;</p> <p>(vii) accreditation for training hospitals, units, teaching centres or supervisors;</p> <p>(viii) the financial standing of Fellows, trainees or other persons with the College or any of its College Bodies; and</p> <p>(b) such other decisions as the Board may from time to time permit or determine to be a Decision for the purposes of this By-Law.</p>
'Reconsideration Body'	means the College Body which undertakes a Reconsideration in accordance with clause 3.
'Reconsideration Decision'	means a Decision of a College Body made on an application for Reconsideration made in accordance with clause 3.
'Reviewing Body'	means the College Body which undertakes a Review in accordance with clause 4.
'Review Decision'	means a Decision of a College Body made on an application for Review made in accordance with clause 4.
'Fellow'	has the same meaning as defined in the College's Constitution.
'Termination of Membership Decision'	means a decision made by the Board to terminate the membership of a member under clause 4.2 of the College's Constitution.

<b>By-Law History as from October 2011</b>		
<b>Commencement of By-Law October 2011</b>		
This By-Law was approved by the Board Executive of the College in October 2011 and commenced on that date.		
<b>Subsequent amendments to By-Law</b>		
<b>Item</b>	<b>Amendment</b>	<b>Commenced</b>
5.1	the minimum number of Appeals Committee Members required to conduct an Appeal Hearing be reduced from 5 to 3, but with the authority vested in the CEO to appoint additional members to a particular committee hearing if circumstances warrant (Clause 5.2).	8 August 2013
5.2	“The Chief Executive officer may determine to expand the membership of the Appeals Committee to include additional Fellow and/or non-Fellow members, as the circumstances of the appeal may warrant.”	8 August 2013
5.4	the actual members of the particular Appeals Committee be selected by the Company Secretary from previously approved panels.	8 August 2013
6.3	the Appeals Committee may determine the process it will adopt to determine the Appeal. Currently all appeals must go to a hearing with the applicant invited to attend and present their case. Particular circumstances may warrant that a formal hearing is not required and this clause now provides the committee to determine how it wishes to consider the appeal.	8 August 2013
8.1	In respect of an appeal from a Termination of Membership Decision, the Appeals Committee will hear the Appeal and make a recommendation to the Board. The Appeals Committee’s recommendation is not binding on the Board and the Appeals Committee has no power to make any decision in relation the appeal other than to make recommendations to the Board.	8 August 2013
3.11 and 3.15	Change to the quorum requirements.	4 December 2015
2.8, 3.7 and 7.1	Removal of certain sub-clauses to make less prescriptive in terms of the decision making powers of the committees.	4 December 2015
11	Amendment to “decisions” definition, such that decision of a College Body in relation to research projects also be excluded from the reconsideration, review and appeals process.	10 February 2017