



## **P019 – ACSEP Review, Reconsideration and Appeals Policy**

### **Purpose and Scope**

This Policy has been developed to ensure a mechanism for appeal by those directly and adversely affected by a decision of the College. It is ACSEP’s mission to provide and promote excellence in the training and continuing professional development of ACSEP Membership in Australia and New Zealand. The P019 ACSEP Review, Reconsideration and Appeals Policy supports this mission by seeking to establish a fair and appropriate approach to facilitating and managing appeals. This policy sits alongside the most updated ACSEP Training Manual, online training documents and other relevant ACSEP policies and applies to all ACSEP Membership, senior management, permanent and contract staff and prospective students.

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### **Introduction**

This policy outlines the parameters and procedural guidelines for lodging a request for review, reconsideration and/or appeal to the college. A person directly and adversely affected by any ACSEP [college] decision [details outlined or referred to below] may ask the college to explain the original



decision that is being appealed. This request must be in writing within three (3) months of receipt of notice of any decision. Such an application shall be accompanied by all relevant information or grounds upon which the person seeks to rely in respect of the review. The college, within four (4) weeks of receiving the request, will write to the appellant to explain the reasons for the original decision and any future course of action. If after feedback and detail around the decision the appellant disagrees and wishes to have the decision reviewed they have the scope to apply to the Chief Executive Officer [CEO], to have any such decision considered by the ACSEP Appeals Committee. It should be noted that there is a fee associated with formal lodgement of appeal beyond seeking initial college feedback. Details of fees and Appeals Policy procedures and parameters are outlined fully below.

## Policy Responsibilities and Process

### 1. Prior Reconsideration and Review of Decisions

- 1.1. Before referring a matter to the Appeals Committee, the Chief Executive Officer may advise an applicant to seek a reconsideration and review of the original decision, in accordance with college processes amended and approved by the Board from time to time.
  - (a) Such reconsideration and review shall not, and does not, constitute an appeal under these rules.
- 1.2. An applicant may request copies of information on which the original 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 apply as per college policies and procedures.
- 1.3. A person directly adversely affected by a decision referred to below in (Section 2) **Grounds for Appeal**, may, within 3 months of receipt of notice of such decision, or within 3 months of notice of outcome of review of that decision (whichever is the later), apply to the Chief Executive Officer to have the decision considered by the Appeals Committee.
- 1.4. The Chief Executive Officer shall not convene the Appeals Committee until satisfied:
  - (a) that all avenues of re-consideration and review of the relevant decision have been exhausted
  - (b) that based on the material submitted, there are prima facie grounds for appeal.

### 2. Grounds for Appeal

- 2.1. Appeals may be considered by the Appeals Committee in the following circumstances:



- (a) By a prospective Registrar/trainee for decisions regarding selection/non-selection,
- (b) By a Registrar/trainee for decisions relating to disciplinary action, dismissal and recognition of training
- (c) By an application for admission/non-admission to Fellowship
- (d) By an applicant for decisions in relation to assessment of International Medical Graduates
- (e) By an examination candidate for decisions arising from College examinations
- (f) By a Registrar for disciplinary decisions or actions in relation to Registrar training
- (g) By a Fellow for decisions in relation to Continuing Professional Development of Fellows
- (h) By a Fellow for disciplinary decisions or actions in relation to Fellows
- (i) By a Fellow for decisions in relation to the financial status of Fellows
- (j) Any such other decisions as the Board of the College nominate for this policy

2.2. 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 the original decision was made for an improper purpose or conflict of interest

### **3. Appeals Committee Composition**

3.1. An Appeals Committee made up of 5 persons will be convened by the Chief Executive Officer, comprising the following members (selected from):



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- (a) Chairman (one of the non-Fellow members of the Appeals Committee)
  - (b) Chairman of the College or another Board member appointed by the Board
  - (c) One Fellow of the College
  - (d) Up to three other persons who are not Fellows, nominated by the CEO
- 3.2. The Appeals Committee members shall each have no apparent conflict of interest that will prevent their fair and objective consideration of the appeal.
- 3.3. 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).
- 3.4. The Chief Executive Officer 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.
- 3.5. 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 based on a majority vote. In the event of an equality of votes, the Chairman may exercise a casting vote.
- 3.6. Each Appeals Committee shall be constituted with most members as non-Fellows.
- 3.7. All members will not knowingly allow the participation in an appeal any member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Committee member must agree to act with objectivity and without conflict of interest when reviewing an appeal.
- 3.8. An Appeals Committee member confirms agreement to abide by this policy in a **Statement of Conflict of Interest, Confidentiality, and Disclosure** provided to the Chief Executive Officer prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Appeals Committee member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that committee member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy.
- (a) If an Appeals committee member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Chief Executive Officer determines, constitute a Conflict of Interest, that committee member must withdraw from the appeal.



- 3.9. An Appeals Committee member agrees to keep confidential any information provided by the appellant under review and information gained because of participating in an appeal.
- (a) Keeping information confidential requires that the Appeals Committee member not discuss or disclose institutional information except as needed to further the purpose of the Appeals Committee's decision-making processes.
  - (b) It also requires that the Appeals Committee member not make use of the information to benefit any person or organization.
  - (c) Maintenance of confidentiality survives any action and continues after the process has concluded.

#### **4. Consideration of Appeals**

- 4.1. In any appeal, the applicant will have the onus of proof to establish the grounds of the appeal.
- 4.2. 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.
- 4.3. 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.
- 4.4. 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.
- 4.5. 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).
- 4.6. 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.
- 4.7. 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, on with the prior consent of the Appeals Committee, act as an advocate.

- 4.8. 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.
- 4.9. The Chief Executive Officer may delegate his or her powers and duties in respect of any appeal to such person as he or she determines.
- 4.10. The Appeals Committee will not, except in exceptional circumstances, consider a matter de novo.

## 5. Appeals Committee Hearing Process and Timeline (For Guidance Only)

- 5.1. Before convening an Appeals Committee, the applicant shall pay a fee as listed on the ACSEP Website (<https://www.acsep.org.au/page/resources/fees/>) 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.
- 5.2. The College shall endeavour to convene the Appeals Committee within 3 months of the lodging of an appeal and hear the appeal as soon as practicable.
- 5.3. At least 45 days prior to the convening of the Appeals Committee hearing, the Chief Executive Officer 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
- 5.4. An applicant will be asked to lodge a written submission to the Appeals Committee at least 30 days before an appeal hearing. Subject to these rules, the Appeals Committee may receive written or oral submissions at any time during a hearing, at its discretion.
- 5.5. Prior to the hearing of the Appeal:
  - (a) at least 8 weeks prior to the hearing, the College will provide the applicant with copies of documents and records of the College relevant to the Appeal.
  - (b) at least 4 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.



- (c) 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.
- (d) at least 1 week prior to the hearing, the applicant will provide any further or final submissions in reply.

#### 5.6. Time of and During the hearing of the Appeal

- (a) The Appeals Committee may meet alone for up to one hour at the commencement of each meeting to review the matter before it.
- (b) The applicant and other parties attending to provide information to the Committee will be admitted together.
- (c) 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.
- (d) The College Solicitor attends to provide legal advice to the Committee but is not a member of the Appeals Committee.
- (e) The Chief Executive Officer 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.
- (f) The Appeals Committee may request, or permit, other parties to appear before it strictly in the role of providing information to the Committee.
- (g) 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.
- (h) The Chairman will then invite members of the Appeals Committee to seek clarification from the applicant of any matters raised.
- (i) The Chairman will then invite any person attending to provide information to the Committee to comment on the submission of the applicant.
- (j) The Appeals Committee may direct questions to any person attending to provide information to the Appeals Committee.
- (k) The applicant will be asked to respond or make submissions in relation to material presented by other parties or participants.



- (l) 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.
  - (m) Any or all persons, including members of the Appeals Committee, may participate telephonically or electronically as the Chairman permits.
  - (n) The parties involved in the appeal will, if the Appeals Committee requires such further clarification, re-join the meeting and provide the clarification sought.
  - (o) 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.
  - (p) 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.
  - (q) The Chairman will thank all parties for their attendance and dismiss them.
- 5.7. The Appeals Committee will reach a determination which will be conveyed to the participant's subsequently in writing by the Chief Executive and shall endeavour to issue the determination within 21 working days of the hearing.
- 5.8. The Chief Executive Officer has the right to waive the application fee in appropriate circumstances.
- 5.9. The Appeals Committee shall use these procedures for guidance only and may vary these procedures and conduct its processes in such manner as it may, in each case, determine.

## **6. Decisions of the Appeals Committee**

- 6.1. An Appeals Committee may, upon considering all submissions:
- (a) Confirm the decision which is the subject of the appeal
  - (b) Revoke the decision which is the subject of the appeal
  - (c) 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)
  - (d) 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)





(e) Recommend to the College Board whether part or all the costs associated with the Appeals Committee should be waived

6.2. 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.

6.3. 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.

## **7. Annual Reporting**

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.

## **8. Complaints Process**

8.1. It is ACSEP policy that any adverse feedback (written or verbal) from membership or external personnel about college policy or procedures will be investigated thoroughly as per the most current version of the P002 ACSEP Grievance Policy and Procedure.

8.2. ACSEP will take appropriate action against any persons behaving in a way that falls within the range of unacceptable behaviour as outlined within the College's various policies on Code of Ethics and Professional Behaviour, Harassment, Bullying and Discrimination, Cultural Diversity and Ethics. This may include disciplinary action under the ACSEP rules and constitution.

8.3. All parties involved will be notified either in writing or verbally of the outcome from the ACSEP National Office and for severe breaches, incidents may be referred to ACSEP Legal Counsel and Fair Work Australia.

## **9. Reporting**

No additional reporting outside of this policy is required.

## **10. Records Management**

Staff must maintain all records relevant to administering this policy in a recognised ACSEP record keeping system. Records in relation to registrar placements will be managed and maintained at ACSEP in accordance to the P012 ACSEP Records Management Policy and associated Procedures.



## 11. Related Legislation and Documents

ACSEP Training Manual <https://www.acsep.org.au/members/resources/trainingmanual>

Fees - <https://www.acsep.org.au/page/resources/fees/>

P001 ACSEP Bullying, Harassment and Discrimination Policy

P002 ACSEP Grievance Policy and Procedure

P004 ACSEP Privacy Policy

P011 ACSEP Deferral, Withdrawal & Termination from Training Program Policy

P012 ACSEP Records Management Policy

P015 ACSEP Code of Ethics and Professional Behaviour

P020 ACSEP Part-Time ACSEP Training Program Policy

P023 ACSEP Special Consideration Policy

## 12. Feedback

ACSEP staff or membership may provide feedback about this document by emailing ACSEP Programs, Policy and Systems Administrator via [nationaloffice@acsep.org.au](mailto:nationaloffice@acsep.org.au)

## 13. Approval and Review Details

Approval and Review	Details
Approval Authority	ACSEP CEO and ACSEP Board of Directors
Advisor or Advisory Committee to Approval Authority	ACSEP CEO
Policy Administrator	ACSEP Programs and Systems Administrator
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