



Notes for guidance about Appeals Tribunal hearings in Australia

General

- Every appeal to the Chartered Accountants Australia and New Zealand (**CA ANZ**) Appeals Tribunal shall be by way of re-hearing.
- Appeals Tribunal hearings are formal processes and Members should attend their hearing. Members may attend in person, or by telephone or videoconference with the leave of the Appeals Tribunal.
- The Appeals Tribunal panel is comprised of (i) Members of CA ANZ who have at least ten years' relevant experience in either practice or commerce with a sound and current knowledge of business management, of the governance framework of CA ANZ, and of the professional standards required of its Members under the co-regulatory system, as well as (ii) lay members with business or professional experience that makes them suitable to hear and determine complex professional conduct matters which are of significance to the public, to CA ANZ and to the Members who are the subject of hearings. All members of the Appeals Tribunal must comply with the CA ANZ Code of Conduct. Complaints are determined by a quorum of the Appeals Tribunal which must be made up of at least two Members and one lay member.
- Appeals Tribunal hearings are public however the Member or the Professional Conduct Committee (**PCC**) may make an application to the Tribunal for all or part of the matter to be heard in private (By-Law 40(13.12)).
- In accordance with By-Law 40(13.3) the Appeals Tribunal may record its hearings in any manner it decides, including by the use of stenography and sound recording technology. With the exception of the official Appeals Tribunal transcript provider and sound recording for the Appeals Tribunal's record(s), the use of recording devices is not permitted.
- A transcript will be taken of the proceedings. The transcript will be provided to the Member if the Member did not attend the hearing. A Member attending a hearing may make submissions to the Appeals Tribunal requesting that a copy of the transcript be made available to them, and the Tribunal will make a determination at the hearing.
- The Appeals Tribunal may require a Member to pay to CA ANZ an amount by way of security against the anticipated *Costs*¹ of the appeal.

The hearing

- The parties (representatives of the **PCC** and of the Member), the Appeals Tribunal Secretary, the Tribunal's legal adviser (if present) (**Legal Adviser**), the transcript provider and any members of the public or media take their seats in the hearing room, in the presence of the Appeals Tribunal members.
- The Chair opens the hearing, introduces the members of the Appeals Tribunal, explains the Legal Adviser's role and explains the nature of the proceedings. Unless an application was granted to hold all or part of the hearing in private, the Chair explains that the hearing will be held in public.
- The Chair will set out the conditions on which any member of the public is permitted to remain in the hearing. Any members of the public who wish to attend the hearing must sign confidentiality documentation signifying their agreement to those conditions.
- The Appeals Tribunal will decide any application under By-Law 40(11.7) in respect of the rehearing of witnesses or the introduction of any new evidence, if such applications have not already been determined in advance of the hearing.

¹ Defined in By-Law 39(h)

- The Notice of Appeal, the Disciplinary Tribunal hearing papers and decision, and other relevant documentation will be tabled by the Chair. Even though this material is formally tabled at this stage of the hearing, Appeals Tribunal members will have read all of the material before the commencement of the hearing.
- The Chair will invite the appellant or the appellant's representative to make submissions to the Appeals Tribunal on the grounds of appeal.

Member appeal of Disciplinary Tribunal findings on breach of By-Laws and sanctions imposed

- After the Member appellant has made submissions on their grounds of appeal (see [above](#)) the Chair calls on the PCC representative to make submissions to the Appeals Tribunal on the grounds of appeal, including summarising the PCC's allegations against the Member and the evidence in support of those allegations.
- The PCC representative and then the Member or the Member's representative present closing submissions on questions of breach of the By-Laws.
- Members of the Appeals Tribunal may question the PCC representative, the Member and the Member's representative in relation to the appeal in relation to breach of the By-Laws.
- The Appeals Tribunal will then:
 - deliberate on the appeal in relation to breach in the absence of the parties and any observers to the hearing, or
 - invite submissions on sanction.
- The Member or the Member's representative makes submissions on the grounds of appeal in relation to sanctions, including *Costs*, as well as notification to interested parties under [By-Law 40\(11.5\)](#). If the Member seeks an order preventing publication of the Member's name and location pursuant to [By-Law 40\(12.3\)](#), the Member or their representative will present submissions supporting the claim of exceptional circumstances.
- The PCC representative then:
 - provides a final schedule of *Costs* to the Appeals Tribunal and Member (updating the interim schedule of *Costs* provided before the hearing)
 - makes submissions on the grounds of appeal regarding sanction(s), including *Costs*, and notification to interested parties under [By-Law 40\(12.3\)](#), and in response to any Member submissions seeking non-publication.
- Members of the Appeals Tribunal may question the PCC representative, the Member and the Member's representative in relation to the appeal regarding sanctions, *Costs*, notification to interested parties and any request for non-publication.
- In the absence of all the parties and any members of the public or the media, the Appeals Tribunal members will consult with the Legal Adviser. Any advice so provided will remain confidential to Appeals Tribunal members.
- When the Appeals Tribunal has decided whether to:
 - affirm, vary or set aside any determination as to breach made by the Disciplinary Tribunal, and
 - affirm, increase, reduce or set aside any sanction imposed by the Disciplinary Tribunal, and
 - impose any additional or alternative sanction or sanctions from those permitted to the Disciplinary Tribunal
 the Chair will recall all the parties and any members of the public or the media and deliver the decision of the Appeals Tribunal.

Member appeal of Disciplinary Tribunal imposition of sanctions

- After the Member appellant has made submissions on their grounds of appeal (see [above](#)) the Chair calls on the PCC representative to summarise the decisions of the Disciplinary Tribunal regarding the Member's breach(es) of the By-Laws. The PCC representative then:

- provides a final schedule of *Costs* to the Appeals Tribunal and Member (updating the interim schedule of *Costs* provided before the hearing)
- makes submissions on the grounds of appeal regarding sanction(s), including *Costs*, notification to interested parties under [By-Law 40\(10.6\)](#) and in response to any request for non-publication under [By-Law 40\(12.3\)](#).
- The PCC representative and then the Member or the Member's representative present closing submissions on appropriate sanctions, *Costs*, notification to interested parties and re any request for non-publication.
- Members of the Appeals Tribunal may question the PCC representative, the Member and the Member's representative in relation to the matters of the appeal.
- The Appeals Tribunal will then deliberate on the appeal in relation to sanctions, including *Costs*, notification to interested parties and publication, in the absence of the parties and any observers to the hearing.
- In the absence of all the parties and any members of the public or the media, the Appeals Tribunal members will consult with the Legal Adviser. Any advice so provided will remain confidential to Appeals Tribunal members.
- When the Appeals Tribunal has decided whether to:
 - affirm, increase, reduce or set aside any sanction imposed by the Disciplinary Tribunal, and
 - impose any additional or alternative sanction or sanctions from those permitted to the Disciplinary Tribunal
 the Chair will recall all the parties and any members of the public or the media and deliver the decision of the Appeals Tribunal.

PCC appeal of Disciplinary Tribunal findings on breach of By-Laws or sanctions imposed

- After the PCC appellant has made submissions on their grounds of appeal (see [above](#)) the Chair calls on the Member or the Member's representative. The hearing will then follow the process set out above, but with the parties reversed.

Witnesses

- Unless the Appeals Tribunal grants an application made by the Member or the PCC, the Tribunal shall not allow witnesses to be recalled who gave evidence before the Disciplinary Tribunal, nor allow the introduction of any new evidence ([By-Law 40\(11.7\)](#)).

Costs

- If any allegations are established or upheld by the Appeals Tribunal, the PCC may make submissions to the Tribunal that the Member should pay all, or a portion, of the *Costs* incurred by Chartered Accountants ANZ. The Member will be given an opportunity to make submissions to the Appeals Tribunal in relation to *Costs*.
- To assist with the Member's submissions on *Costs*, an interim *Costs* schedule is sent to the Member prior to their hearing and, as set out above, a final version of that *Costs* schedule is distributed at the hearing.
- If the Appeals Tribunal is asked to make a determination relating to *Costs*, it will do so with reference to the [Costs Guidelines for Appeals Tribunals](#) and [Regulation CR8](#). It is strongly recommended that the Member read these documents as early as possible, and in particular paragraph 6.7 of the *Costs* Guidelines.
- If the Member was required to pay security against the anticipated *Costs* which CA ANZ may incur in the conduct and hearing of the appeal ([By-Law 40\(11.4\)](#)), CA ANZ may apply any part of that amount in satisfaction of any *Costs* awarded against the Member. If no *Costs* are awarded against the Member, CA ANZ will refund that security to the Member.

If Member not present

- The Appeals Tribunal will have read all material prior to the hearing, including the Member's written submissions.
- The Appeals Tribunal will ask if any communication has been received that clarifies whether the Member is expected to attend the hearing. If the Appeals Tribunal determines that the appeal should be heard in the absence of the Member, the hearing will proceed as follows.
- The PCC will provide information to the Appeals Tribunal in relation to the provision to the Member of the Notice of Appeal (or confirmation of receipt of the Member's Notice of Appeal), the Disciplinary Tribunal hearing papers and decision, and supporting material and copies of any communications with the Member.
- Following the hearing, the final version of the *Costs* schedule distributed at the hearing and a copy of the transcript will be sent to the Member, along with any additional documents tabled at the hearing.

Reasons and publication

- The Appeals Tribunal written decision with reasons will be provided to the Member and PCC within 14 days of the hearing (By-Law 40(11.15)(a)).
- Subject to any decision by the Appeals Tribunal restricting publication under By-Laws 40(13.12)(c) and 40(13.12)(d) (including any decision prohibiting reporting of a decision until the written reasons have been delivered), the decision of the Appeals Tribunal will be able to be reported following the determination of the appeal, which will take effect from the day the determination is made (By-Law 40(11.14)).
- The Appeals Tribunal decision may be published on the date it takes effect and may be in such form and publication as the Tribunal considers appropriate. Decisions are usually published in the CA ANZ journal (Acuity) and on the CA ANZ website, but may also be published in any other place decided by the Appeals Tribunal. The Appeals Tribunal may also direct that the decision be sent to other parties (eg statutory authorities).

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