



Hearing Procedure Guidelines

Appeals Tribunal in Australia

General

- Every appeal to the Appeals Tribunal shall be by way of re-hearing.
- 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 Tribunal transcript provider and sound recording for the Appeals Tribunal record(s), the use of recording devices is not permitted.
- A transcript will be taken of the proceedings and provided to the member if the member did not attend the hearing. A member attending a hearing may make submissions to the Tribunal requesting that a copy of the transcript be made available to them, and the Tribunal will make a determination at the hearing.

Commencement

- The parties (representatives of the Professional Conduct Committee (**PCC**) and of the member), the Appeals Tribunal Secretary, the Tribunal 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 is made under [By-Law 40\(13.12\)\(b\)](#) to hold the hearing in private, and is granted, 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\(11.5\)](#) 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.
- 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 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 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, and publication under By-Law 40(12.3).
- The PCC representative then:
 - provides a final schedule of costs to the 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 publication under By-Law 40(12.3).
- Members of the Tribunal may question the PCC representative, the member and the member's representative in relation to the appeal regarding sanctions, costs and publication.
- In the absence of all the parties and any members of the public or the media, the Tribunal members will consult with the Legal Adviser. Any advice so provided will remain confidential to Tribunal members.
- When the 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 Tribunal.
- 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 Tribunal's 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(11.12)).

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 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 publication under By-Law 40(12.3).
- The PCC representative and then the member or the member's representative present closing submissions on questions of the appropriate sanctions.
- Members of the Tribunal may question the PCC representative, the member and the member's representative in relation to the appeal regarding appropriate sanctions.
- The Tribunal will then deliberate on the appeal in relation to sanctions 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 Tribunal members will consult with the Legal Adviser. Any advice so provided will remain confidential to Tribunal members.
- When the 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 Tribunal.
- 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 Tribunal's 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\(11.12\)](#)).

PCC appeal of Disciplinary Tribunal findings on breach of By-Laws and/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.

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 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 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 member not present

- The Appeals Tribunal will have read all material prior to the hearing, including the member's written submissions.
- The PCC and/or Tribunal Secretary will be asked if any communication has been received that clarifies whether the member is expected to attend the hearing. If the 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.
- The Appeals Tribunal written decision with reasons will be provided to the member within 14 days (see [By-Law 40\(11.13\)\(a\)](#)).

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