

Notes for guidance about Appeals Council hearings in Australia

NB: this guide does not relate to complaints made about Members of NZICA

Background

- The Member and/or Professional Conduct Committee (PCC) may, within 21 days after the date of written notification of the Final Decision¹ of the Disciplinary Tribunal, give notice of appeal of the entire or any part of the Final Decision. The Appeals Council may approve a longer timeframe for receipt of a notice of appeal.
- The notice of appeal must be on the form specified in the Regulations of Chartered Accountants Australia and New Zealand (CA ANZ).
- The Member or PCC must also give notice of any Final Decision that it seeks be stayed pending determination of the appeal.
- The Appeals Council Secretary must give the Member at least 28 days' notice of the date, time and place or virtual location of the hearing.
- The manner in which an appeal will be conducted will be determined by the Appeals Council, having regard to its obligations of procedural fairness.
- The Member must, at least 14 days before the date for hearing, give written notice to the Appeals Council of:
 - whether the Member will attend the hearing
 - whether the Member intends to be represented by a legal representative at the hearing and, if so, their name and contact details
 - notice of any other relevant fact or circumstance the Member wishes to bring to the attention of the Appeals Council, (By-Law 40.22(h)).

General

- Every appeal to the Appeals Council shall be by way of re-hearing.
- Appeals Council hearings are formal processes and Members should attend the hearing. Members should attend:
 - where the hearing is held on site: in person, or by telephone or videoconference only with the leave of the Appeals Council
 - where the hearing is held virtually: by virtual link as provided by the Appeals Council, or by telephone or videoconference only with the leave of the Appeals Council.
- The Appeals Council panel is comprised of a maximum of 7 Members as follows (i) at least 2 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) at least 2 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 Council must comply with the CA ANZ Code of Conduct. No member of the CA ANZ

¹ Capitalised terms are as defined in the By-Laws.

Board, the CA ANZ Council, the Professional Conduct Committee, the Disciplinary Tribunal or the Professional Conduct Oversight Committee may be a member of the Appeals Council. Complaints are determined by a quorum of the Appeals Council which must be made up of at least two CA ANZ Members and one lay member.

- Appeals Council hearings are public however the Member or the PCC may make an application to the Council for all or part of the matter to be heard in private (By-Law 40.35(c)).
- In accordance with By-Law 40.30 the Appeals Council may record and transcribe its hearings in any manner it decides, including by the use of stenography and sound recording technology. With the exception of the official Appeals Council transcript provider and sound recording for the Appeals Council's records, 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 Council requesting that a copy of the transcript be made available to them, and the Council will advise the Member and PCC of its decision.
- The Appeals Council may, at its discretion or on application by the PCC, require a Member to pay to CA ANZ an amount by way of security against the anticipated Costs of the appeal (By-Law 40.22(c)).
- If the Member does not pay the security at the expiry of the required payment time, the appeal will automatically lapse and the Disciplinary Tribunal decision will take effect from the date when the appeal lapsed.
- The Appeals Council may proceed to hear the appeal even in the absence of the Member.
- All communications by the PCC or Member with the Appeals Council outside of the hearing shall be conducted with the Appeals Council Secretary, and must be copied to all parties (representatives of the PCC and of the Member).

The hearing

- The parties (representatives of the PCC and of the Member), the Appeals Council Secretary, the Council's legal adviser (if present) (**Legal Adviser**), the transcript provider and any members of the public or media are admitted to the virtual hearing or take their seats in the hearing room, in the presence of the Appeals Council members.
- The Chair opens the hearing, introduces the members of the Appeals Council, explains the Legal Adviser's role and explains the nature of the proceedings. Unless an application is or 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 Council will decide any application under By-Law 40.22(f) 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 Council members will have read all 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 Council on the matters the subject of the appeal.
- The Chair will then invite the other party to the appeal (respondent) to make submissions to the Appeals Council on the matters the subject of the appeal, including in response to the appellant's submissions.
- The appellant is then invited to make closing submissions.
- Members of the Appeals Council may ask questions of the PCC representative, the Member and the Member's representative in relation to the appeal and the parties' submissions.
- If the subject of the appeal relates to whether or not the Member committed an Offence, plus other issues such as the appropriate Sanction to be imposed, Costs, whether or not there are any exceptional circumstances for not publicising the Member's name and location (By-Law 40.26(d)) and notification to interested parties (By-Law

40.26(f)), the Appeals Council may adjourn the hearing for it to consider its decision before progressing to hear submissions on the remaining issues.

- The Appeals Council will consider its decision on the appeal in the absence of the parties and any observers to the hearing.
- If the Member seeks an order that there are exceptional circumstances for not publishing the Member's name and location pursuant to By-Law 40.26(d), the Member or their representative must make submissions supporting the claim of exceptional circumstances and should provide any supporting evidence, and the PCC representative will be given an opportunity to reply.
- If the PCC is seeking Costs of the appeal then the PCC representative will provide a final schedule of Costs to the Appeals Council and Member (updating the interim schedule of Costs provided before the hearing)
- The schedule of Costs itemises all Costs incurred by CA ANZ in bringing the matter to the Appeals Council. Costs do not include the internal overhead costs of CA ANZ.
- If the Appeals Council is asked to make a decision relating to Costs, it will do so with reference to the Cost Guidelines 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.
- In the absence of all the parties and any members of the public or the media, the Appeals Council members may consult with the Legal Adviser. Any advice so provided will remain confidential to Appeals Council members.
- The Appeals Council may decide to affirm, vary or set aside any Final Decision of the Disciplinary Tribunal or any part of that Final Decision.
- If the Appeals Council decides to announce its decision at the hearing, it will do so after recalling all the parties and any members of the public or the media.
- 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 40.22(c)), 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.

Witnesses

- Unless the Appeals Council grants an application made by the Member or the PCC, the Appeals Council shall not allow witnesses to be recalled who gave evidence before the Disciplinary Tribunal, nor allow the introduction of any new evidence (By-Law 40.22(f)).

Production of documents

- The Appeals Council may:
 - require a Member to produce documents or information to the Appeals Council, on the application by another Member made on the form specified in CA ANZ Regulation CR8
 - require that any document, thing or information be provided to any person appearing at the hearing and
 - impose any terms or conditions on the provision of any document or information or thing to a Member, the complainant or any other person regarding the use that may be made of them, including any assessment of any claim for confidentiality or privilege.

Reasons and Publication

- The Appeals Council's decision, including reasons, will generally be provided to the Member and PCC within 21 days of the hearing (By-Law 40.25(a)).
- A Final Decision of the Appeals Council shall take effect from the date it is made. Subject to any decision by the Appeals Council prohibiting reporting of a decision until the written reasons have been delivered, the decision of the Appeals Council will be able to be reported from the date it is made.

Public

- The Appeals Council decision will be published on the date it takes effect and may be in such form and publication as the Appeals Council 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 Council. The Appeals Council may also direct that the decision be notified to other parties (eg statutory authorities).

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