

Regulation

Subject: **Regulations Governing Process for Review of Certain Decisions of the Company**
Approval Date: 30 August 1999, Revised October 2002, Revised March 2007, November 2013, February 2018
Review Date: February 2022
Review By: Board of Directors
Number: 7/1999

Interpretation

- 1 Except as otherwise specified:
 - (1) **Committee** means the Board of Education and Assessment, the Board of Professional Practice and Quality and the Faculty committees;
 - (2) **Company** means The Royal College of Pathologists of Australasia ACN 000 173 231; and
 - (3) **Constitution** means the constitution of the Company (as amended from time to time).
- 2 Except as otherwise specified, defined terms in this Regulation have the same meaning given to them in the Constitution.

Background

- 3 The Directors of the Company have adopted this Regulation relating to the review of certain decisions of the Company to reflect the revised governance structure of the Company following the adoption of the Constitution in 2012.

Review Committee

- 4 A review committee will be established for the purposes of reviewing the decisions of the Directors made pursuant to rule 18.2 of the Constitution, and any other decisions of the Committees referred to in Regulation 11 (**Review Committee**). The Review Committee shall comprise the following:
 - (1) the chairperson, being any member of the Review Committee who is not a Fellow of the Company;
 - (2) the members, being the following persons:
 - (a) a past President of the Company, other than the immediate past President;

- (b) one Fellow of the Company who has not served as an Officer, Director or member of the Council of the Company within the last two (2) years; and
 - (c) three members nominated by the Standing Council on Health (**SCH**) (or a delegate).
- 5 Members of the Review Committee (other than those nominated by the SCH) shall be appointed by the Board of the Company.
- 6 Members of the Review Committee shall be appointed for terms of two (2) years and may be reappointed for one or more two year terms, subject to continuing eligibility under Regulation 4.
- 7 The Secretary/Treasurer of the Company shall be the secretary of the Review Committee, but shall not form part of the Review Committee and shall not be entitled to vote. In addition, a legal practitioner, also in a non-voting capacity may be appointed to assist the Review Committee.
- 8 The Secretary/Treasurer may delegate his/her functions in respect of any review to any person as he/she nominates and, in the event of such nomination, that person is to be the secretary of the Review Committee in any such case for the entirety of the review.
- 9 Any individual who was party to the decision to which the review relates must not sit as a member of the Review Committee. The appointing committee under Regulation 5 may appoint a substitute.
- 10 Any individual who has been nominated by the SCH to sit on a panel established to assess overseas-trained pathologists must not sit as a member of the Review Committee. The appointing committee under Regulation 5 may appoint a substitute, drawn from a list of persons nominated by the SCH.

Application for Review of Decisions

- 11 In addition to the decisions of the Directors made pursuant to rule 18.2 of the Constitution, the decisions which may be reviewed pursuant to these Regulations are as follows (**Decisions**):
 - (1) any decisions of a Committee which affect, as an individual:
 - (a) a Fellow of the Company;
 - (b) a Trainee of the Company or applicant for admission as a Trainee of the Company;
 - (c) an Affiliate or applicant for admission as an Affiliate of the Company;
 - (d) an Associate or applicant for admission as an Associate of the Company;
 - (e) an overseas trained doctor applying for assessment for recognition on behalf of the Australian Medical Council or the Medical Council of New Zealand;
 - (f) any Fellows of RCPA Faculties or applicant for admission as a Fellow of an RCPA Faculty; or

- (g) a Trainee of an RCPA Faculty or applicant for admission as a Trainee of an RCPA Faculty.

- 12 Any person (**Applicant**) adversely affected by any Decision may, within three (3) months of receipt of notice of such Decision, apply to the Secretary/Treasurer to have the Decision referred for review (**Application**). The Application is to be in writing and be accompanied by such materials and information, including grounds for review, upon which the person seeks to rely in respect of the review.
- 13 Hospitals sponsoring overseas-trained doctors may apply for a review on behalf of the doctor.
- 14 Before accepting an Application, the Secretary/Treasurer shall advise an Applicant to seek reconsideration and review of the original Decision by the relevant maker of the original Decision. Such reconsideration and review of the original Decision does not constitute a review under these Regulations.(See Appendix 1 for details)
- 15 Having accepted an Application for review of a Decision, the Secretary/Treasurer must not convene the Review Committee unless the chairperson of the Review Committee has advised in writing that he/she is satisfied that the Applicant has exhausted all other avenues of reconsideration and review of the relevant Decision.

Quorum

- 16 A quorum for meetings of the Review Committee is to be the chairperson and three (3) other members.

Voting

- 17 All members of the Review Committee are entitled to vote on Decisions.
- 18 Members constituting the quorum are not permitted to abstain from voting.
- 19 The Review Committee is to decide on the basis of a majority vote. In the event of an equality of votes, the chairperson may exercise a casting vote.

Grounds for Review

- 20 A review of a Decision may be made only on one or more of the following grounds:
 - (1) that an error in law or due process occurred in the making of the Decision;
 - (2) that relevant and significant information, available at the time of the Decision or which became available subsequently, was not considered or not properly considered in the making of the Decision;
 - (3) that irrelevant information was considered in the making of the Decision;
 - (4) that the Decision was clearly contrary to the weight of evidence before the maker of the Decision;
 - (5) that procedures that were required by policies of the Company to be observed in connection with the making of the Decision were not observed to the detriment of the Applicant;

- (6) that the relevant maker of the Decision has acted outside the terms of its powers or not incidentally thereto;
- (7) that the Decision was made in accordance with a rule or policy without regard to the merits of the particular case; and
- (8) that the Decision was made for an improper purpose.

Consideration of Review

- 21 The Applicant requesting a review of a Decision must state the grounds upon which the Application for review is based.
- 22 The Review Committee must meet to hear an appeal within three (3) months of lodgement of the Application for review.
- 23 At least twenty-eight (28) days before convening a hearing of the Review Committee, the Secretary/Treasurer shall advise the Applicant in writing of:
 - (1) the date, time and place of the hearing; and
 - (2) the right of the Applicant:
 - (a) to appear before and address the Review Committee in relation to his/her submission;
 - (b) to be accompanied by another person; and
 - (c) to have a legal representative present.
- 24 The Applicant must advise the chairperson of the Review Committee in writing, at least seven (7) days before the hearing, whether or not he/she is to be represented at the hearing, and if so, by whom he/she is to be represented and seek leave of the chairperson of the Review Committee to be so represented. The chairperson will grant such leave if the chairperson considers that the Applicant could not, or would be disadvantaged in his or her appeal if required to, present in person.
- 25 At least twenty-eight (28) days before convening a hearing of the Review Committee, the Secretary/Treasurer must advise in writing, the chairperson of the relevant Committee whose decision is in dispute, or the President if the decision in dispute is a decision of the Directors pursuant to rule 18.2 of the Constitution:
 - (1) that an application for reference of a Decision under this Regulation has been accepted;
 - (2) the name of the Applicant;
 - (3) the decision which is the subject of the application; and
 - (4) the date, time and place of the hearing,and shall also supply a copy of the Application and any materials or information upon which the Applicant seeks to rely.

- 26 The record of any findings and the Decision must be made available to the Applicant and to the Review Committee at least fourteen (14) days before the hearing.
- 27 The Review Committee is entitled to consider all such relevant information it thinks fit and:
- (1) may invite the chairperson of the relevant Committee whose decision is in dispute, or the President (or his or her nominee) if the decision in dispute is a decision of the Directors pursuant to rule 18.2 of the Constitution, to make representations to and/or appear before the Review Committee;
 - (2) may invite any person to appear before it, or to provide information or make submissions on the issue under dispute; and
 - (3) the Applicant will be given the opportunity at the hearing of presenting such evidence as he/she may reasonably desire.
- 28 If the Review Committee proposes to have regard to additional information in reaching a decision, which has not been previously disclosed to the Applicant, the Review Committee must make such information available to the Applicant at least fourteen (14) days prior to the hearing. Further, the Review Committee must give notice to the Applicant at least fourteen (14) days prior to the hearing of any persons it has invited to appear before it.
- 29 The Review Committee must act according to the rules of natural justice and is not bound by the rules of evidence but may inform itself on any matter and in such manner, as it thinks fit.
- 30 The Review Committee is to conduct its affairs with as little formality as possible, but otherwise, subject to this Regulation, has full power to regulate its conduct and operation.
- 31 Except where otherwise required by law, or otherwise determined by the Review Committee, the hearing of the Review Committee will be sound recorded, but a written transcript will be made only at the discretion of the chairperson. Such sound recording, written transcript, if any, and other information provided to the Review Committee shall be kept confidential and secure (except that the information may be released with the consent of the Applicant).
- 32 The Review Committee will issue a written decision within three (3) weeks of the review hearing or within three (3) weeks of receiving any further written submissions requested at the hearing by the Review Committee, whichever is later.
- 33 The formal record of the Review Committee is confined to:
- (1) a record of persons present or in attendance during the hearing;
 - (2) a record of all decisions made by the Review Committee and the reasons for those decisions; and
 - (3) a record of any recommendations to be made to the Directors on procedural matters relating to the Review process disclosed during the hearing.
- 34 The Applicant may give written notice to the chairperson of the Review Committee at least fourteen (14) days prior to the hearing if he/she is unable to attend or obtain representation on the proposed date of the hearing at the time specified. If the Applicant

fails to notify the chairperson at least fourteen (14) days prior to the hearing and fails to attend the hearing, the Review Committee has the right to dismiss the Application.

Fees

- 35 The Company may require an Applicant lodging an Application for review of a Decision to the Review Committee to pay a fee of an amount equivalent to the subscription payable by a Fellow for the current year. The fee (if any) must be paid to the Company before the Review Committee is convened.
- 36 The Secretary of the Review Committee may waive payment of a fee pursuant to Regulation 35 in appropriate circumstances.
- 37 If an Applicant's appeal is successful, the Company must refund any fee paid by the Applicant under Regulation 35.
- 38 An Applicant will be liable for all his/her own costs associated with attending and presenting at the hearing including travel, accommodation and other expenses.

Decisions of the Review Committee

- 39 A Review Committee may, upon considering all submissions:
- (a) confirm the Decision which is the subject of the Application for review;
 - (b) set aside the Decision which is the subject of the Application for review; or
 - (c) set aside the Decision and refer the matter back to the original maker of the Decision, (upon such terms and conditions as the Review Committee may determine).
- 40 In the event of a review of a Decision in respect of a candidate who has failed an examination, action open to the Review Committee is limited to:
- (a) confirming the Decision which is the subject of the application for review;
 - (b) setting aside the results of the examination and ordering a new examination; or
 - (c) referring the matter back to the Board of Education and Assessment.

Appendix 1

Clause 14 of this regulation states:

“Before accepting an Application, the Secretary/Treasurer shall advise an Applicant to seek reconsideration and review of the original Decision by the relevant maker of the original Decision. Such reconsideration and review of the original Decision does not constitute a review under these Regulations”

The process associated with this Clause is described below. As examples is provided to provide clarity in relation to the process.

If a person eligible to request a Review of Decision of the of the Company as described in Clause 11 in relation to matters detailed in Clause 20 in the first instance the person will be advised that a review process will commence.

There are three components of a formal Review:

1. Reconsideration by Original Decision maker be it an individual or a committee.

The request for review is first sent to the original decision maker to reconsider in light of any extra information or to double check that the decision was not made in error *Example:*

A trainee has failed an examination and requests a review of this decision. In this instance the first step is that an administrative check of papers associated with the decision is undertaken and the Chief Examiner is asked to reconsider the result.

2. The outcome of the first stage of the review is provided to the person who requested the review. **Review by the Body responsible for the Original Decision that is under Review**

This stage would involve referral to the appropriate Committee/Board to which the original decision maker reports to. The original decision would be discussed along with any additional information provided by the person requesting the review. The Committee Board may choose ultimately to refer to the Board of Directors for further consideration.

Example

The trainee was not happy with the outcome of stage one of the Review and requests review of the decision by the Board of Education and Assessment.

The outcome of the second stage of the review is provided to the person who requested the review.

3. Formal Appeal by Independent Review Committee

If the person requesting the review is still not happy then the full review process detailed in this policy will be enacted.

Example

Trainee requests full review of exam results. Review Committee set up as per regulation.

Outcome available in this circumstance detailed in regulation 40 of this document.