

BY-LAW 16

HEARINGS & APPEALS TRIBUNAL PROCEDURE

Under clause ___ of the Constitution, the Board is able to make rules about disciplinary matters.

HEARINGS TRIBUNAL

The following regulates the formation and conduct of Hearings Tribunals established by AOCRA to hear any matter referred to a Hearings Tribunal (or Judiciary Committee) pursuant to AOCRA's Rules (which include the Constitution, the by-laws, regulations and other AOCRA Rules) ("**the Rules**"). [The referral document may provide further specific guidelines.](#)

Preparation for Tribunal Hearing

1. A Tribunal Panel will be constituted to hear a matter that has been referred to it in accordance with the Rules. The minimum number of Tribunal members required to be present throughout the hearing will be three with two of [the](#) representatives being Members of AOCRA.
2. The Tribunal members will be provided with copies of all the relevant correspondence, reports or information concerning the referral.
3. The Tribunal will be scheduled as soon as practicable, but must allow adequate time for the person being complained about (respondent(s)) to prepare their case for the hearing.
4. The Tribunal will not include any person who has any actual or perceived conflict of interest, or bias regarding the matter.
5. The AOCRA secretary will inform the respondent(s) in writing that a tribunal hearing will take place. The notice will outline:
 - That the person has a right to appear at the tribunal hearing to defend the complaint/allegation;
 - Details of the complaint, and details of all allegations and the clause of any policy or rule allegedly breached;
 - The date, time and venue of the tribunal hearing;
 - That they can make either verbal or written submissions to the Tribunal;
 - That they may arrange for witnesses to attend the Tribunal in support of their position (statutory declarations of witnesses not available or from character witnesses may also be provided to the Tribunal);

- An outline of any possible penalties that may be imposed if the complaint is found to be true; and
- That legal representation will not be allowed. However if the respondent is a minor, they are required to have a parent or guardian present.

A copy of any information / documents that have been given to the Tribunal (e.g. investigation report findings) will also be provided to the respondent.

The respondent(s) will be allowed to participate in all AOCRA activities and events, pending the decision of the Tribunal, including any available appeal process, unless the Complaints Officer or AOCRA President believes it is necessary to exclude the respondent(s) from all or some AOCRA activities and events, after considering the nature of the complaint.

6. The AOCRA Secretary will notify the complainant in writing that a tribunal hearing will take place. The notice will outline:

- That the person has a right to appear at the tribunal hearing to support their complaint;
- Details of the complaint, including any relevant rules or regulations the respondent is accused of breaching;
- The date, time and venue of the tribunal hearing;
- That they can make either verbal or written submissions to the Tribunal;
- That they may arrange for witnesses to attend the Tribunal in support of their position (or provide statutory declarations from witnesses unable to attend); and
- That legal representation will not be allowed. However if the complainant is a minor, they are required to have a parent or guardian present.

A copy of any information / documents that have been given to the Tribunal (e.g. investigation report findings) will also be provided to the complainant.

7. If the complainant believes the details of the complaint are incorrect or insufficient they should inform the Complaint Officer as soon as possible so that the respondent and the Tribunal Panel members can be properly informed of the complaint.

8. It is preferable that the Tribunal include at least one person with knowledge or experience of the relevant laws/rules (e.g. Discrimination).

Tribunal Hearing Procedure

9. The following people will be allowed to attend the Tribunal Hearing:

- The Tribunal members;
- The respondent(s);

- The complainant;
 - Any witness called by the Respondent;
 - Any witness called by the complainant;
 - Any parent/guardian or support person required to support the respondent or the complainant.
10. If the respondent(s) is not present at the set hearing time and the Tribunal Chairperson considers that no valid reason has been presented for their absence, the Tribunal Hearing will continue subject to the Tribunal Chairperson being satisfied that all Tribunal notification requirements have been met.
 11. If the Tribunal Chairperson considers that a valid reason for the non-attendance of the respondent(s) has been presented, or the Tribunal Chairperson does not believe the Tribunal notification requirements have been met, then the Tribunal will be rescheduled to a later date.
 12. The Tribunal Chairperson will organise for the Tribunal to be reconvened and advise the AOCRA secretary.
 13. The Tribunal Chairperson will read out the complaint, ask the respondent(s) if they understand the complaint and if they agree or disagree with the complaint.
 14. If the respondent agrees with the complaint, he or she will be asked to provide any evidence or witnesses that should be considered by the Tribunal Panel when determining any disciplinary measures (penalty).
 15. If the respondent disagrees with the complaint, the complainant will be asked to describe the circumstances that lead to the complaint being made.
 - Reference may be made to brief notes.
 - The complainant may call witnesses.
 - The respondent(s) may question the complainant and witnesses.
 16. The respondent(s) will then be asked to respond to the complaint.
 - Reference may be made to brief notes.
 - The respondent may call witnesses.
 - The complainant may ask questions of the respondent and witnesses
 17. Both the complainant and respondent may be present when evidence is presented to the Tribunal. Witnesses may be asked to wait outside the hearing until required.
 18. The Tribunal may:
 - consider any evidence, and in any form, that it deems relevant.

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- question any person giving evidence.
 - limit the number of witnesses presented to those who provide any new evidence.
 - Require the attendance of any witness it deems relevant;
 - Act in an inquisitorial manner in order to establish the truth of the issue/case before it.
19. Video evidence, if available, may be presented. The arrangements must be made entirely by the person/s wishing to offer this type of evidence.
 20. If the Tribunal considers that at any time during the Tribunal Hearing that there is any unreasonable or intimidatory behaviour from anyone the Chairperson may stop further involvement of the person in the hearing.
 21. [The Tribunal can impose any discipline upon the member, as outlined in Appendix A to By-Law 12, Member Protection Policy.](#)
 22. After all of the evidence has been presented and the parties allowed to make closing submissions, the Tribunal will make its decision in private. The Tribunal must decide whether the complaint has been substantiated on the balance of probabilities (i.e. more probable than not). As the seriousness of the allegation increases, so too must the level of satisfaction of the Tribunal that the complaint has been substantiated. The respondent will be given an opportunity to address the Tribunal on disciplinary measures which might be imposed. Disciplinary measures imposed must be reasonable in the circumstances.
 23. All Tribunal decisions will be by majority vote.
 24. The Tribunal Chairperson will announce the decision in the presence of all those involved in the hearing and will declare the hearing closed, or may advise those present that the decision is reserved and will be handed down in written form.
 25. Within 48 hours, the Tribunal Chairperson will:
 - Forward to the AOCRA Secretary a copy of the Tribunal decision including any disciplinary measures imposed.
 - Forward a letter to the respondent(s) reconfirming the Tribunal decision and any disciplinary measures imposed. The letter should also outline, if allowed, the process and grounds for an appeal. Where the matter is of unusual complexity or importance, the Tribunal Chairperson may inform the parties in writing within 48 hours that the decision will be delayed for a further 48 hours
 26. The Tribunal does not need to provide written reasons for its decision.

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Appeals Procedure

27. A complainant or a respondent(s) who is not satisfied with a first instance decision (eg a decision which purports to be a final decision imposing or not

imposing a penalty (subject to this appeal right) or a membership decision (regarding the granting, rejection, suspension or cancellation of a membership), whether it is the decision of a Complaints Officer, a Decision of the Board, [a Decision of the Hearings Tribunal \(other than an appeal from another decision\)](#) a decision of a Zone or can lodge one appeal to AOCRA on one or more of the following bases:

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27.1 That a denial of natural justice has occurred; or

27.2 That the disciplinary measure(s) imposed is unjust and/or unreasonable.

27.3 That the decision was not supported by the information/evidence provided to the Decision Maker;

Comment [k1]: We have removed mediation from here, as a mediator does not make a decision, a mediator simply encourages the parties to reach a resolution between them.

28. A person wanting to appeal in accordance with clause 26 must lodge a letter setting out the basis for their appeal with the AOCRA President within 28 days of the relevant decision. An appeal fee of \$350 shall be included with the letter of intention to appeal.

Comment [k2]: Advise appropriate fee \$350?

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29. If the letter of appeal is not received by the AOCRA President within the time period the right of appeal lapses. If the letter of appeal is received but the appeal fee is not received by the relevant time, the appeal lapses.

30. The letter of appeal and copy of tribunal decision report will be forwarded to the AOCRA committee to review and decide whether there are sufficient grounds for the appeal to proceed. The AOCRA committee may invite any witnesses to the meeting it believes are required to make an informed decision.

31. If the appellant has not shown sufficient grounds for appeal in accordance with clause 26, then the appeal will be rejected. The appellant will be notified with reasons. The appeal fee will be forfeited.

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32. If the appeal is accepted an Appeal Tribunal with a new panel will be convened to rehear the complaint, and the appeal fee will be refunded.

33. The Tribunal Procedure shall be followed for the appeal.

34. The Decision of an Appeal Tribunal will be final.