



POLICY ON PROCEDURAL FAIRNESS

1. PURPOSE AND SCOPE

Decision-makers are subject to legal rules and principles, including the possible application of the rules of 'procedural fairness' (also known as natural justice), being the right to a fair hearing and lack of bias in the decision making process.

The purpose of this policy is to provide guidance for decision-makers in relation to matters to be considered when making a decision(s) that may impact negatively on the rights or interests of the individual that is the subject of the decision. Such decisions may include, but are not limited to decisions about trainee assessment or performance issues, disciplinary proceedings pertaining to College members, trainees or staff, resolution of complaints and include those where the decision relates to an entity, such as decisions on accreditation of sites for the purposes of FACEM training.

This policy applies to all members, trainees and staff of the College. Nothing in this policy purports to impose any limitation on the authority of the Board to carry out its constitutional responsibilities.

2. DEFINITIONS

ACEM / the College

means the Australasian College for Emergency Medicine

Decision-maker

includes the Board, a College Council or other College entity, or officeholder or delegate/nominee or staff member who has responsibility for making any decision pursuant to any delegated authority.

Decision-making process

includes investigation and/or consideration of the available information, materials and College requirements, and associated processes leading up to and including the making of the decision itself.

Individual that is the subject of a decision

includes but is not limited to an individual, who may or may not be a College member or trainee; a group of individuals; or other entity such as a training site or site seeking accreditation as an ACEM training site, to which a decision or purported decision directly relates.

Member

means a person admitted as a 'member' of the College pursuant to the provisions of the ACEM Constitution and associated regulations; and, for the purposes of this policy, also includes trainees as well as any other person serving on any College entity or as a College representative.

Officeholder

includes a person who is formally appointed to a College position (other than as a member of an entity), such as Directors of Emergency Medicine Training (DEMTs) and similar.

Trainee

means trainees enrolled in and undertaking the FACEM Training Program and, for the purposes of this policy, also includes Emergency Medicine Certificate and Emergency Medicine Diploma trainees, and Specialist International Medical Graduates (SIMGs) undertaking College requirements for the purpose of attaining eligibility for election to Fellowship of the College.

3. PRINCIPLES OF PROCEDURAL FAIRNESS

Procedural fairness relates to the procedures used by a decision-maker to reach a decision(s), rather than the actual outcome reached. It imposes an obligation on the decision-maker to adopt fair procedures, appropriate and adapted to the circumstances of the particular case, in the making of decisions that affect the rights, obligations or legitimate expectations of the individual that is the subject of the decision.

Procedural fairness requires the decision-maker to:

- inform the individual of the matter to be dealt with;
- give the individual an opportunity to be heard;
- not be biased or seen to be biased; and
- act only on relevant information or evidence.

3.1 Inform the individual of the matter to be dealt with

The individual that is the subject of a decision must be provided with sufficient details of the matter affecting him/her to enable a response to be prepared, including:

- reasons for the matter relating to him/her;
- information or evidence on which the decision will be based;
- reasons why a decision is required and the nature of the impending decision and relevant criteria for making the impending decision; and
- possible outcomes which might ensue.

Information which might be relevant to an individual's response should also be provided if it arises after the initial information has been provided.

It is generally sufficient to provide details of the substance or essence of the matter by written correspondence howsoever distributed. Except where otherwise required by College regulations, entity Terms of Reference or policy, it is not necessary to provide copies of all or any original documents.

3.2 Give the individual an opportunity to be heard

An individual that is the subject of a decision must be given a reasonable opportunity to be heard and to respond to any complaint or matter or impending decision before a decision is made. An opportunity to be heard may involve:

- an opportunity to make submissions (orally or in writing);
- an opportunity to give evidence and call witnesses; and
- an opportunity to test persons in relation to any adverse information or material.

A response may be made either in writing or orally, provided that the type of hearing is proportional to the nature of the decision.

The individual must be provided with adequate notice of any impending decision or hearing. Where applicable, timeframes set out in College regulations or policies must be followed. Otherwise, such notice as is reasonable in the circumstances must be given.

Decision-makers should also consider whether there are any obstacles or factors which might hinder an individual's ability to respond to a matter under consideration, or to make a submission on any matter, and otherwise to make appropriate allowances so that the submission or response of the individual that is the subject of the decision will be taken into consideration.

Generally, in any face-to-face meeting or when making an oral submission, it is reasonable to afford the individual the opportunity to be accompanied by a support person, who, unless otherwise permitted by College regulations or policy, may only act as an observer.

Timeliness

To enable the individual that is the subject of the decision to respond to the matter under consideration, he/she must be given reasonable and adequate notice. Where this period is not prescribed in the relevant College regulations or policy, it is determined having regard to the particular circumstances of the matter in question.

At the time of notification of the meeting/hearing at which a matter is to be considered, the decision-maker should advise the individual that is the subject of the decision, of the date and time by which any written submission or response is to be submitted.

The principle of procedural fairness does not require that the individual that is the subject of the decision takes the best advantage of an opportunity(ies) to be heard. Accordingly, the individual should be advised that, in the absence of exceptional circumstances and without the approval of the decision-maker for an extension of time, the matter may proceed to determination if he/she fails to provide a response by the date specified.

3.3 Not be biased or seen to be biased

The decision-maker must be impartial. That is:

- they must not have a direct or indirect interest in the outcome of the process; and
- they must act fairly and without bias (or the appearance of bias).

This includes ensuring that, from an onlooker's perspective, there is no reasonable perception of bias. Circumstances that may give rise to bias or a perception of bias include personal, financial or family relationships, and participation in another role in the decision-making process. If this is the case, the person concerned should remove himself/herself from the process and ensure that an independent person assumes the role of decision-maker, or position on a decision-making body as applicable.

The nature of the College and its activities is such that office holders and the members of governing bodies and entities will frequently have at least a broad interest in decisions that are made. As such, it may not be possible for decisions to be made only by those who are completely disinterested and impartial in the manner of a judge or statutory tribunal. Where there is any uncertainty, the decision-maker or member thereof should seek guidance from the relevant senior College staff member (Executive Director or Chief Executive Officer). Reference should also be made to the *Conflict of Interest Policy* (COR139) and the *ACEM Examinations – Conflict of Interest Policy* (COR233).

3.4 Act only on relevant information or evidence

The decision-maker must give genuine and proper consideration to the particular merits of the individual's case before reaching a decision. The decision-maker should not take into account facts or considerations unrelated to the matter at hand.

Legislation ensures that circumstances such as race, religion, gender and a range of other grounds can form no part of a decision regarding employment, education and training. Where irrelevant material is presented, the decision-maker should make it clear that the material is not being considered or relied upon in any way.

4. DECISION-MAKING

Decisions should be made on the merits of the case and having regard to all relevant information available to the decision-maker.

Record keeping

Accurate records of the materials and matters considered, and the decision reached must be kept. Ordinarily, this will be in the minutes of the meeting at which the decision was made.

Reasons

The decision-maker must ensure that the reason(s) for the decision are provided in documented form to the individual that is the subject of the decision.

5. DOCUMENT REVIEW

Timeframe for review: every two (2) years, or earlier if required.

5.1 Responsibilities

Document authorisation: Board
Document implementation: CEO
Document maintenance: General Manager, Governance and Standards

5.2 Revision History

Version	Date of Version	Pages revised / Brief Explanation of Revision
v1	Mar-2014	Approved by Council
v2	May-2017	Substantive revisions throughout
v3	Jun-2019	Minor administrative revisions and articulation of membership categories and trainee