

Portfolio:	Education Partnerships	Ref. No.	REG-2053
Team:	Education Governance & Risk		
Title:	Reconsideration, Review and Appeal		

1. PURPOSE AND SCOPE

This regulation sets out the formal process for challenging a decision being via the process of Reconsideration, Review and Appeal (RRA Regulation or Regulation), by any person, organisation, or body corporate (an Applicant) affected by a decision related to the training and education functions of the Royal Australasian College of Surgeons (RACS).

The three-step process involved in formally challenging a decision is intended to minimise the need for Applicants to undertake an Appeal to resolve their issue. It is expected that many issues will reach a satisfactory outcome in the Reconsideration and Review steps.

The purpose of this Regulation is to set out the three sequential steps that may be taken by an Applicant aggrieved by a decision related to the training and education functions of RACS, those being to apply for:

1.1. Reconsideration.

This step provides the Applicant with the opportunity to submit additional information to the original decision-maker. This additional information must have been available and known (or should have been known) at the time that the original decision was made.

1.2. Review.

This step provides the Applicant with the opportunity to provide the reasons (to a review panel) that they believe there has been an error by the original decision-maker.

1.3. Appeal.

This step provides the Applicant (also known as the Appellant at this step) with the opportunity to present their case for an Appeal of the decision (by the original decision-maker) to an independent appeals committee (Appeals Committee).

2. GENERAL PRINCIPLES

2.1. Fees

2.1.1. No fee is required for Reconsideration or Review.

2.1.2. An Applicant will be required to pay a fee for an Appeal:

- a. The relevant fee is available on the RACS website;
- b. This fee must be paid at the time a request for an Appeal is lodged;
- c. Where the Appellant is successful (i.e. where the decision is revoked) 50% of the Appeal fee will be refunded.

2.2. Appointment and Delegation

The Reconsideration, Review and Appeal Officer (RRA Officer) will be appointed by the CEO. The RRA Officer may delegate their powers and duties in respect of this Regulation and any procedures made under it.

2.3. Matter Progression

2.3.1. Generally, Applicants will have their matter considered in accordance with the three-step mechanism in the stated sequence, that is, they will commence at the Reconsideration step before continuing to a Review and then Appeal.

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2.3.2. The Reconsideration and/or Review steps may be bypassed if approved by the CEO.

2.4. When applications will be accepted

2.4.1. Any person, organisation or body corporate whose interests are directly and adversely affected by an original decision (as detailed in clause 3.1) that is inconsistent with an approved regulation or policy may, within the specified timeframe set out in this Regulation, apply to have that original decision reconsidered, reviewed and/or considered at a hearing of the appeals committee where there is demonstrable evidence, provided at the time of the application, of one or more of the grounds (set out in clause 3.2) relating to the decision that is the subject of the application.

2.4.2. The onus of establishing the relevant grounds of a request falls upon the Applicant.

2.4.3. Applications submitted under this Regulation will not be accepted where the Applicant is seeking an exemption from any approved policy or regulation.

2.4.4. In the absence of manifest error in the scoring of examination results, challenges to examination results are limited. Examinations will not be “re-scored” or “re-assessed”, and a candidate cannot be elevated to a pass except in accordance with the Special Consideration for an Examination Policy.

2.4.5. Applications will not be accepted where the application relates to matters that fall under the remit of the Special Consideration for an Examination Policy, and where that policy was not utilised within the timeframe outlined therein and results of the examination have been published, regardless of the reasons cited for not submitting an application under that policy.

2.5. Applicant’s request for documents

2.5.1. An Applicant may, prior to requesting a Reconsideration or Review, request from the original decision-maker copies of documents on which the decision was based. The original decision-maker must respond to this request within fourteen (14) days of receipt of a written request. The original decision-maker will not provide any documents to the Applicant where to do so may waive privilege, or breach privacy and confidentiality obligations.

2.5.2. Failure to receive copies of documents on which the decision was based, from the original decision-maker, shall not be accepted as a reason for failure to lodge an application on time. The Applicant must meet all timing requirements in this Regulation, even if the documents requested have not been provided by the original decision-maker.

2.6. Reporting

RACS will publish annually an Activities report including the number of Applicants using this Regulation and the relevant outcomes.

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3. DECISIONS ABLE TO BE RECONSIDERED, REVIEWED OR APPEALED

3.1. Decisions subject to this Regulation

An Applicant may only apply for a Reconsideration, Review or Appeal of the following decisions related to the training and education functions of RACS:

- 3.1.1. Decisions of a relevant Training Committee/Board relating to selection, training, or admission to Fellowship.
- 3.1.2. Decisions of the SIMG Committee relating to specialist assessment and clinical assessment of Specialist International Medical Graduates (SIMGs).
- 3.1.3. Decisions of the relevant committee to determine the accreditation status of training posts or SIMG clinical assessment posts.
- 3.1.4. Decisions of the relevant committee to determine accreditation of Post Fellowship Education and Training programs and accreditation of courses.

In addition to the above the following other decisions may be challenged in accordance with this Regulation:

- 3.1.5. Decisions relating to termination of Fellowship (Appeal only).
- 3.1.6. Decisions of the Professional Conduct Committee (Appeal only).
- 3.1.7. Such other decisions of RACS, its Boards or Committees (including conjoint Committees), or surgical specialty societies in performing RACS functions under delegation and/or contract as the CEO may determine from time to time.

The following are not decisions to which this Regulation will apply:

- 3.1.8. Assessments, references or other decisions of competency, including work-based assessments prior to any decision of a Training Committee/Board in relation to admission, progression, suspension or termination of training.
- 3.1.9. Assessment, references or other decisions of competency prior to any decision of the SIMG Committee in relation to admission, progression, suspension or termination of an SIMG.

3.2. Grounds for Reconsideration, Review and Appeal

The grounds under which an application for a Reconsideration Review and Appeal can be made are:

- 3.2.1. That an error in law or in due process occurred in the formulation of the original decision;
- 3.2.2. That relevant and significant information, whether available at the time of the original decision or which became subsequently available, was not considered or not properly considered in the making of the original decision;
- 3.2.3. That irrelevant information was considered in the making of the original decision;
- 3.2.4. That the original decision was made for an improper purpose;

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- 3.2.5. That procedures that were required to be observed by RACS policies and/or Surgical Education and Training (SET) board regulations in connection with the original decision were not observed;
- 3.2.6. The original decision was made in accordance with a rule or policy without consideration to the merits of the particular case;
- 3.2.7. The original decision was clearly inconsistent with the evidence and arguments put before the original decision-maker.

Any application which does not meet these requirements may be rejected.

4. STEP ONE – RECONSIDERATION

4.1. Initiation of Reconsideration

- 4.1.1. Any Applicant who is directly affected by and is dissatisfied with a decision of RACS referred to in clause 3 of this Regulation may apply to have the original decision-maker reconsider its decision.
- 4.1.2. The application for Reconsideration must be made in writing and may include any additional material or documentation not previously considered by the original decision-maker (if applicable), but only where such material was available and known (or should have been known) to the original decision-maker at the time the decision was made. Additional material or documentation cannot be considered for decisions relating to:
- selection to the surgical education and training program; and
 - examinations where special consideration ought to have been sought.
- 4.1.3. The Applicant is entitled to provide written submissions at the time of application. The original decision-maker may also require the Applicant to provide written submissions if they consider it may assist in this process.

4.2. Timeframe

- 4.2.1. The application for Reconsideration of a decision must be received by RACS within twenty-eight (28) days of the date of the original decision unless it is a decision relating to selection to the surgical education and training program, which must be received by RACS within seven (7) days.
- 4.2.2. If the decision is provided in writing, the date of the written notification shall be taken to be the date of the decision for this purpose. Failure to receive documents requested under clause 2.5.1 shall be noted by the Applicant on their application and shall not be accepted as a reason for late lodgement of an application. The Applicant must comply with clause 2.5.2.
- 4.2.3. RACS will acknowledge receipt of the application within seven (7) days of receipt.

4.3. Conduct of Reconsideration

- 4.3.1. The original decision-maker shall reconsider the decision together with all original material previously before the original decision-maker, any additional materials provided by the Applicant and their submissions (if applicable).
- 4.3.2. Unless requested by the original decision-maker, the Applicant does not have the right to attend any meetings with the original decision-maker or

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make any oral submissions to the original decision-maker, either personally or through any other party.

- 4.3.3. The original decision-maker may inform itself as it sees fit, subject to the rules of procedural fairness and natural justice.

4.4. Outcome of Reconsideration

- 4.4.1. RACS aims to complete the Reconsideration process within twenty-eight (28) days of receipt of the complete Reconsideration application received pursuant to this Regulation. Following completion of the Reconsideration, RACS will notify the Applicant in writing of the decision (Reconsideration Decision). In the event the original decision is upheld, the communication to the Applicant shall contain the Reconsideration Decision and information relating to the further options available to the Applicant.

5. STEP TWO – REVIEW

5.1. Initiation of Review

- 5.1.1. An Applicant who remains dissatisfied with the decision of the original decision-maker and maintains that the decision-maker erred in making that decision, may apply to have that decision reviewed by a Review Panel.
- 5.1.2. The Applicant is entitled to provide written submissions for the Review Panel at the time of application, which they consider may assist in this process.

5.2. Timeframe

- 5.2.1. The application for Review of a decision must be received by RACS within fourteen (14) days of the date of the written notification of the Reconsideration Decision.
- 5.2.2. RACS will acknowledge receipt of the application within seven (7) days of receipt.

5.3. Conduct of Review

- 5.3.1. RACS shall convene a Review Panel, which shall comprise of people approved by the CEO or their delegate for this purpose. The Review Panel shall not include a member who participated in the making of the original decision or the Reconsideration Decision or who otherwise has, or may be perceived to have, a conflict of interest.
- 5.3.2. The Review Panel shall consider and conduct the Review on the basis of:
- all the material and documentation considered by the original decision-maker when making the original decision or reconsidering it under this Regulation;
 - the application for Review;
 - any new information obtained by it which is relevant to the decision of the original decision-maker;
 - any submissions made by the Applicant under clause 5.1.2;

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- e. whether the principles of procedural fairness and natural justice were followed when the original decision was made and when it was reconsidered; and
- f. any RACS regulations, policies and procedures relevant to the decision.

5.3.3. Unless requested by the Review Panel, the Applicant does not have the right to attend any meetings of the Review Panel or to make any oral submissions to it, either personally or through any other party.

5.3.4. The Review Panel may inform itself as it sees fit, subject to the rules of procedural fairness.

5.4. Outcome of Review

5.4.1. The Review Panel may only make one of the following decisions (Review Decision):

- a. affirm the original decision or Reconsideration Decision;
- b. set aside the original decision or Reconsideration Decision and require that an alternative process be undertaken to arrive at a decision; or
- c. vary the original decision or the Reconsideration Decision to arrive at a different decision.

5.4.2. The decision of the Review Panel is binding on the original decision-maker who must comply with any directions.

5.4.3. RACS aims to complete the Review process within twenty-eight (28) days of receipt of the complete Review application received pursuant to this Regulation. Following completion of the Review process, RACS will notify the Applicant in writing of the Review Decision and, if relevant, will advise the Applicant of their right to appeal this Review Decision.

6. STEP THREE - APPEAL

6.1. Initiation of Appeal

6.1.1. An Applicant (also known as the Appellant) who remains dissatisfied with the outcome of the Review process may submit an Appeal in accordance with the allowable grounds of Appeal at clause 3.2 for determination by an independent Appeals Committee. The Appellant will carry the burden of proof to establish the specific grounds relied upon in the application.

6.1.2. To constitute a valid application for Appeal, the application must contain all of:

- a. The prescribed Appeal fee;
- b. Details of the specific decision that is being appealed;
- c. The grounds of Appeal based on the allowable grounds of Appeal as described in clause 3.2;
- d. A summary of the facts or other means by which the matter falls within the stated ground(s); and
- e. A statement that evidence exists that supports the grounds of Appeal.

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6.2. Timeframe

- 6.2.1. The application for Appeal must be received by RACS within fourteen (14) days of the date of the written notification of the Review Decision (in the case of decisions referred to in clauses 3.1.1 - 3.1.6 of this Regulation, within fourteen (14) days of the date of the written notification of those decisions).
- 6.2.2. RACS will acknowledge receipt of the application within fourteen (14) days and will advise the Appellant and the original decision-maker that an Appeal will be heard. This advice will include a timeline of the Appeal process and information about the rights of the Appellant.
- 6.2.3. Unless otherwise advised in writing by RACS, the decision under Appeal remains in effect until the Appeal is heard and determined.
- 6.2.4. The Appellant and the original decision-maker will provide to RACS written submissions and copies of any documents and records upon which they wish to rely, within the time specified in any communication from RACS. The Appellant and the original decision-maker shall have no less than twenty-eight (28) days to undertake this. The written submissions of the original decision-maker and the Appellant will be provided to the other party and to the Appeals Committee. Following receipt of the original decision-maker's submissions, the Appellant cannot introduce new grounds of Appeal.
- 6.2.5. The Appellant and the original decision-maker may lodge a rebuttal within the time specified by RACS which cannot be less than fourteen (14) days before the Appeal hearing. The rebuttals will be provided to the other party and to the Appeals Committee. No further material will be accepted after this time.

6.3. Conduct of Appeal

- 6.3.1. RACS will convene an Appeals Committee, which will comprise the following members approved by the CEO or their delegate:
- a. three persons who are not Fellows of RACS, one of whom shall chair the Appeals Committee (Chair);
 - b. the Vice President of RACS or a delegate who is a Fellow of RACS; and
 - c. one Fellow of RACS.
- 6.3.2. The Appeals Committee shall not include members who have been involved in the decision to which the Appeal relates or who otherwise have, or may be perceived to have, a conflict of interest.
- 6.3.3. Council has delegated the appointment of persons to the pool of Appeals Committee members, including the Chair, to the CEO.
- 6.3.4. A quorum for meetings of the Appeals Committee will be a Chair and three other members. All members of the Appeals Committee shall be entitled to vote on decisions and the outcome of the Appeal shall be decided on the basis of a majority vote if consensus cannot be achieved. In the event of a tied vote the Chair will have a casting vote.

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- 6.3.5. The Appeals Committee must act according to the rules of procedural fairness. The Appeals Committee is not bound by the rules of evidence and, subject to the rules of procedural fairness, may inform itself on any matter and in such manner as it thinks fit.
- 6.3.6. The Appeals Committee shall be entitled to consider all relevant information which it thinks fit and may invite any person to appear before it, or to provide information. Witnesses are not compellable. However, the Appeals Committee is limited to considering the grounds of Appeal as pleaded by the Appellant in their application for Appeal.
- 6.3.7. The CEO, or their delegate, will appoint a person to be the legal advisor to the Appeals Committee.
- 6.3.8. The Appellant is expected to appear before the Appeals Committee at their own cost and may seek leave to be represented by a legal practitioner and where such leave is sought, it must be sought at the time of application. An Appellant may be excused from attending where attendance would cause undue hardship to the Appellant or for another reason acceptable to the Appeals Committee. Where an Appellant is excused from attending in person, their legal advisor may exercise all the rights and shall bear all the obligations of the Appellant at the hearing. The Appellant may also be accompanied by a support person.
- 6.3.9. A representative of the original decision-maker is expected to attend and address the Appeals Committee on matters relevant to the Appeal. The original decision-maker may seek leave to be represented by a legal practitioner. If leave is sought, the Manager of the RACS legal department will appoint a legal advisor.
- 6.3.10. The RRA Officer may request or permit other persons to attend meetings of the Appeals Committee.

6.4. Outcome of Appeal

- 6.4.1. An Appeals Committee may, upon considering all submissions, make one of the following decisions:
- a. affirm the decision under Appeal;
 - b. set aside the original decision and recommend that an alternative process be undertaken to arrive at a decision; or
 - c. revoke the original decision under Appeal and refer the decision back to the original decision-maker and make any other recommendations for the further consideration of the decision that the Appeals Committee considers appropriate.
- 6.4.2. The Appeals Committee cannot make a recommendation in relation to a matter that the original decision-maker could not have made and cannot make an order in relation to costs. In addition, the Appeals Committee may not:
- a. elevate an Appellant above others in a competitive assessment for selection to the SET program without reference to the scoring process; or
 - b. recommend a pathway to Fellowship for an IMG without reference to a new IMG Assessment Panel; or

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- c. revoke the clinical or examination assessment of a trainee and replace the assessment with an assessment of its own; or
 - d. award a Fellowship to any Appellant.
- 6.4.3. The Appeals Committee will issue a written decision, with reasons for the decision, as soon as practicable, but aims to complete its decision within twenty-eight (28) days from the date of the Appeal hearing.
- 6.4.4. The Appeals Committee's decision takes effect from the date of the written decision which will be forwarded on the same date to the Appellant and the relevant decision-maker.

7. COMPLIANCE WITH LAWS AND REGULATIONS

Nothing in this Regulation authorises an Appeals Committee to direct that an act be done or a process be undertaken by any decision-maker which is unlawful or outside the terms or authority of the regulations or policies of RACS as they existed at the time of the original decision.

8. ASSOCIATED DOCUMENTS

Approver Education Committee
Authoriser Council