

Policy



AOA  
AUSTRALIAN  
ORTHOPAEDIC  
ASSOCIATION

RECONSIDERATION  
REVIEW AND  
APPEAL OF  
TRAINING  
DECISIONS



AOA



*Excellence* in Orthopaedic  
Surgical Education and Training

# Reconsideration, Review and Appeal of Training Decisions

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## Purpose and Scope

This policy outlines the mechanism by which a trainee in the AOA training program (Trainee) may request reconsideration, review or appeal of a training related decision.

A Trainee adversely affected by a decision of AOA outside the parameters of this policy (i.e. a decision other than a training related decision) should refer to the *AOA Reconsideration, Review and Appeals policy (Appeals Policy)*. The Appeals Policy does not apply to training related decisions covered by this policy.

## Training Decisions

1. From time to time, a Trainee may believe they have been adversely affected by a Training Decision.
2. *Training Decisions* may be categorised as Formative Decisions or Summative Decisions.
3. Formative Decisions are those decisions intended to provide a Trainee with feedback. This includes decisions pertaining to Workplace-Based Assessments and Feedback Entries.
4. *Formative Decisions* are not eligible for reconsideration, review or appeal under this policy or the Appeals Policy.
5. *Summative Decisions* are those decisions that may affect a Trainee's progression. This includes decisions pertaining to Quarterly Assessment Reports, Performance Appraisals, Progress Reviews, Stage Reviews and Dismissal.
6. A Trainee adversely affected by a Summative Decision may request a copy of the written reasons for the decision. If such a request is made, written reasons are to be provided within 14 days of receipt of the Trainee's request.
7. A Trainee adversely affected by a summative training decision may request reconsideration, review or appeal of such a decision in accordance with this policy.

8. Requests for reconsideration, review or appeal of a training related decision pertaining to an assessment conducted by the Royal Australasian College of Surgeons (RACS) are not managed under this policy and should be directed to RACS.
9. AOA staff will assist a Trainee to lodge a request for reconsideration, review or appeal and refer the Trainee to the appropriate policy or procedure to be followed.

## Reconsideration of a Training Decision

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10. A reconsideration of a Summative Decision may be made as the Federal Training Committee (or delegate) may determine from time to time.
11. A Trainee adversely affected by a Summative Decision may, within 14 days of receipt of notice of such a decision, apply to the AOA to have the decision reconsidered by the original decision makers.
12. Where the Trainee has sought a copy of the written reasons of the decision, time elapsed between the request for, and subsequent provision of, written reasons will not contribute to the 14-day period outlined at section 11.
13. A reconsideration of a decision may be made on the following grounds:
  - 13.1. The original decision was the result of an error of law or error in due process.
  - 13.2. That relevant and significant information, available at the time of the original decision, was not considered or not properly considered in the making of the original decision.
  - 13.3. That the original decision was clearly inconsistent with the evidence and arguments put before the body making the original decision.
  - 13.4. That irrelevant information was considered in the making of the original decision.
  - 13.5. That procedures that were required by AOA to be observed in connection with the making of the decision were not observed and this could have had a material impact on the decision.
  - 13.6. That the original decision was made in accordance with a rule or policy without regard to the merits of the particular case.
  - 13.7. That the original decision was made for an improper purpose.
14. All applications for reconsideration are to be made in writing and accompanied by all relevant information or grounds upon which the Trainee seeks to rely in respect of the reconsideration.
15. The Trainee will bear the onus of proof to establish the grounds of the reconsideration upon application. If AOA determines in its absolute discretion that grounds have not been established, or that information provided in order to establish grounds is not relevant to the decision or policy, the reconsideration will not proceed.

16. AOA may offer the Trainee the option of proceeding directly to review, omitting reconsideration where deemed appropriate. In these circumstances, clauses 17-21 will not apply.
17. The original decision makers will form a Reconsideration Panel and will reconvene to reconsider the original decision and material associated with that decision. The Reconsideration Panel will also consider information the Trainee provides to establish grounds for reconsideration.
18. The reconsideration will be conducted with as little formality as possible, but otherwise the Reconsideration Panel shall have full power to regulate its conduct and operation.
19. The reconsideration of the decision by the Reconsideration Panel must be undertaken in accordance with the rules of natural justice and each reconsideration will be reviewed on its merits.
20. Minutes of the meeting shall only record the decision, the reasons for the decision, and any recommendations made.
21. The outcome of the reconsideration and the reasons for the outcome will be provided to the Trainee in writing.

## Review of a Training Decision

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22. A review of a Summative Decision may be made as the Federal Training Committee (or delegate) may determine from time to time.
23. A review of a decision may be made on the same grounds as a reconsideration (outlined in Section 13) once a reconsideration process has been undertaken, the outcome communicated to the Trainee and if the Trainee is not satisfied with the outcome or in accordance with section 16.
24. A Trainee adversely affected by a Summative Decision and having had the decision reconsidered by the original decision makers by the process outlined in this policy may, within 14 days of receipt of notice of such a decision, apply to the AOA to have the decision reviewed by an AOA internal independent review panel (Review Panel).
25. The Trainee will bear the onus of proof to establish the grounds of the review upon application. If AOA determines in its absolute discretion that grounds have not been established, or that information provided in order to establish grounds is not relevant to the decision or policy, the review will not proceed.
26. All applications for review are to be made in writing and be accompanied by all relevant information or grounds upon which the Trainee seeks to rely in respect of the review.
27. The Trainee must pay a fee, which shall be the current fee as published by the Board at that time.
28. A Review Panel will be established. The AOA will provide administrative and procedural assistance. The Review Panel will be made up of at least three (3) Fellows of AOA with no previous involvement in the decision.

29. The Review Panel will convene to review the original decision and material associated with that decision and will also consider information the Trainee provides to establish grounds for review.
30. The review will be conducted with as little formality as possible, but otherwise the Review Panel shall have full power to regulate its conduct and operation.
31. The review of the decision by the Review Panel must be undertaken in accordance with the rules of natural justice and each review will be considered on its merits.
32. The Review Panel may uphold or overturn the decision. Where the decision is overturned, the Review Panel may not make a determination as to the competence of the Trainee. The Panel may only:
  - 32.1. Require a new decision to be made via a defined alternative process, or
  - 32.2. Refer the matter back to the original decision maker with directions, terms or conditions regarding the process for the making of a new decision
33. Minutes of the meeting shall only record the Review Panel's decision, the reasons for the decision, and any recommendations made.
34. The outcome of the review and the reasons for the outcome will be provided to the Trainee and the original decision maker in writing.

## Appeal of a Training Decision

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35. An appeal of a Summative Decision may be made as the Federal Training Committee (or delegate) may determine from time to time.
36. An appeal of a decision may be made on the same grounds as reconsideration (outlined in Section 13) once a review process has been undertaken, the outcome communicated to the Trainee and if the Trainee is not satisfied with the outcome.
37. A Trainee adversely affected by a Summative Decision and having had the decision reviewed by the process outlined in this policy may, within 14 days of receipt of notice of such a decision, apply to the AOA to have the decision appealed.
38. Applications for appeal of a Summative Decision where a review has not been undertaken according to this policy will not be accepted. Reconsideration and/or Review shall not, and does not, constitute an appeal under this policy.
39. Appeal of dismissal decisions will be referred to the RACS Appeal Mechanism.
40. Appeal of all other Summative Decisions will be referred to an AOA Appeal Committee in accordance with this policy.
41. The Trainee will bear the onus of proof to establish the grounds of the appeal upon application. If AOA determines in its absolute discretion that grounds have not been established, or that information provided in order to establish grounds is not relevant to the decision or policy, the appeal will not proceed.

42. All applications for appeal are to be made in writing and be accompanied by all relevant information or grounds upon which the Trainee seeks to rely in respect of the appeal.
43. The Trainee must pay a fee, which shall be the current fee as published by the Board at that time.

## Appeal Committee

44. Unless the matter is being referred to the RACS Appeal Mechanism, an Appeal Committee will be convened by the AOA Dean of Education (or delegate) and shall be comprised of:
  - One Fellow of AOA;
  - One member of AOA, who may be any category of member;
  - Up to two appropriately qualified or interested persons who are not required to be Fellows of AOA, one of whom shall be an appropriately qualified legal practitioner.
45. A member of the Appeal Committee, who is not a Member of AOA, shall be appointed Chair of the Appeal Committee.
46. The Appeal Committee will not comprise any person who was a party to the decision of AOA to which the appeal relates.
47. A quorum of the Appeal Committee will be the Chair and two other members.
48. Each member of the Appeal Committee shall be entitled to one vote. In the event of an equality of votes, the Chair may exercise a casting vote, whether or not the Chair has previously voted.

## Appeal Hearing

49. AOA will convene the Appeal Committee within 3 months of an appeal having been lodged, and shall hear the appeal as soon as practicable.
50. The Appeal Committee will not, except in exceptional circumstances and with AOA Board approval, consider a matter de novo.
51. A Trainee shall have the right to appear and address the Appeal Committee in relation to his or her written submissions. The Trainee shall be entitled to have a support person attend the hearing with him or her. That support person may be the Trainee's legal representative. The support person may, with leave of the Appeal Committee, act as an advocate.
52. At least 28 days before convening the Appeal Committee hearing, the AOA will advise the parties in writing of:
  - The time, date and place of the hearing;
  - The right of the parties to appear before the Appeal Committee; and
  - The right of the parties to seek leave of the Appeal Committee to have legal representation at the hearing.
53. The parties will be asked to provide written submissions to the Appeal Committee not less than 14 days before the date of the hearing. The Appeal Committee may, in its discretion,

receive written and/or oral submissions at any time during the course of a hearing.

54. The Appeal Committee is not bound by the rules of evidence and it may inform itself of any matter and in such manner as it thinks fit.
55. The Appeal Committee shall conduct its affairs with as little formality as possible, but otherwise shall have full power to regulate its conduct and operation.
56. The Appeal Committee must act in accordance with the rules of natural justice and decide each appeal on its merits.
57. The proceedings of the Appeal Committee will be recorded and the proceedings transcribed.
58. The transcript of proceedings shall be kept confidential (except as required by law).

## Hearing Procedures

59. The Appeal Committee will meet prior to each hearing to consider the matter before it.
60. The hearing is to be conducted with all parties present, however, the Appeal Committee may, in its absolute discretion, hear the parties separately.
61. All questions must be directed to the Chair.
62. The Chair may invite the Trainee, then any other party appearing before the Appeal Committee, to summarise his or her position.
63. The Chair will then invite the Trainee to present his or her submission and may direct the Trainee, at any time, to any point of that submission or invite questions on any point of that submission.
64. The Chair will then invite members of the Appeal Committee to seek clarification from the Trainee of any matters raised.
65. The Chair will then invite any person attending to provide information to the Appeal Committee.
66. The Trainee will then be asked to respond or make submissions in relation to the material presented by the other parties or participants.
67. The Trainee and other parties will then be asked to withdraw from the meeting while the Appeal Committee discusses the matter. The Trainee and other parties will be asked to remain available to clarify any further matters if required.
68. If further clarification is sought, all of the parties will reconvene before the Appeal Committee and clarify those further matters. The Trainee will then be asked to make any final submissions.
69. If the Appeal Committee decides, in its absolute discretion, that the Trainee ought to be given an opportunity to provide further written submissions, leave will be granted in relation to same.



70. Minutes of the hearing shall only record the Appeal Committee's decision, the reasons for the decision, and any recommendations made.
71. All information made available to the Appeal Committee is to be made available to the Trainee.

## Decision of the Appeal Committee

72. The Appeal Committee may uphold or overturn the decision, Where the decision is overturned, the Appeal Committee may not make a determination as to the competence of the Trainee. The Panel may only:
  - 72.1. Require a new decision to be made via a defined alternative process, or
  - 72.2. Refer the matter back to the original decision maker with directions, terms or conditions regarding the process for the making of a new decision.
73. The Appeal Committee may make a recommendation to the Board as to whether any or all of the fee paid by the Trainee should be reimbursed by AOA;
74. The Appeal Committee will reach a determination within 3 weeks of the hearing, or receipt of final written submissions, whichever is the latter. A copy of the Appeal Committee's written decision with reasons is to be provided to all parties by the AOA no later than 7 days after the decision has been made.
75. The decision of the Appeal Committee will be final.

## Non-Assessment Period

76. Where a Trainee has submitted a request for reconsideration, review or appeal and:
  - Is still allocated to the training site where the contested assessment was completed, and
  - Either the Trainee or their Director of Training considers the process may be having an impact on the ability for training to continue productively,

the Trainee or their Director of Training may apply to the Chair, Education and Training for the Trainee to complete a non-assessment period until such time as the matter is resolved.
77. Where a Trainee has submitted a request for reconsideration, review or appeal and safety concerns are reported to AOA, the Trainee may be required to undertake a non-assessment period until such time as the matter is resolved.
78. During a non-assessment period, the Trainee may continue to work (at the discretion of the training site) but will not be considered to be in active training. No assessments will be conducted, and training time will not be recognised/accredited.
79. AOA will formally notify the training site where a non-assessment period is triggered and when completed.