



Australian Government
Department of Defence

Decision-Maker's Handbook for Personnel-related Decisions

Make the right decision | Make the decision right

Your Job | Your Career | Defence's Future



<http://www.defence.gov.au/payandconditions/>

Overview

1. The *Decision-Maker's Handbook for Personnel-related Decisions* is for all Defence decision-makers who deal with personnel related decisions for both ADF members and APS employees.
2. The Handbook is subtitled 'Make the right decision – Make the decision right'. It includes information to support decision-makers on ADF conditions of service and APS conditions of employment, and a quick-reference guide to the main features of good decision-making.
3. The Handbook supplements *Good decision-making in Defence: a guide for decision-makers and those who brief them*. It consolidates the information contained in these and a number of other documents.
4. It is recommended that decision-makers at all levels familiarise themselves with the contents of the guide so they can apply a process that will ensure consistency and rigour in all areas of decision-making.

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1. DO I NEED TO READ THIS HANDBOOK?

INTRODUCTION

It is important for everyone to have confidence in decision-makers and the decisions they make. It is equally important for decision-makers and their managers to have confidence when making their decisions that the information to support any challenge to those decisions is available should it be required.

You need to read this Handbook if you do either of these tasks.

- Supervise others in Defence.
Examples: Supervisor, commanding officer or manager.
- Prepare advice for those who make decisions.

HOW THIS HANDBOOK CAN HELP

This Handbook will help you make decisions, which will pass all these tests.

- They are legally sound and defensible if reviewed.
- They apply the principles of natural justice (and procedural fairness).
- They consistently and accurately apply the relevant rules.

INFORMATION USED IN THIS HANDBOOK

This Handbook consolidates information in these source documents.

- *Good decision-making in Defence: a guide for decision-makers and those who brief them.*
- Defence Enterprise Agreement 2017-2020.
- APS People Policy website on PeopleConnect.

HOW THE HANDBOOK IS WRITTEN

In Defence, decision-makers often need to know the basis and the context of decision-making for both members of the ADF and APS employees. The Handbook is written for all decision-makers in Defence. However Section 4 focuses specifically on decision-making for ADF members. Section 5 (which is in two parts, *Decision-making powers and types* and *Principles-based decision-making*) focuses on decision-making for APS employees. These two Sections are clearly marked as 'ADF' and 'APS' respectively.

Sections 1 to 5 provide information on the context, basis and types of decision-making in Defence and are written in the third person. Sections 6 to 10 provide specific guidance on the process of decision-making and include checklists and references to assist the decision-maker. These Sections are written in the second person, using 'you' and 'your decision' to focus the guidance.

2. ARE THERE ANY TERMS USED WHICH I MAY NOT KNOW?

ABBREVIATIONS

The following table describes abbreviations contained in this Handbook.

THE ABBREVIATION...	MEANS...
ADF	Australian Defence Force
APS	Australian Public Service
APSWR	Australian Public Service Workplace Relations
CDF	Chief of the Defence Force
CO/OC	Commanding Officer or Officer Commanding
CR	Complaint Resolution
DEA	<i>Defence Enterprise Agreement 2017-2020</i>
Defence	Australian Defence Force and the Department of Defence
Defence Act	<i>Defence Act 1903</i>
FW Act	<i>Fair Work Act 2009</i>
LSL Act	<i>Long Service Leave (Commonwealth Employees) Act 1976</i>
Maternity Leave Act	<i>Maternity Leave (Commonwealth Employees) Act 1973</i>
PACMAN	<i>ADF Pay and Conditions Manual</i>
PS Act	<i>Public Service Act 1999</i>
Subordinate legislation	<i>Public Service Regulations 1999, Australian Public Service Commissioner's Directions 2016, and Public Service Classification Rules 2000</i>

TERMS

The following table defines terms used in this Handbook.

TERM	DEFINITION
Approving authority	The person who certifies that factual information is correct and approves the payment of an entitlement. This approval can only be given when there is no discretionary decision to be made. Not to be confused with the authorised person.
Authorisation	When consent (oral or written) is given that permits a person to act, for and on behalf of the owner of a power, for a particular purpose, as an agent. You are always acting on behalf of the owner of the power. An authorisation continues in force until it is revoked at a later date or the authoriser ceases to hold the position able to authorise the power.
Authorised person	A person or group of persons who have been given the power to make a decision. The authorised person will be required to make a judgement on conditions of service (ADF) or conditions of employment (APS) in particular cases, including whether to approve specific applications. The judgement will normally be based on specified criteria or guidelines. The decision will be seen as the personal decision of the person who has given the permission for you to act on their behalf.

TERM	DEFINITION
Decision-maker	The person who makes a decision about particular service or employment conditions, including whether to approve specific applications. The decision- maker can be an authorised person or a delegate.
Delegate	A person who has been permitted, through delegation by the owner of the power, to use their power to make a decision. The delegation allows the delegate to make a decision using the power in their own right. A decision made using the delegation is your own decision, even though it is made using someone else's original power.
Delegation	A mechanism in legislation that permits the owner of a power to delegate (in writing) the use of that power by others. The delegation continues in force until it is revoked at a later date.
Discretionary decision	A discretionary decision is one where the decision-maker has to make a judgement or choice about whether or not to approve an application.
An entitlement	An entitlement is a legal right to a benefit. Decisions are made to approve specific applications. This can be through verifying facts or making a discretionary decision that the applicant qualifies under a rule. Entitlements are provided under the conditions of service for ADF members or conditions of employment for APS personnel.
Power	A power is the authority to make a decision. The power can be given to another person or persons through delegation or authorisation.
Principle	A principle is general guidance that requires you to use some judgement or discretion when applying it. It gives context to a rule and shows the intent behind the rule.
Rule	Rules are contained in legal instruments which provide the basis for pay and conditions of service and employment for the ADF and APS as follows. <ul style="list-style-type: none"> a. ADF rules are contained in 'determinations' and are published in the PACMAN. b. The APS rules are contained in the PS Act and its subordinate legislation, the LSL Act, the Maternity Leave Act, the FW Act and the DEA. The DEA includes principles that provide the context and the objective of the rules.

3. HOW DO THE ADF AND APS FRAMEWORKS DIFFER?

DIFFERENT FRAMEWORKS BUT UNDERPINNED BY THE SAME DEFENCE VALUES

This section provides information on the legislation that provides the legal frameworks for decision-making for ADF members and APS employees, and the different ways that the powers are given to members and employees for day-to-day decision making.

It is important to remember that decisions are made not only within a legal context, but within a values framework. The Defence Senior Leadership Group has committed to these Defence-wide Values.

- Professionalism
- Loyalty
- Integrity
- Courage
- Innovation
- Teamwork

These are known as the PLICIT Values and they apply to ADF members and APS employees.

In addition, each single Service has its own Values. APS employees are obliged to follow APS Values, Employment Principles and the APS Code of Conduct which set ethical standards for employees (see Appendix 3).

The PLICIT Values do not replace or override the Single Service or APS Values. They are complementary and apply to everyone in Defence.

ADF FRAMEWORK

The CDF has the power to command the ADF under section 9 of the Defence Act.

As there are many decisions made every day, the CDF uses delegation to devolve a range of powers, including powers to review decisions. However, most pay and conditions powers are devolved by the use of a system of authorisations. The people occupying the positions that have been given the powers are called authorised persons. Authorised persons may be either APS employees or ADF members, who use the CDF powers that have been devolved to make decisions necessary for the day-to-day administration of conditions of service for ADF members.

Pay and conditions rules are called 'determinations' and are made under section 58B and 58H of the Defence Act.

Section 9A of the Defence Act also gives the CDF the power to make Defence Instructions (General) (DI(G)).

Note that as well as applying to ADF personnel, DI(G)s also apply to APS employees where they are applicable or relevant to their duties or responsibilities.

APS FRAMEWORK

The Secretary holds powers as an 'Agency Head' under the PS Act and its subordinate legislation, about engagement, movement, retirement/termination of APS employees; the promulgation of the APS Code of Conduct and Values to guide the behaviour of employment-related decisions; and the right of review of actions on employment-related decisions.

The Secretary also holds powers under the FW Act for developing, communicating, certifying and administering Defence agency agreements; unfair dismissal and dispute resolution options; and the negotiation and administration of common law employment contracts.

The Secretary holds powers under the DEA on remuneration and employment conditions.

Pay and conditions rules for APS employees are generally under all of the above legislation and either in the DEA or common law employment contracts.

As there are many decisions made every day, the Secretary has devolved many of these powers. Most APS employment decisions are devolved by the use of a system of delegations. The people occupying the positions that have been given the powers are called delegates. Delegates may be either APS employees or ADF members, who use the powers to make decisions necessary for the day-to-day administration of employment conditions for APS employees.

Some of the Secretary's powers that are devolved are by authorisation, such as the powers relating to common law employment contracts and to APS employees who are working overseas.

MORE INFORMATION

A list of ADF and APS framework documents is in Appendix 3.

4. MAKING PAY AND CONDITIONS DECISIONS FOR ADF MEMBERS

WHEN DOES A RULE HOLD A DECISION-MAKING POWER?

Rules are contained in legal instruments which provide the basis for pay and conditions of service. ADF rules are contained in determinations and are published in the PACMAN.

A rule that requires a decision includes words that give the power to make the decision. This is often called an 'authorising provision'.

Powers belong to a person, or a group of persons, who occupy the position or group of positions that are named in the provision.

Example:

A rule says 'The CDF may approve a written application for reunion travel at Commonwealth expense from a member who meets all these conditions' (PACMAN clause 9.3.29).

Here the power to make the decision is given to the CDF, and the CDF is the correct person to make this decision (although in many cases he gives his powers to others – see **How powers are given to decision-makers**).

HOW POWERS ARE GIVEN TO DECISION-MAKERS

The CDF is given his decision-making powers on ADF conditions of service by determinations made under the Defence Act. Because of the large number of decisions that are required daily, the CDF gives many of the powers to other people. These people are called authorised persons.

Authorisation: when consent (oral or written) is given that permits a person to act, for and on behalf of the owner of the powers, for a particular purpose, as an agent.

- The authorisation means that the decision will be seen as the personal decision of the person who has given the permission for the authorised persons to act on their behalf.
- This is important because it means the authorised persons are seen by others to make decisions that belong to the person who made the authorisation.

Example – authorisation: 'The CDF may approve a written application for reunion travel at Commonwealth expense from a member who meets all these conditions' (PACMAN Clause 9.3.29).

The CDF has authorised specified persons to approve reunion travel under PACMAN Clause 9.3.29. The authority to exercise this power for and on behalf of the CDF is in the CDF Instrument of Authorisation and in the relevant clause in the PACMAN. In this example, the authorised persons are 'supervisors not below WO2/APS 4, in the member's direct chain of command or supervision'.

TYPES OF DECISIONS – FACTUAL

A decision is an action.

Normally, rules are written so that they apply to a person when that person meets some factual circumstances. These are sometimes called 'objective criteria'.

Example: A flight engineer in the Air Force signed on for a completion bonus of \$105,000 in return for five years' effective service.

To decide whether the member is eligible for the bonus, the only action that is needed is to check the facts against the relevant criteria.

TYPES OF DECISION – DISCRETIONARY

Sometimes a rule is too rigid or difficult to apply, because there are so many facts that could lead to a person becoming eligible for an entitlement. When this happens, a rule will be written to include a choice. This is called a 'discretion'.

A decision-maker must use their judgement and make this choice before the rule can apply to a person and give them a benefit. The PACMAN provides guidance on the criteria that the decision-maker must consider when making a decision.

Example: The member is entitled to be repaid for costs they incur on appointment, enlistment or promotion, for the private purchase of uniform and personal necessities, *if the CDF is satisfied that the purchase is reasonable* (PACMAN clause 10.2.3).

CRITERIA FOR A DISCRETIONARY DECISION

The rule usually includes 'objective criteria' or general facts. The decision-maker **must** look at these criteria to guide the making of a discretionary decision. However, the decision or choice of whether the applicant meets the criteria is left up to your judgement as the decision-maker.

Example: In the example above, approval can only be given *if the CDF is satisfied that the purchase is reasonable*. To assist in the decision about what is reasonable, the determination provides a number of criteria.

'The CDF must consider these criteria.

- i. The availability from Service sources of items of the kind purchased.
- ii. The member's posting location.
- iii. The nature of the member's duties.
- iv. If the member has a special need for the item because of a medical condition.
- v. Any other factor relevant to the purchase of the item.'

This means that the authorised persons who are listed in the PACMAN as able to make this decision make a judgement about what is reasonable based on these criteria.

5. MAKING PAY AND CONDITIONS DECISIONS FOR APS EMPLOYEES

DECISION-MAKING POWERS AND TYPES

APS DECISION-MAKING POWERS

Legal instruments provide the basis for decisions about APS pay and conditions of employment.

A rule that requires a decision includes words that give the power to someone to make that decision. Powers belong to a person or who occupy a position or who are in a category that is named in the provision.

Example: A rule says 'The Secretary may approve payment of a meal allowance to an employee.' (DEA Part E – Working arrangements).

Here the power is given to the Secretary and the Secretary is the correct person to make this decision (although he gives his powers to others for the day-to-day decisions – see **How powers are given to decision-makers**).

HOW POWERS ARE GIVEN TO DECISION-MAKERS

The Secretary is given the decision-making powers by the PS Act and its subordinate legislation, the FW Act and the DEA. Because of the large number of decisions regarding APS employees that are made daily, the Secretary gives many of his powers to other people. He does this through legal instruments of **delegation** or **authorisation**.

Decision-making powers can also be **directly conferred** on groups of people through the DEA.

DELEGATION

Delegation is a mechanism in legislation that permits the holder of the powers to delegate (in writing) the use of their powers by others. The delegation continues in force until it is revoked in writing at a later date.

The delegation allows the decision-maker to make a decision using their power in their own right. A decision made using the delegation is the decision-maker's own decision, even though it is made using someone else's original power.

Decision-making powers that can be delegated come from these two sources.

- Legislation, including The PS Act and its subordinate legislation, the LSL Act, Maternity Leave Act, Defence Act etc.
- The DEA.

THE PUBLIC SERVICE ACT AND ITS SUBORDINATE LEGISLATION

The PS Act and its subordinate legislation provide for decisions about the engagement, movement and retirement/termination of APS employees; the APS Code of Conduct and values to guide the behaviour of employment-related decisions and the right of review of actions on employment-related decisions.

Example: 'An Agency Head may from time to time determine the duties of an APS employee in the Agency, and the place or places at which the duties are to be performed' (PS Act s25).

The positions to which these powers are delegated for day-to-day decision-making are specified in Schedules of PS Act Delegations. This information is available on the PeopleConnect website.

THE DEA

The DEA provides for decision-making on APS employees' pay and conditions. In the DEA, the Secretary's decision-making powers are identified by the following phrases:

- The Secretary may... or
- The Secretary will...

Example: 'The Secretary may review and adjust the rate of overtime meal allowance.' (DEA, Part E – Working arrangements)

The positions to which these powers are delegated for day-to-day decision-making are specified in the Schedule of DEA delegations. This information can be found on the PeopleConnect website.

DIRECTLY-CONFERRED POWERS

There are other decision-making powers identified in the DEA that directly confer powers on a groups of people who are directly responsible for undertaking these functions in their day-to-day business, such as supervisors, group heads. Directly-conferred powers are identified by the following phrases:

- A supervisor may... or
- A supervisor will...

Example: 'An employee's supervisor may approve flex credits in excess of 37 hours 30 minutes being carried over, provided that arrangements are made to reduce the credit below this amount within the ensuing four weeks' (DEA, Part E - Working arrangements)

These powers are located in specific paragraphs in the DEA, and further guidance on their application can be found on the APS People Policy site. It can be found on the PeopleConnect website.

AUTHORISATION

An authorisation is when consent (oral or written) is given that permits a person to act, for and on behalf of the owner of the powers, for a particular person, as an agent.

The authorisation means that the decision will be seen as the personal decision of the person who has given the permission for decision-maker to act on their behalf. This is important because it means that the authorised decision-maker is seen by others to make decisions that belong to the person who made the authorisation.

The Secretary mainly uses authorisations in relation to the development and administration of common law employment agreements and for conditions for APS employees who are working overseas.

Information on conditions for APS employees who are working overseas can be found on the PeopleConnect website.

DECISION-MAKING POWERS FOR APS EMPLOYEES OVERSEAS

For APS employees performing duty overseas, the conditions of service are similar to those for ADF members. The Secretary signed an instrument of authorisation to incorporate these in the Overseas Conditions of Service Volume of the PACMAN, and authorises specified persons to act on his behalf. They are also referred to in Part H of the DEA.

PRINCIPLES-BASED DECISION-MAKING

MOVING TO PRINCIPLES-BASED DECISION-MAKING

Defence is seeking to achieve a balance between the different types of rules, to remove the 'red tape' but still provide clear instructions for decision-makers.

Strict rules were once used to try to cover every possible scenario that might arise. It is now clear that this approach increases the complexity and volume of rules and can actually lead to people missing out on benefits because of its black-and-white approach.

Principles-based decision-making allows decision-makers more flexibility to reach the decision that best suits individual situations and operational requirements.

For Defence APS employees, their conditions of employment are established by the DEA which is based on a set of core principles. In this context decision-making requires some assessment or judgement on the facts and merits of the application to be made by the decision-maker.

Unlike the strict rules-based approach, principles-based decision-making does not try to provide a rule for every situation. This approach incorporates broad principles that apply to many individual circumstances without the need for more specific rules.

Principles achieve these aims.

- They give guidance about the application of conditions of employment contained in the DEA.
- They give context to a rule.
- They show the intent behind the rule.
- They allow managers some scope to exercise discretion.

Using a principles-based approach, additional direction or guidance is provided which tells the decision-maker about the principle or the purpose for the employment condition.

TYPES OF DECISIONS – FACTUAL

Example:

A rule might say: 'Overtime meal allowance is to be paid where an employee is required to take a meal break during a period of overtime because they have or will have worked for five hours continuously.' (DEA, Part E - Working arrangements).

To make the decision in the example, you need to find out two things. They are whether the employee was approved to work overtime duty, and whether the employee was required to take a meal break because they worked five continuous hours. No judgement needs to be made. The person who certifies these facts is normally an immediate supervisor or line manager.

If it is established that the employee worked sufficient approved overtime, the employee is entitled to a meal allowance. No judgement needs to be made.

TYPES OF DECISIONS – DISCRETIONARY

In some more complex situations the decision-maker will be required to apply the principle and use their judgement to arrive at a decision which is appropriate to the circumstances. This involves making a choice and is often called a 'discretion'.

In making their decision, the decision-maker will consider 'objective criteria' or general facts.

The decision-maker needs to consider these criteria or facts as a guide in making the choice and exercising their judgement.

Example: A person who holds a leave credit has applied to take leave. The decision-maker would look at all the relevant facts, such as workplace requirements, other employees who have applied for leave during the period in question, leave balances, etc, before making a decision to approve or reject the leave application.

The entitlement is to the accrued leave. The decision being made is about the use of that accrued leave, both the amount of leave to be taken and the timing of taking the leave.

You may have heard this type of decision called an 'exercise of discretion' by the decision-maker.

APPLYING PRINCIPLES-BASED DECISION-MAKING

Principles-based decision-making is not very different from the rules-based approach when actually applied.

The following table contains questions and a case study that outlines use of the principles-based approach:

NUMBER	QUESTION	EXAMPLE
1.	What is the issue?	A team was about to commence all weather/all conditions testing of a new piece of equipment when they were advised that the usual testing which normally takes 3 months had to be completed within 6 weeks.
2.	What outcome is the organisation seeking?	Defence needed the task to be completed quickly and within budget.
3.	What outcome do the employees want?	The employees were committed to doing a good job and meeting the new time frame. They also wanted some balance between work and outside life. They suggested working 9.5 hour shifts, with 2 shifts per day and no-one working more than 5 days per week.
4.	What is the applicable DEA principle?	DEA, Part E - Working arrangements; Part G - Remuneration.
5.	Are there any limitations or constraints to making the decision?	Budget for penalty rates/overtime was limited. Outcome must meet WHS requirements.

NUMBER	QUESTION	EXAMPLE
6.	What are the options and which is the best?	<ul style="list-style-type: none"> • Option 1 (Rules-based) <ul style="list-style-type: none"> – Work within the bandwidth and pay overtime (would exceed the budget). – Shift work (penalties would exceed the budget). – Work standard hours and employ additional staff (would exceed budget and probably exceed timeframe). • Option 2 (Principles-based) <p>A principles-based approach allowed for a negotiated outcome and the flexible use of a range of DEA provisions.</p> <p>The outcome was a two 'shifts' per day arrangement with employees nominating their preference for working either mornings or evenings and the arrangements that were attached to each session.</p> <p>The morning session was from 6.30 am to 4 pm with lunch 12–12.30. Overtime of 1.5 hours worked each day was taken as time-off-in-lieu, accrued at penalty rates and to be taken after the project was completed. Employees who chose to work mornings were not regarded as shift workers.</p> <p>The evening session was from 4 pm to 1.30 am with dinner from 8.30 – 9 pm. Shift work and overtime penalties were paid.</p> <p>This allowed the project to be completed within the time frame. The employees were able to meet their work and outside commitments in ways that suited them, and they felt fairly treated regarding compensation for the time worked.</p>
7.	Is the decision consistent with the APS Values and Code of Conduct?	Both Option 1 and Option 2 uphold the APS Values and Code of Conduct.
8.	Will the decision stand if it is challenged or reviewed?	Where consultation is undertaken to ensure that the chosen option meets employee's needs and the option is in accordance with the DEA, the decision will withstand scrutiny.

6. HOW CAN I MAKE SURE I CAN SUPPORT MY DECISIONS?

MAKING THE RIGHT DECISION

Although the ADF and APS frameworks are different, they are both based on administrative law.

To ensure you have met the administrative law requirements for good decision-making, use the following ten steps to guide you.

- These steps are based on the reasons for review of administrative decisions set out in the *Administrative Decisions (Judicial Review) Act 1977*.
- The steps form a useful checklist to ensure your decisions are based on a defensible process. In reviewing pay and conditions decisions it is often the process you have followed to make the decision that will be most carefully examined.

By applying these steps your decision will be stronger and more likely to be upheld in any review.

STEP 1. KNOW YOUR POWER

The decision must be authorised by the enactment under which it is made. In other words it must be a valid power under legislation such as the Defence Act or the PS Act, or under the DEA. It is essential that you as the delegate/decision-maker understands the nature of the power you are exercising.

You may be given a power directly by legislation or the DEA, or the power may be given to you by means of an instrument of delegation or authorisation. This gives you the legal authority to make a decision.

When you make a decision:

- First read the relevant provision that contains the power.
- Check that you hold a power that permits you to make that decision. Your position, or class of positions, must be listed in an instrument of delegation or authorisation. You must formally occupy that position on either a permanent or temporary basis.
- Check whether the person who gave you the power has put limits or conditions on the way you can use it.

You have the power to refuse as well as give a benefit. You must have reasonable grounds to support your decision.

Note: If the person who holds a delegation or authorisation is not available, another person can make the decision, **but only if they have been given the same power.**

It is important to remember that unless the rule that gives you a power clearly permits you to give it to another person, you cannot give the power to another person.

STEP 2. COMPLY WITH THE RULE OR PRINCIPLE

Your decision must be made in a way that complies with the legislative framework of rules and any principles relating to the matter being considered. It must be a valid power under legislation (eg the Defence Act, the PS Act, the FW Act) or the DEA. It must also comply with any direction that is attached to the power to be used.

You must consider the purpose and context of the rule. You should not read the words so narrowly that you defeat the purpose of the rule. You must not ignore another rule that is there to cover that situation.

STEP 3. CONSIDER ALL THE FACTORS AND CRITERIA

If the rules, principles or directions list factors or criteria that must be taken into account in reaching a decision, you must observe these criteria.

When you are making your decision, you may be required to consider government policy. When doing this you must not apply that policy inflexibly and you must take into account rules or directions that list things (often called 'factors' or 'criteria') that are relevant.

Administrative guidance and policies that are not listed as criteria under legislation may also be relevant to the decision. You must make your decision having regard to all the merits of the case.

If there is an inconsistency between a legal rule and a source of administrative or policy information, the rule must be followed. You should tell the relevant policy areas in People Policy and Employment Conditions Branch in Defence People Group if this happens so that the confusing information can be fixed.

STEP 4. MAKE YOUR DECISION ON THE MERITS OF EACH CASE IN VIEW OF THE FACTS

As a decision-maker, you must examine all the *relevant* facts of each individual case on its merits. Do not allow *irrelevant* facts to influence your decision.

- Be careful to ensure the relevance of each part of a case put forward.
- You must be certain of the facts. Any key points should be independently confirmed, if necessary. In some cases you may be required to make inquiries to confirm the facts.
- You should not be pressured to make your decision by a large quantity of supporting material that may or may not be relevant. Whether the supporting material is relevant is a matter for you to consider and decide.
- You must not be swayed by emotive argument that is not supported by relevant facts.
- You must not approve a case solely to avoid complaint.

STEP 5. BE IMPARTIAL

When you make a decision, you must remain objective and impartial. This means you must make no preconceived judgements on the merits of a particular application, you must not act in bad faith and you must not be influenced by personal attitudes towards the policy or about a person's status or expertise.

- You **cannot** be forced to decide a particular way, by another person (such as your supervisor or CO). Make your own decision free from influence.
- If there is any risk of real bias, or the appearance of bias, either for or against an applicant, then you (as the decision-maker) must refer the case to another decision-maker with the appropriate powers to make the decision.

You must avoid conflicts of interest. Where the decision may confer a personal benefit to you (as decision-maker), or to your family or friends or associates, or where it may look as if there may be bias or a conflict of interest, you must refer the case to another decision-maker with the appropriate powers to make the decision.

STEP 6. APPLY PROCEDURAL FAIRNESS

You must be fair and reasonable and must observe natural justice. Natural justice is sometimes also referred to as 'procedural fairness'. It is a very important principle with rules that must always be followed.

- An applicant must have full access to the rule and any criteria on which the decision is to be made, so that they can make their case and respond to any problems.
- An employee or member who is the subject of a decision-making process has the right to be heard before their application is refused. You must not shut your ears to the applicant during the process of deciding the matter.
- In disputed matters, you must listen carefully to both sides and give the employee or member an opportunity to reply to any adverse findings.
- You must not be biased, either for or against the applicant.
- You must test the evidence provided; there must be sufficient valid evidence to support your decision.

STEP 7. PROTECT THE APPLICANT'S PRIVACY

Wherever possible take care to protect an applicant's privacy.

The [Australian Privacy Principles](#) in the *Privacy Act 1988* set out standards that you must, by law, follow, regarding these matters.

- Collecting, storing, using and disclosing information about people.
- Allowing people access to information that Defence keeps about them.
- Allowing people to request changes to this information.

STEP 8. BE CONSISTENT IN YOUR DECISIONS

Being consistent does not mean that you are bound to follow a decision that has been made before, sometimes called a 'precedent'. It does mean you should:

- Follow policy guidance.
- Consider the merits of each case in a similar way so that the process is fair and reasonable for everyone.
- Make the fair and correct decision in the particular circumstances of each individual case.

It does not mean making the same decision for everyone whatever their circumstances, or making a decision that is so unreasonable that no reasonable person would have made the same decision.

STEP 9. DON'T DELAY DECISIONS

Make decisions promptly, as delays may form grounds for review of the decision or the decision-making process.

(However, it is also important that you seek advice *before* you make a decision, rather than make an incorrect or inappropriate decision in haste with unwarranted consequences. It is good practice to advise an applicant of any unexpected delay in the process.)

STEP 10. KEEP RECORDS AND USE THE CHECKLIST

There are good reasons to keep records of your decision.

New information might come to light that may make you consider revisiting a decision (see Section 9). The applicant might later seek a review of your decision (see Section 10). Without records you will probably only remember some of the issues that led you to make your decision.

You might have to make many decisions in the course of your job, and record keeping might seem like an additional burden. It is sensible to take a risk management approach, and to make sure that some decisions have better records than others.

This table shows what factors should trigger you into keeping more thorough records.

FEWER RECORDS	MORE RECORDS
The benefit is small.	The benefit is large.
The decision just requires the verification of facts.	The decision is a discretionary decision.
The matter is a common one.	The matter is unusual.
The case is straightforward, requiring simple judgement.	The case is complex, requiring significant discretion or judgement.
The applicant clearly does not meet the facts.	-
There are no review mechanisms for your	The applicant may seek a review of your decision.
You have assessed the risk of a review occurring, and you believe it is low.	You have assessed the risk of a review occurring, and you believe it is possible.
-	The decision involves matters on which the applicant should have the opportunity for a hearing.
-	There is a third party with an interest in the matter.
Your decision is in the applicant's favour.	Your decision is to refuse the application.

Example 1: A new member has applied for recognition of prior service for long service leave. Four years ago the member was discharged from the ADF on medical grounds, after five years of service. You have the power to approve recognition of this member's prior service but only if you are satisfied the member returned to the ADF within a year of recovery.

You think the member has not made their case that they recovered less than a year ago. You have evidence to suggest that the member was fit at least two years ago. After discussions with the member, and after looking at the medical evidence the member has provided, you have decided that you will not approve the application. You know the member will not be happy.

You decide to keep very thorough records of your decision-making process.

Example 2: An employee applies for a week of annual leave. The week that is chosen is going to be hectic, but the employee is just as happy to take the week before and to be there for the busy week. You approve the amended application.

You keep minimal records of your decision-making process.

Use the one page Checklist in Appendix 1 to ensure you have followed these steps each time you make a decision.

7. WHEN CAN I FINALISE A DECISION?

BEFORE YOU FINALISE A DECISION

Before you finalise a decision you should make sure you have all the relevant information you need.

- Ask the applicant to give you any additional information if you think it may help you to make a better informed decision.
- Remember, under the rules of procedural fairness the applicant has the right to be heard before you decide to refuse their application. In some cases this will prompt them to provide you with more information.
- If you decide to refuse the application, best practice recommends that you provide a statement of reasons, even if one is not requested.

ASK FOR ADVICE AND GUIDANCE

Seek advice **before** you finalise your decision if you are uncertain about the facts, or the rule or the principles that you should be applying.

- If you do not get advice before you make up your mind, you might miss something important for your decision.
- Failing to consider a relevant fact could cause an applicant to seek a review. Your decision could be criticised if it was uncertain or incomplete in some way.

WHEN IS A DECISION FINAL?

A decision is final once it has been given to the applicant or issued in a way that makes clear that a decision has been made. Once the decision has been made, the applicant is able to rely on it, for example, in the case of an application for leave, your decision to approve the leave allows the applicant to pay for a holiday in advance.

Generally, the decision would not be able to be replaced by another decision-maker outside the review process, (see Section 9 for exceptions).

Example: A Major receives a letter telling him that his application for an allowance has been refused. This shows that a decision has been made.

Non-example 1: An APS employee speaks to their supervisor about taking leave during a busy time of the year before submitting a leave application. The supervisor says 'Subject to all outstanding work being completed that should not be a problem'. This is not a decision. The supervisor and employee would need to discuss the application before making a final decision to ensure that the specific workplace requirements were not in jeopardy.

Non-example 2: The CO is asked by an administrator whether he has approved an application to recognise a de facto relationship. The CO says 'I've made my decision to reject it. Can you check whether there is any extra material to change my mind before I send out the final decision?'

The CO has indicated his mind is made up before asking for extra information. This example shows a failure to give a hearing or apply procedural fairness before the decision to refuse is made.

The correct action would be for the CO to say 'I am considering it. Before I make my final decision can you check with the applicant whether there is any further information that I should consider'.

8. WHEN DO I HAVE TO PROVIDE A STATEMENT OF REASONS?

INTRODUCTION

As a matter of best practice you should provide a written notification of your decision to an applicant. Sometimes this is as simple as an email acknowledgment or a paper copy of an approved leave application. However, you must provide a full statement of reasons if requested to do so by the applicant once you have notified them of your decision. This is usually requested when a decision is made to deny a request or application.

WHEN SHOULD I NOTIFY THE APPLICANT IN WRITING?

Notifying an applicant of the outcome and reasons for your decision in writing will often save you time and paperwork in the long run. If your reasons for refusing their application are explained, applicants are less likely to take action in these ways.

- Ask for a formal statement of reasons.
- Ask for a review of your decision.
- Start a Redress of Grievance or Review of Action.

Advise the member or employee in writing of the outcome and the reasons for your decisions in these situations.

- When you deny any application.
- If you approve an application that required a complex decision.
- Anytime you have made a written record of reasons for your decision.

The written advice can be very short, such as a sentence on an application form. Your reasons should relate to the relevant facts at issue.

WHAT IS A STATEMENT OF REASONS?

A statement of reasons is a written step-by-step explanation of the decision-making process.

You should provide a statement of reasons if requested by the applicant where both of the conditions below are met.

- An applicant is adversely affected by the decision.
- No or insufficient reasons for the decision have been given to the applicant.

There is no standard format. In most cases a minute will be appropriate. The detail and length of the statement can vary from half a page to many pages. This will depend on the seriousness and complexity of the issues, and the amount of information involved. The language should be clear and unambiguous.

The statement must include this information.

- Your name, title and appointment.
- Your authority to make the decision.
- The legal rule or principle relied on and any policy guidance taken into account.
- What you took into account when you made the decision, and the significance, or weighting, placed on the various factors.

A sample pro forma of a statement of reasons can be found at Appendix 2. You must put a copy of the statement of reasons on file.

Note: The *Good decision-making in Defence* guide gives further information on providing a statement of reasons

9. WHAT HAPPENS IF OTHER INFORMATION COMES TO LIGHT AFTER I MAKE MY DECISION?

OCCASIONALLY THERE MAY BE A NEED FOR THE DECISION-MAKER TO REVIEW THE ORIGINAL DECISION

If you apply the principles in this Handbook, and in particular the 10 step decision-making process in **Section 6**, most of your decisions should be sound. However, occasionally there may be situations where additional information comes to light after you have made a final decision that leads you to believe that you would have made a different decision had you been given that information at the time.

SHOULD I REMAKE MY DECISION?

There may be times when you think that a decision you have made should be remade. This could be because of any of these matters.

- The required process has not been followed.
- Procedural fairness rules have not been followed.
- You did not have the authority to make the decision.
- The power to make the decision was improperly exercised.

Examples:

- You were not given all the facts that would influence your decision.
 - You discover later that some of the facts you were given were incorrect.
 - An irrelevant consideration was taken into account when you made the decision.
 - A relevant consideration was not taken into account when you made the decision.
 - The decision was made in bad faith.
 - The decision has been made on the direction of another.
 - The decision has been made strictly in accordance with a rule or policy without having regard to the merits of the case.
 - A decision has been made that is so unreasonable that no reasonable person could have made it.
- You realise that the decision involved an error of law or was even illegal.
 - You realise that there is no evidence, or insufficient evidence to justify the decision.

Sometimes you will be sure that even if you had known the true facts, you would have made the same decision. In this case you do not need to make another decision.

Following the steps set down in Section 6 will help you avoid most of the common mistakes made when making a decision.

Note: Some decisions in the APS are non-reviewable and cannot be remade once the decision has taken effect. They can be found on the [complaints homepage](#).

If you proceed to reconsider the issue, you should keep these matters in mind:

- This will be a new decision even though you have considered the facts before, and you must consider the facts with fresh eyes.
- If you are concerned that you are unable to approach the decision in an unbiased way you should ask another decision-maker with the same powers to look at the case.

EXAMPLES OF DECISIONS THAT HAVE BEEN REMADE

Example 1: A manager makes a decision to defer the payment of performance progression to an APS 4 employee, as he believes that the employee has not been working at the APS 4 level for at least 6 months.

The employee is able to provide evidence such as previous performance agreements and pay slips, to show that before being promoted that they were receiving additional responsibility pay at the APS 4 level. The period of ARP brings the total period of performance at the APS 4 level during the performance progression year, up to at least 6 months. (The employee's ARP experience was not used to justify an above base salary on promotion.)

The manager makes a new decision to approve the payment of performance progression to the employee.

Example 2: A Commander does not get a telephone message from a Lieutenant, to say that he is unable to attend an interview to present evidence about his application seeking extra travel costs. Because he does not show up, the Commander decides there is no reason to give him the extra money he has asked for. In fact, the Lieutenant has a lot of receipts to show extra expenses that he was required to incur on his business trip. There is an error in the decision because procedural fairness was not provided to the Lieutenant.

When the Commander finds out that the Lieutenant was too sick to come to the interview and had notified his inability to attend, the Commander makes a new time to see the Lieutenant. After the Lieutenant presents his receipts, the Commander decides to grant his request for payment of the extra costs.

Non-example 1: An Army Captain does not like a decision made by one of his staff, a Warrant Officer, so he makes another decision about the same case to replace the original decision.

The applicant makes a successful application for review of this situation. The Warrant Officer's decision was notified as a final decision and is found to be made properly. The applicant is entitled to rely on it.

Non-example 2: An EL1 does not like the decision made by her EL2 to refuse her application for part-time work. She mentions this to her Branch Head at lunch in the canteen. The Branch Head asks the EL2 to change the original decision in favour of the EL1.

The EL2 followed the 10 steps for good decision-making. The decision was made properly and the EL1 was asked for any additional information before the EL2 made a final decision. The EL2 recorded her reasons for the refusal on the application form and provided this to the EL1.

The Branch Head cannot interfere in the decision-making process. Once the decision is made that process ends. The decision is then final.

DO I NEED TO CONTACT THE PERSON AFFECTED BY THE DECISION?

You will need to advise the person about whom the original decision was made that the decision is being reconsidered. You may need to give the person another opportunity to put their case again in light of the new information.

10. RIGHT TO HAVE A DECISION REVIEWED

REVIEW OF DECISION

In pay and conditions matters, an applicant has the right to request a review of a decision that affects them through the Redress of Grievance (ADF) or Review of Action (APS) processes.

If a person approaches you about your decision and says they would like a review, you should advise them of the options available to them or refer them to someone who can do this.

The fact that someone wants a review does not reflect badly on your decision. The review is just a tool to ensure that the best possible decision is made. If you have followed the 10 steps for good decision-making and there is no error in your decision, it is unlikely that a review decision will differ at all from your original decision.

WHAT IS REVIEWED?

Generally there are two major aspects to a review.

- Was this the correct and appropriate decision given the merits of the case?
- Was this decision made in accordance with the principles of procedural fairness and principles of administrative law?

The steps in Section 6 of this Handbook are derived from these principles. If you follow these steps and the policy guidance on the matter of the decision, you should make decisions that will withstand the scrutiny of review.

HOW TO FIND OUT ABOUT REVIEW PROCESSES

The formal review mechanisms for ADF and APS personnel are quite different.

For the **ADF**, adverse decisions are subject to merits review under the ADF redress of grievance system which can be found on the Military Redress homepage on the DRN, including an appeal to the Defence Force Ombudsman.

Information on review processes available to **APS** employees is on the Complaints and Resolution homepage on PeopleConnect.

General inquiries about the APS complaint handling process can be e-mailed to complaint.resolution@defence.gov.

WHAT IF AN APPLICANT ASKS A MORE SENIOR OFFICER TO CHANGE MY DECISION?

Sometimes an applicant may seek the review of a decision by a more senior officer outside of the formal grievance process.

In such situations, the senior officer cannot remake or alter the original decision, or direct the original decision-maker to do so.

If they are aware of any additional relevant information or any errors in the original decision-making process, they may draw these to the attention of the original decision-maker. They may request that these now be taken into account (see Section 9 *Can I change my decision?*), or advise the applicant of the Redress of Grievance and Review of Actions processes.

11. SEEKING ADVICE

Advice on delegations can be obtained from:

- Defence People Group Human Resource Business Partners.
- Defence Service Centre – 1800 333 362 or YourCustomer.Service@defence.gov.au.
- HR Services Team (HRS Team).
- People Policy and Employment Conditions Branch - Email: adf.peoplepolicy@defence.gov.au or aps.peoplepolicy@defence.gov.au.

APPENDIX 1 CHECKLIST FOR DECISION-MAKERS

WHEN A DECISION IS MADE BY EXERCISING A DISCRETIONARY POWER (DEVOLVED BY THE SECRETARY OR THE CDF OR GIVEN DIRECTLY TO YOU), YOU MUST:

- ❑ Ensure you have the power to make the decision. Check the delegation or authorisation.
- ❑ Comply with the rule or principle and directions that are associated with it.
- ❑ Consider all the facts and criteria. Include relevant facts and exclude irrelevant ones.
- ❑ Check the facts if you are uncertain. Conduct an inquiry if necessary.
- ❑ Observe procedural fairness (natural justice)
 - give the applicant full access to the rule to help them make their case
 - give the applicant an opportunity to provide additional information or have a hearing if you are considering rejecting their application
 - make sure there is sufficient evidence to support the decision
 - do not be biased or appear to be biased.
- ❑ Be objective and impartial.
- ❑ For the APS, apply the principles in the APS Values and Code of Conduct.
- ❑ Protect the applicant's privacy.
- ❑ Be consistent in the way you make your decisions not in their outcomes
 - make your decision on the merits of each individual case
 - ignore previous cases
 - be fair and reasonable.
- ❑ Make decisions promptly.
- ❑ Provide written reasons for adverse decisions.

AND YOU MUST NOT:

- ❑ Allow irrelevant facts to influence the decision.
- ❑ Be biased either toward or against an applicant.
- ❑ Be ordered to reach a particular outcome.
- ❑ Be influenced by an applicant's powerful position.
- ❑ Interpret the rule in a way that is narrower or contrary to the way it is intended to apply.
- ❑ Have an interest, or what looks like an interest, in the outcome of the decision.
- ❑ Appoint another person to make your decision, unless that person also has the power to make the decision.

APPENDIX 2 SAMPLE PRO FORMA FOR STATEMENT OF REASONS

1. I _____
am authorised by the Chief of the Defence Force/ the Secretary [delete as
appropriate] to make decisions about

Under _____

2. The power to make the decision is as follows: _____

3. Your application for _____

was received on _____/_____/_____

4. I have considered the facts relevant to your request,

5. Having considered the relevant facts and criteria, I have decided that

7. If you wish to seek a review of this decision, you may wish to

Signed _____

Dated ____/____/____

APPENDIX 3 RESOURCES

LIST OF RESOURCES ON THE ADF FRAMEWORK

Below is a list of ADF framework documents for further reference.

- *Defence Act 1903*, particularly sections 9A, 58B and 58H.
- *Defence Regulation 2016*.

See: <https://www.legislation.gov.au/>

A number of aids are available to help with decision-making in the ADF framework, including the following.

- Good Decision-Making in Defence: A guide for decision makers and those who brief them.
- Incident Reporting and Management Manual.
- Single Service Instructions and instructions for completing administrative processes for each Service. These are sometimes known as Bench Level Instructions or Standard Operating Procedures.

See: <http://intranet.defence.gov.au/home/documents/whatsnew.htm>

LIST OF ADF RESOURCES ON REVIEW

Below is a list of ADF documents on review for further reference.

- [Military Redress](#) homepage.
- [Complaints and Alternative Resolutions Manual](#) (CARM).

LIST OF RESOURCES ON APS FRAMEWORK

Below is a list of APS framework documents for further reference.

- *Public Service Act 1999*
- *Public Service Regulations 1999*
- *Australian Public Service Commissioner's Directions 2013*
- *Fair Work Act 2009*
- *Long Service Leave (Commonwealth Employees) Act 1976*
- *Maternity Leave (Commonwealth Employees) Act 1973*

See: <https://www.legislation.gov.au/>

- [Defence Enterprise Agreement 2017 – 2020](#)
- [APS People Policy website on PeopleConnect](#)

You may also want to look at the rules about safety and compensation, which are closely tied to the basic pay and conditions package. They include:

- *Safety Rehabilitation and Compensation Act 1988*
- *Work Health and Safety Act 2011*

See: <https://www.legislation.gov.au/>

LIST OF RESOURCES ON APS REVIEW

Below is a list of APS documents on review for further reference.

- [Defence Enterprise Agreement 2017 – 2020](#)
- [APS People Policy website on PeopleConnect](#)

LIST OF APS RESOURCES ON DELEGATIONS

Below is a list of APS delegations schedules for further reference.

- *The Defence HR Delegations*
- *The DEA Delegations Schedule*
- *The PS Framework Delegations Schedule*

See: <http://www.defence.gov.au/PayAndConditions/>

LIST OF APS RESOURCES ON PRIVACY

Below is a list of documents on privacy for further reference.

- The [Defence privacy knowledge site](#) on PeopleConnect
- The Office of the Australian Information Commissioner's [Australian Privacy Principles](#) webpage

APS VALUES AND CODE OF CONDUCT

The APS values and Code of Conduct are contained in Part 3 of the [Public Service Act 1999](#).



Australian Government
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